

NOTICE OF OPEN MEETING

DECEMBER BOARD OF TRUSTEES

NBU Board Room, 263 Main Plaza, New Braunfels, Texas 78130 December 14, 2023, at 1:00 PM

www.nbutexas.com

AGENDA

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE AND INVOCATION

Board Vice President Judith Dykes-Hoffmann

PUBLIC COMMENT

NBU EMPLOYEE RECOGNITIONS

- 1. Presentation of Years of Service Pins to Employees Teresa Bracey (20 years) and Gretchen Reuwer (25 years)
- 2. Recognition of Kevin Self for Assisting a Community Member
- 3. Recognition of the 2023 Rising Star Award Recipients
- 4. Recognition of the 2023 Innovation Award Recipient
- 5. Recognition of the 2023 Ian Taylor Ethics Award Recipient
- 6. Recognition of the 2023 Outstanding Achievement Award Recipient

ITEMS FROM THE CHAIR

- 1. Dissolution of NBU Board Committee
 - a. Ad hoc Committee Board Compensation Committee
- 2. NBU Board Committee Assignments
- 3. Report from the Audit Committee
- 4. Report from the Investment Committee
- 5. Report from the Community Advisory Panel (CAP) Board Committee

ITEMS FROM STAFF

- 1. Interim CEO's Update
 - a. 2023 Downtown Spooktacular

- b. Pumpkin Patch Community Resource Fair
- c. Government Finance Officers Association (GFOA) Certificate of Achievement Award for Excellence in Financial Reporting
- d. New Braunfels Utilities and New Braunfels Food Bank Joint Food Drive Partnership & Thanksgiving Meal Distribution Event
- e. Emergency Management Tabletop Exercise
- f. New Braunfels Utilities Ethics Week
- g. Community Road Show Update
- h. Veterans Day Celebration and Parade
- i. American Public Power Association Excellence in Communication Web Social Submittal Award
- j. State of NBU Presentation to New Braunfels City Council
- k. Annual Holiday Tree Lighting
- 1. New Braunfels Food Bank Volunteer Activity for NBU Leadership Team
- m. NBU University Update
- n. One Water Logo Winners
- o. Leadership Announcements
- p. Other Items Permitted Under Section 551.0415 of the Texas Government Code
- 2. Financial Update and Report
- 3. Quarterly Investment Report
- 4. Quarterly Update on the Headwaters at the Comal
- 5. NBU Winter Weather Preparedness and Regulatory Update

CONSENT ITEMS FOR ACTION

- 1. Approve Minutes of the NBU Special Board Meeting of October 19, 2023
- 2. Approve Minutes of the NBU Regular Board Meeting of October 26, 2023
- 3. Approve Minutes of the NBU Special Board Meeting of November 29, 2023
- 4. Approve the Change Order Log from September 15, 2023, through November 15, 2023
- <u>5.</u> Approve the Reports for Water and Electric Engineering Contracts from August 1, 2023, through November 15, 2023
- 6. Approve the Electric Line of Business Alternative Procurements from September 15, 2023, through November 15, 2023

- 7. Approve 2023 Second Quarter Charge-Off Accounts
- 8. Approve the Guadalupe-Blanco River Authority Canyon Hydroelectric Cost Reconciliation for Fiscal Year 2023
- 9. Authorize Proposed Changes to the NBU Financial Policy
- 10. Authorize Interim CEO or His Designee to Negotiate and Execute a Second Amendment to the Professional Services Agreement with Arcadis U.S., Inc. for the Water Resource Planning Project
- 11. Authorize Interim CEO or His Designee to Negotiate and Execute a Third Amendment to the Professional Services Agreement with Arcadis U.S., Inc for the Design of Phase 4 Aquifer Storage and Recovery Support Project
- 12. Authorize Interim CEO or His Designee to Negotiate and Execute a Cooperative Contract with Holt Texas, Ltd., to Purchase One (1) Skid Steer Loader; One (1) Excavator; Three (3) Backhoe Loaders; and Two (2) Backhoe Loaders with Extended Boom
- 13. Authorize Interim CEO or His Designee to Negotiate and Execute a Cooperative Contract with Reliance Truck and Equipment, LLC. for One (1) Prebuilt 1050 TVO 2024 Closed Circuit TV Truck
- 14. Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for Program Management and Staff Augmentation for Engineering and Engineering Related Services in Support of New Braunfels Utilities' Water and Wastewater Capital Improvement Plan
- 15. Authorize Interim CEO or His Designee to Negotiate and Execute a Reuse Water Supply Contract with Sundance Property Owners Associations, Inc. for the Use of Reuse Water Provided by New Braunfels Utilities
- 16. Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Wallgren Environmental Service, Inc. DBA Pollution Control Services for Laboratory Testing Services for New Braunfels Utilities' Water and Wastewater Facilities in Connection with Regulatory and Compliance Testing Requirements
- 17. Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Guadalupe-Blanco River Authority for Biomonitoring Testing Services for New Braunfels Utilities' Water and Wastewater Facilities in Connection with Regulatory and Compliance Testing Requirements
- 18. Authorize Interim CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for Owner's Representative Services for the New Braunfels Utilities' Headquarters Project
- 19. Authorize Resolution #2023-180 Approving Revisions to the Records and Information Management Policy, Appointing the New Braunfels Utilities Records Manager as Records Management Officer Pursuant to the Local Government Records Act, and Approving Other Matters in Connection Therewith

- 20. Authorize Interim CEO or His Designee to Negotiate and Execute an AIA Amendment to the Professional Services Agreement with Marmon Mok Architecture for Architectural Design Services for the New Braunfels Utilities' Headquarters Project
- 21. Authorize Interim CEO or His Designee to Negotiate and Execute an AIA Agreement with SpawGlass Contractors, Inc., Including Contingency, for the NBU Annex Facility Renovation Design Build
- 22. Authorize Interim CEO or His Designee to Negotiate and Execute a Cooperative Contract with Waypoint Business Solutions, LLC for the Replacement of Servers Within the Consolidated VxRail Cluster and the Backup System
- 23. Authorize Interim CEO or His Designee to Negotiate and Execute a Cooperative Agreement with SHI International Corp. for the Renewal of Microsoft EA Licensing to Maintain Critical Software Usage for NBU Staff
- <u>24.</u> Approve Appointment of Stuart Blythin as Vice Chair of the Community Advisory Panel and Other Matters in Connection Therewith

ACTION ITEMS

- Discuss and Consider Approval of the NBU Annual Comprehensive Financial Report and Red Flag and Cybersecurity Incidents Report
- 2. Discuss and Consider Adopting Resolution #2023-181 Relating to the Issuance of the "City of New Braunfels, Texas Utility System Revenue and Refunding Bonds, Series 2024" and Resolving Other Matters Related Thereto
- 3. Discuss and Consider Approval and Authorization to Select the Underwriting Team for the City of New Braunfels, Texas, Utility System Revenue and Refunding Bonds, Series 2024
- <u>4.</u> Discuss and Consider Approval of a Professional Services Agreement with GHD, Inc. DBA GHD Consulting Inc. for Asset Management Support Services

EXECUTIVE SESSION

The Board of Trustees may recess into Executive Session for any purpose permitted by the Texas Open Meetings Act, including but not limited to:

- 1. Power Supply Resources Competitive Matters (Section 551.086 Texas Government Code)
- 2. Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege (Section 551.071 Texas Government Code)
 - a. Utility Construction Cost Sharing Agreement Among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC

3. Personnel Matters

(Section 551.074 – Texas Government Code)

- a. Deliberate the Appointment, Employment, and Duties of the Chief Executive Officer
- b. Deliberate the Appointment, Employment, and Duties of the Interim Chief Executive Officer

The Board of Trustees upon reconvening in Open Session will discuss and consider any action if necessary regarding closed session items.

RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE

ACTION ITEMS

- 1. Discuss and Consider Authorizing the Interim CEO or His Designee to Negotiate and Execute an Amended and Restated Utility Construction Cost Sharing Agreement Among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC, Amending Provisions of the Utility Construction Cost Sharing Agreement Dated February 8, 2022, Among the Same Parties
- 2. Discuss and Consider Authorizing the Interim CEO or His Designee to Negotiate and Execute a Construction Contract with Landmark Structures I, L.P. for the Construction of the Conrads Elevated Storage Tank Project

ADJOURN

If you require assistance in participating at a public meeting due to a disability as defined under the Americans with Disabilities Act, reasonable assistance, adaptations or accommodations will be provided upon request. Please contact the Board Relations Coordinator at least three (3) days prior to the scheduled meeting date, at (830) 629-8400, or NBU Main Office at 263 Main Plaza, New Braunfels, Texas, for additional information.

CERTIFICATE OF POSTING

I, Ryan Kelso, Secretary to the Board of Trustees, do hereby certify that this Notice of Open Meeting was posted at the City of New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas, and New Braunfels Utilities Main Office, 263 Main Plaza, New Braunfels, Texas, on the 8th day of December, 2023, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Ryan Kelso, Interim Chief Executive Officer

Secretary to the Board of Trustees



 Meeting Date:
 December 14, 2023
 Agenda Type:
 Items from Staff

 From:
 Kimberly Huffman Accounting Manager
 Reviewed by: Director of Finance

Submitted by: Dawn Schriewer Approved by: Ryan Kelso

Chief Financial Officer Interim Chief Executive Officer

RECOMMENDED ACTION: Financial Update and Report

BACKGROUND

NBU's service territory experienced higher temperatures and higher rainfall during the month of October than historically. The average temperature was 73.9 degrees, which was 3.8 degrees higher than the historical average temperature of 70.1 degrees. Rainfall totaled 4.23 inches for the month of October, which was 0.73 inches higher than the historical average rainfall of 3.5 inches.

For the month of October 2023, NBU recorded a change in net position after contributions ("CNPAC") of \$2,652,000 which represents an increase of \$1,629,000 compared to the budgeted monthly CNPAC of \$1,023,000. Operating service revenues of \$20,147,000 were less than budget by \$1,666,000, or 8%, for the month of October. A \$1,530,000 decrease in electric revenue, \$379,000 increase in water revenue, and a \$515,000 decrease in wastewater revenue contributed to the overall service revenues. Other operating revenues of \$500,000 were greater than budget by \$79,000 for the month of October. Purchased power costs were \$2,267,000 less than budget for October 2023 and \$14,948,000 greater for Year-to-Date ("YTD"). A decrease in other operating expenses of \$1,180,000 resulted in total operating expenses to be \$3,447,000, or 16%, less than the budgeted amount of \$21,186,000. The net revenue and operating expense variances contributed to a favorable net operating income variance of \$1,860,000 from budget. Net non-operating items had a \$103,000 favorable variance compared to budget. Impact fees were less than budget by \$737,000, services income was greater than budget by \$469,000, and capital participation fees were less than budget by \$66,000. October 2023 YTD CNPAC was \$15,649,000, which was \$2,109,000 greater than the budgeted amount of \$13,540,000.

FINANCIAL IMPACT

Electric

The Electric Line of Business reported total operating revenues of \$13,875,000, a \$1,506,000 decrease, or 10%, from the October budgeted amount of \$15,381,000. The net rate realized per kWh was \$0.0878, which was 3% less than the budgeted rate of \$0.0908. October kWh sales were 153.9 million kWh, a 11.8 million kWh decrease, or 7%, in comparison to the budgeted amount of 165.6 million kWh. Purchased power costs totaled \$9,229,000, which was \$2,267,000 less than the budgeted amount of \$11,496,000. Electric gross margin, which is total operating revenues minus purchased power, resulted in the amount of \$4,646,000 for the month of October and \$16,396,000 YTD. These amounts were \$761,000 greater and \$3,428,000 less than the budgeted amount of \$3,885,000 Month-to-Date ("MTD") and \$19,824,000 YTD. Other operating

expenses were less than budget by \$619,000. These items resulted in the Electric Line of Business reporting net operating income of \$2,320,000, which was \$1,380,000 greater than the budgeted amount of \$940,000. Net non-operating items provided a favorable variance from budget of \$19,000. Services income was greater than budget by \$445,000. The Electric Line of Business reported October 2023 CNPAC of \$2,228,000 and YTD CNPAC of \$8,792,000. These amounts were \$1,844,000 greater and \$428,000 less than their respective October 2023 MTD and October 2023 YTD budget amounts.

Water

The Water Line of Business reported total operating revenues of \$3,981,000, a \$421,000 increase, or 12%, from the October budgeted amount of \$3,560,000. In October, water gallons sold of 401,826,000 was greater than the budgeted amount of 391,907,000 (a 9,919,000-gallon variance from budget, or 3%). NBU's net realized price per 1,000 gallons sold in October was \$9.66, which was greater than the budgeted amount of \$8.94. Operating expenses for October were \$3,705,000, which was \$236,000 less than the budgeted amount of \$3,941,000. The net effect of greater revenues and lesser operating expenses than budgeted resulted in the Water's net operating income of \$276,000, which was less than budget. Net non-operating items provided an unfavorable variance of \$1,000 from budget. Impact fees of \$233,000 were less than budget by \$783,000 and services income was greater than budget by \$23,000. The Water Line of Business reported October 2023 CNPAC of \$107,000 and YTD CNPAC of \$4,611,000. These amounts were \$104,000 less than and \$1,737,000 greater than their respective October 2023 MTD and October 2023 YTD budget amounts.

Wastewater

The Wastewater Line of Business reported total operating revenues of \$2,791,000, a \$502,000 decrease, or 15%, from the October budgeted amount of \$3,296,000. Total operating expenses of \$2,479,000 were \$326,000 less than the budgeted amount of \$2,805,000. As a result, the Wastewater Line of Business reported net operating income of \$312,000, which was \$176,000 less than the budgeted amount of \$488,000. Net non-operating items provided a favorable variance of \$86,000 from budget. Impact fees were greater than budget by \$46,000, and capital participation fees were less than budget by \$66,000. The Wastewater Line of Business reported October 2023 CNPAC of \$317,000 and YTD CNPAC of \$2,246,000. These amounts were \$111,000 less than and \$800,000 greater than their respective October 2023 MTD and October 2023 YTD budget amounts.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

- 1. YTD Overview Comparison to Budget and Prior Fiscal Year
- 2. Financial Statements
- 3. Capital Expenditure Summary
- 4. Statistics Electric (Provided separately due to competitive matters)
- 5. Statistics Water
- 6. Statistics Wastewater

NEW BRAUNFELS UTLITIES OVERVIEW COMPARISON TO BUDGET & PRIOR FISCAL YEAR For the Period Ending October 31, 2023

		A	MOUNT		VARIANCE*	% CHANGE	FAV/UNFAV	Variance Explanation +/-30%
	EI	LECTR	IC					
Sales Volume (MWh)	Actual		532.1					
	Budget Prior Year		547.8 512.4		(15.7) 19.7	-3% 4%		
	riidi reai		312.4		15.7	470		
Revenues (\$M)	Actual	\$	65.9					
	Budget	\$	54.4	\$	11.5	21%		
	Prior Year		51.8	\$	14.1	27%		
Gross Margin (\$M)	Actual	\$	16.4					
(Total Operating Revenues Minus Purchased Pwr)	Budget	\$	19.8	\$	(3.4)	-17%		
								Higher revenues and increased purchased power costs than prior
	Prior Year		8.4	\$	8.0	94%		year contributed to larger increase in gross margin.
Operating Income (\$M)	Actual	đ	0.6					
Operating Income (\$M)	Actual Budget	\$ \$	9.6 10.9	\$	(1.3)	-12%		
	Prior Year	•	2.0	\$	7.6	*		
	1	A/ A T.F.						
Sales Volume (Million Gallons)	Actual	WATE	1.5					
	Budget		1.4		0.1	8%		
	Prior Year		1.3		0.2	12%		
Revenues (\$M)	Actual	\$	13.1					
	Budget	\$	12.9	\$	0.2	2%		
	Prior Year		11.1	\$	1.9	18%		
Gross Margin (\$M)	Actual	\$	10.1					
(Total Operating Revenues Minus Purchased Water)	Budget	\$	9.8	\$	0.3	4%		
	Prior Year		9.2	\$	0.9	10%		
Operating Income (\$M)	Actual	\$	3.2					
operating meditic (ph)	Budget	\$	1.1	\$	2.1	*		
	Prior Year		3.6	\$	(0.5)	-13%		
	WAS	STEW	ATFR					
Revenues (\$M)	Actual	\$	8.8					
	Budget	\$	9.8	\$	(1.1)	-11%		
	Prior Year		8.2	\$	0.6	7%		
Operating Income (\$M)	Actual	\$	2.0					
	Budget	\$	1.6	\$	0.4	22%		
	Prior Year		2.2	\$	(0.2)	-10%		
	CO	MBIN						
Operating Expenses (\$M)**	Actual	\$ \$	11.1	4	(4.0)	279/		
	Budget Prior Year	Þ	15.2 9.6	\$ \$	(4.0) 1.5	-27% 15%		
Operating Income (\$M)	Actual	\$	14.8	•	4.4	00/		
	Budget	\$	13.6	\$	1.1	8%		Higher revenues per LOB compared to prior year by\$15M. Lower
	Prior Year		7.9	\$	6.9	88%		operating expenses than prior year by \$10M.
Change in Net Position Before Contributions (\$M)	Actual	\$	10.2					
	Budget	\$	8.3	\$	1.9	22%		
	Prior Year		1.2	\$	9.0	*		
Impact Fees (\$M)	Actual	\$	4.0					
,	Budget	\$	4.2	\$	(0.2)	-6%		
	Prior Year		5.9	\$	(2.0)	-33%		Experiencing a slow down in impact fees collected compared to prior year. Prior year included several apartment complexes.
			5.5	*	(2.0)	55/0		
Change in Net Position After Contributions (\$M)	Actual	\$	15.6	*	0.4	4001		
	Budget	\$	13.5	\$	2.1	16%		Higher revenues per LOB compared to prior year by\$15M. Lower
	Prior Year		8.1	\$	7.5	92%		operating expenses than prior year by \$10M.
*Note: Variances are based on rounding of actual number	rs and not summarv	י חטויוי	bers in prei	vious (column.			
**Note: Operating expenses less purchased power, purch								

LEGEND Unfavorable Within -10% Within +10% Exceeds +10% Exceeds -10%

NEW BRAUNFELS UTILITIES

Balance Sheet

For the Period Ending October 31, 2023

Amounts Shown in Thousands

Amounts Shown in Thousands							
	0	ctober 31	Sep	tember 30			
_		2023		2023		ariance	% Change
ASSETS							
UTILITY PLANT							
,	\$	1,182,695	\$	1,174,867	\$	7,828	1%
Less: Accumulated Depreciation		(350,996)		(347,965)		(3,031)	1%
Construction in Progress		104,439		85,910		18,528	22%
TOTAL UTILITY PLANT	\$	936,138		912,812	_\$_	23,325	3%
CURRENT & ACCRUED ASSETS							
	\$	39,231	\$	25,023	\$	14,207	57%
Accounts Receivable - Customers (Net of Allowance for Bad Debt)		18,577		23,551		(4,975)	-21%
Accounts Receivable - Other		6,363		6,355		8	0%
Accrued Unbilled Revenue		14,765		14,370		395	3%
Inventory		8,685		8,420		265	3%
Prepaid Expenses		19,430		21,242		(1,812)	-9%
Accrued Interest Receivable		70		51		19	38%
Rents Receivable		-		216		(216)	-100%
TOTAL CURRENT & ACCRUED ASSETS	\$	107,120	\$	99,227	\$	7,893	8%
RESTRICTED ASSETS & DEFERRED DEBITS							
Restricted Funds	\$	96,276	\$	103,947	\$	(7,671)	-7%
Designated Funds		64,297		62,088		2,209	4%
Pension Deferred Outflows		16,755		16,755		-	0%
Power Cost Adjustments - Under-Recovered		1,773		6,030		(4,257)	-71%
Mid-Basin Regulatory Asset		2,985		2,915		70	2%
Other Deferred Debits		3,575		4,026		(451)	-11%
TOTAL RESTRICTED ASSETS & DEFERRED DEBITS	\$	185,661	\$	195,761	\$	(10,100)	-5%
	•		<u> </u>	,		,,	
TOTAL ASSETS	\$	1,228,919	\$	1,207,801	\$	21,118	2%
LIABILITIES & NET POSITION							
BONDS PAYABLE							
	\$	372,204	\$	372,196	\$	8	0%
Unamortized Bond Discount/Premium	•	24,672	•	24,880	•	(208)	-1%
TOTAL BONDS PAYABLE	\$	396,876	\$	397,076	\$	(200)	0%
				,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,			
CURRENT & ACCRUED LIABILITIES							
	\$	22,083	\$	6,636	\$	15,448	233%
Accrued Purchased Power	•	8,572	•	10,239	•	(1,667)	-16%
Commercial Paper Payable		65,000		65,000		-	0%
Customer Deposits		12,545		12,366		178	1%
Accrued Payroll & Benefits (Including Compensated Absences)		3,515		4,073		(558)	-14%
Accrued Interest Expense		5,304		4,101		1,203	29%
Current Portion of Long Term Debt		8,045		8,045		1,203	0%
				2,129			43%
Other Payables TOTAL CURRENT & ACCRUED LIABILITIES	đ	3,050 128,114	\$	112,589	\$	921 15,525	14%
TOTAL CURRENT & ACCRUED LIABILITIES	<u>Ф</u>	120,114	<u> </u>	112,569	<u> </u>	15,525	14%
NONCHEDENT LIABILITIES C DEFENDED CREDITS							
NONCURRENT LIABILITIES & DEFERRED CREDITS					_		
	\$	29,068	\$	29,068	\$	-	0%
Power Cost Adjustments - Over-Recovered		5,710		5,453		257	5%
Other Deferred Credits		18,906		18,688		219	1%
TOTAL NONCURRENT LIABILITIES & DEFERRED CREDITS	\$	53,683		53,208	_\$	475_	1%
TOTAL LIABILITIES	\$	578,674		562,873	_\$_	15,801	3%
NET POSITION							
Reserve for Restricted Assets	\$	74,053	\$	80,523	\$	(6,470)	-8%
Reserve for Intergovernmental		10,762		10,962		(200)	-2%
Unrestricted Assets		309,525		300,189		9,335	3%
Contributed Capital		255,906		253,254		2,652	1%
TOTAL NET POSITION	\$	650,245	\$	644,928	\$	5,318	1%
		,		-,			
TOTAL LIABILITIES & NET POSITION	\$	1,228,919	\$	1,207,801	\$	21,118	2%
	•		<u> </u>	-,,			

NEW BRAUNFELS UTILITIES Statement of Revenues & Expenses For the Period Ending October 31, 2023 Amounts Shown in Thousands

	MTD Actual		MTD Budget		Variance	% Variance	_	YTD Actual		YTD Budget	Var	iance	% Variance
VOLUME/RATES													
Electric Sales kWh	153,850		165,637		(11,788)	-7%		532,149		547,818		(15,670)	-3%
Electric Sales Rate Per kWh	\$ 0.0878		0.0908	\$	(0.0030)	-3%	\$		\$	0.0975	\$	0.0240	25%
Purchased kWh	146,819		161,055		(14,236)	-9%		529,896	•	541,427		(11,531)	-2%
Purchased Rate per kWh	\$ 0.0629		0.0714	\$	(0.0085)	-12%	\$		\$		\$	0.0296	46%
Gallons Sold Rate per 1,000 Gallons Sold	401,826 \$ 9.66) 5 \$	391,907 8.94	\$	9,919 0.72	3% 8%	\$	1,498,162 8.52	\$	1,391,587 9.12		106,575 (0.59)	8% -7%
	,					0,0	_						770
OPERATING REVENUES SERVICE REVENUE							_						
Electric Service	\$ 13,505	\$	15,035	\$	(1,530)	-10%	\$	64,650	\$	53,385	\$	11,265	21%
Water Service	3,882		3,503		379	11%		12,766		12,685		81	1%
Wastewater Service	2,760		3,275		(515)	-16%		8,669		9,791		(1,122)	-11%
TOTAL SERVICE REVENUE	\$ 20,147	\$	21,813	\$	(1,666)	-8%	\$	86,085	\$	75,861	\$	10,224	13%
OTHER OPERATING REVENUE													
Electric Other		\$	100	\$	73	73%	\$	477	\$	300	\$	177	59%
Water Other	78		42		36	86%		235		125		110	88%
Wastewater Other	31		18		13	72%		89		53		36	68%
Transmission System Revenue	157		217 29		(60)	-28%		687		651 87		36	6%
Electric Pole Attachments Water Tower Antenna Lease	40 21		29 15		11 6	38% 40%		130 63		87 44		43 19	49% 43%
TOTAL OTHER OPERATING REVENUE	\$ 500		421	\$	79	19%	-\$		\$	1,260	\$	421	33%
TOTAL OPERATING REVENUE	\$ 20,647		22,234	•	(1,587)	-7%	\$			77,121	•	10,645	14%
TOTAL OPERATING REVENUE	\$ 20,047	φ	22,234	φ	(1,367)	-776		67,700	φ	//,121	φ	10,043	1476
OPERATING EXPENSES ELECTRIC							_						
Purchased Power	\$ 9,229	\$	11,496	\$	(2,267)	-20%	\$	49,547	\$	34.599	\$	14,948	43%
Electric O&M Expenses	564		767		(203)	-26%		1,486	Ů	2,420		(934)	-39%
Electric Depreciation & Amortization	981		1,215		(234)	-19%		3,239		3,645		(406)	-11%
Electric Support Services Allocated Operating Expenses	781		963		(182)	-19%		2,064		2,869		(805)	-28%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 11,555	\$	14,441	\$	(2,886)	-20%	-\$	56,336	\$	43,533	\$	12,803	29%
WATER													
Purchased Water	\$ 1,041	\$	1,032	\$	9	1%	\$	2,962	\$	3,096	\$	(134)	-4%
Water 0&M Expenses	682		849		(167)	-20%		1,743		2,522		(779)	-31%
Water Depreciation & Amortization	912		1,032		(120)	-12%		2,738		3,096		(358)	-12%
Water Support Services Allocated Operating Expenses	1,070		1,028		42	4%	_	2,463		3,045		(582)	-19%
TOTAL WATER OPERATING EXPENSE	\$ 3,705	\$	3,941	\$	(236)	-6%	\$	9,906	\$	11,759	\$	(1,853)	-16%
WASTEWATER													
Wastewater 0&M Expenses	\$ 672		803	\$	(131)	-16%	\$	1,711	\$	2,231	\$	(520)	-23%
Wastewater Depreciation & Amortization	1,138		1,306		(168)	-13%		3,402		3,919		(517)	-13%
Wastewater Support Services Allocated Operating Expenses TOTAL WASTERWATER OPERATING EXPENSE	669 \$ 2,479		695 2,804	\$	(26)	-4% -12%	-	1,661 6,774	\$	2,066 8,216	\$	(405) (1,442)	-20% -18%
TOTAL OPERATING EXPENSES	\$ 17,739	\$	21,186	\$	(3,447)	-16%	\$	73,016	\$	63,508	\$	9,508	15%
NET OPERATING INCOME													
ELECTRIC ELECTRIC	\$ 2,320	\$	940	\$	1,380	*	- 4	9,608	\$	10,890	\$	(1,282)	-12%
WATER	276		(381)	•	657	*	·	3,158	•	1,095	•	2,063	*
WASTEWATER	312		489		(177)	-36%		1,984		1,628		356	22%
TOTAL NET OPERATING INCOME	\$ 2,908	\$	1,048	\$	1,860	*	\$	14,750	\$	13,613	\$	1,137	8%
NONOPERATING REVENUES (EXPENSES)													
Interest Income		\$	431	\$	179	42%	\$			1,293	\$	498	39%
Intergovernmental Expense	(942		(989)		47	-5%		(2,825)		(2,967)		142	-5%
Interest and Amortization Expense	(1,499		(1,376)		(123)	9%		(3,976)		(4,128)		152	-4%
Other TOTAL NONOPERATING REVENUES (EXPENSES)	178 \$ (1,653		(1,756)	¢	103	-6%	-\$	478 (4,532)	¢	533 (5,269)	•	(55) 737	-10% 14%
						-0%	a a			(5,269)	Þ		1476
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$ 1,255	\$	(708)	\$	1,963	*	\$	10,218	\$	8,344	\$	1,874	22%
CAPITAL CONTRIBUTIONS													
Impact Fees		\$	1,399	\$	(737)	-53%	\$	3,967	\$	4,198	\$	(231)	-6%
Services	735		266		469	******		1,463		799		664	83%
GBRA Capital Participation Fee TOTAL CAPITAL CONTRIBUTIONS	\$ 1,397	\$	1,731	\$	(66)	-100% -19%	-\$	5,430	¢	199 5,196	\$	(199)	-100% 5%
TOTAL SAFITAL CONTINUOTIONS	ψ 1,357	Ψ	1,731	Ψ	(554)	-13/0	_	3,430	Ψ	3,130	Ψ	234	
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$ 2,652	\$	1,023	\$	1,629	*	\$	15,649	\$	13,540	\$	2,109	16%

^{*}Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES ELECTRIC LINE OF BUSINESS Statement of Revenues & Expenses For the Period Ending October 31, 2023 Amounts Shown in Thousands

		ITD ctual	MTD Budget	V	ariance	% Variance		YTD Actual	YTD Budget	V	ariance	% Variance
ELECTRIC OPERATING REVENUES		ruui	 dagot		21101100	- Variance	_	, locadi	 baagot		ariarioo	- Tarianco
ELECTRIC SERVICE REVENUE							_					
Electric Service	\$ 1	13,505	\$ 15,035	\$	(1,530)	-10%	\$	64,650	\$ 53,385	\$	11,265	21%
TOTAL ELECTRIC SERVICE REVENUE		3,505	\$ 15,035	\$	(1,530)	-10%	\$	64,650	\$ 53,385	\$	11,265	21%
OTHER ELECTRIC OPERATING REVENUE												
Electric Other	\$	173	\$ 100	\$	73	73%	\$	477	\$ 300	\$	177	59%
Transmission System Revenue		157	217		(60)	-28%		687	651		36	6%
Electric Pole Attachments		40	29		11	38%	_	129	87		42	48%
TOTAL OTHER ELECTRIC OPERATING REVENUE	\$	370	\$ 346	\$	24	7%	\$	1,293	\$ 1,038	\$	255	25%
TOTAL ELECTRIC OPERATING REVENUE	\$ 1	3,875	\$ 15,381	\$	(1,506)	-10%	\$	65,943	\$ 54,423	\$	11,520	21%
ELECTRIC OPERATING EXPENSES												
Purchased Power & Other Power Supply	\$	9,229	\$ 11,496	\$	(2,267)	-20%	\$	49,547	\$ 34,599	\$	14,948	43%
Transmission & Distribution		515	711		(196)	-28%		1,315	2,252		(937)	-42%
Customer Service		(7)	35		(42)	*		80	106		(26)	-25%
Administrative & General		56	21		35	*		91	63		28	44%
Depreciation & Amortization		981	1,215		(234)	-19%		3,239	3,645		(406)	-11%
Support Services Allocated Operating Expenses		781	963		(182)	-19%		2,064	2,869		(805)	-28%
TOTAL ELECTRIC OPERATING EXPENSE	\$ 1	11,555	\$ 14,441	\$	(2,886)	-20%	\$	56,336	\$ 43,534	\$	12,802	29%
ELECTRIC NET OPERATING INCOME	\$	2,320	\$ 940	\$	1,380	*	\$	9,608	\$ 10,889	\$	(1,281)	-12%
NONOPERATING REVENUES (EXPENSES)												
Interest Income	\$	259	\$ 183	\$	76	42%	\$	761	\$ 550	\$	211	38%
Intergovernmental Expense		(749)	(799)		50	-6%		(2,248)	(2,398)		150	-6%
Interest and Amortization Expense		(361)	(246)		(115)	47%		(771)	(739)		(32)	4%
Other		98	90		8	9%		302	271		31	11%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$	(753)	\$ (772)	\$	19	2%	\$	(1,955)	\$ (2,316)	\$	361	16%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$	1,567	\$ 168	\$	1,399	*	\$	7,653	\$ 8,573	\$	(920)	-11%
ELECTRIC CAPITAL CONTRIBUTIONS												
Services	\$	661	\$ 216	\$	445	*	\$	1,138	\$ 647	\$	491	76%
TOTAL ELECTRIC CAPITAL CONTRIBUTIONS	\$	661	\$ 216	\$	445	*	\$	1,138	\$ 647	\$	491	76%
	•			•								
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$	2,228	\$ 384	\$	1,844	*	\$	8,792	\$ 9,220	\$	(428)	-5%

^{*}Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES WATER LINE OF BUSINESS Statement of Revenues & Expenses For the Period Ending October 31, 2023 Amounts Shown in Thousands

TOTAL WATER SERVICE REVENUE			MTD .ctual		MTD udget	Va	riance	% Variance			YTD ctual	E	YTD Budget	V	ariance	% Variance
Mater Service \$ 3,882 \$ 3,503 \$ 3.79 111% \$ 12,766 \$ 12,685 \$ 81 175		•							_							
TOTAL WATER SERVICE REVENUE \$3,882 \$3,503 \$379 11% \$12,766 \$12,685 \$81 19%	WATER SERVICE REVENUE															
Water Other Same	Water Service	\$	3,882						_	•			12,685			1%
Water Other \$ 78 \$ 42 \$ 36 86% \$ 235 \$ 125 \$ 10 889 Water Tower Antenna Lease 21 15 6 40% 63 44 19 73 TOTAL OTHER WATER OPERATING REVENUE \$ 99 \$ 57 \$ 42 74% \$ 298 \$ 169 \$ 129 758 TOTAL WATER OPERATING REVENUE \$ 3,981 \$ 3,560 \$ 421 12% \$ 13,064 \$ 12,854 \$ 210 28 WATER OPERATING EXPENSES WATER OPERATING EXPENSES Purchased Water \$ 1,041 \$ 1,032 9 11% \$ 2,962 \$ 3,096 \$ (134) -48 Supply Source 13 10 3 30% 42 28 14 500 Transmission & Distribution 190 322 (132) -41% 481 904 (423) -479 Pumping 217 235 (18) -6% 634 705 (71) -100 Water Freatme	TOTAL WATER SERVICE REVENUE	\$	3,882	\$	3,503	\$	379	11%		\$	12,766	\$	12,685	\$	81	1%
Mater Toward Antenna Lease 21 15 6 40% 63 44 19 439 439 107AL OTHER WATER OPERATING REVENUE \$ 99 \$ 57 \$ 42 74% \$ 298 \$ 169 \$ 129 758 758 758 758 748 \$ 13,064 \$ 12,854 \$ 210 298 758 7	OTHER WATER OPERATING REVENUE															
TOTAL OTHER WATER OPERATING REVENUE \$ 99 \$ 57 \$ 42 74% \$ 298 \$ 169 \$ 129 76%	Water Other	\$	78	\$	42	\$	36	86%		\$	235	\$	125	\$	110	88%
MATER OPERATING EXPENSES Sample S	Water Tower Antenna Lease						6	40%	_						19	43%
WATER OPERATING EXPENSES Purchased Water \$ 1,041 \$ 1,032 \$ 9 1% \$ 2,962 \$ 3,096 \$ (134) -49 Supply Source 13 10 3 30% 42 28 14 50% Transmission & Distribution 190 322 (132) -41% 481 904 (423) -47 Pumping 217 235 (18) -8% 634 705 (71-00) Water Treatment 230 229 1 0% 489 702 (213) -30% Customer Service (3) 9 (12) * 15 26 (11) -42 Administrative & General 35 44 (9) -20% 81 157 (76) -48 Depreciation & Amortization 912 1032 (120) +12% 2,738 3,096 (358) -19 TOTAL WATER OPERATING EXPENSE \$ 1,070 1,028 42 4% 2,463 3,	TOTAL OTHER WATER OPERATING REVENUE	\$	99	\$	57	\$	42	74%		\$	298	\$	169	\$	129	76%
Purchased Water	TOTAL WATER OPERATING REVENUE	\$	3,981	\$	3,560	\$	421	12%	_	\$	13,064	\$	12,854	\$	210	2%
Supply Source	WATER OPERATING EXPENSES															
Transmission & Distribution 190 322 (132) -41% 481 904 (423) -47% Pumping 217 235 (18) -8% 634 705 (71) -109 (21) -1	Purchased Water	\$	1,041	\$	1,032	\$	9	1%		\$	2,962	\$	3,096	\$	(134)	-4%
Transmission & Distribution 190 322 (132) -41% 481 904 (423) -47% 47% 481 904 (423) -47% 47% 481 904 (423) -47% 47% 481 904 (423) -47% 481 904 (423) -47% 908 1 908	Supply Source		13		10		3	30%			42		28		14	50%
Pumping 217 235 188 -8% 634 705 770 -108 108			190		322		(132)	-41%			481		904		(423)	-47%
Water Treatment 230 229 1 0% 489 702 (213) -30% Customer Service (3) 9 (12) * 15 26 (11) -42% Administrative & General 35 44 (9) -20% 81 157 (76) -48% Depreciation & Amortization 912 1,032 (120) -12% 2,738 3,096 (358) -12% Support Services Allocated Operating Expenses 1,070 1,028 42 4% 2,463 3,045 (582) -199 TOTAL WATER OPERATING EXPENSES 3,705 3,941 (236) -6% \$ 9,905 \$ 11,759 \$ (1,854) -169 NONOPERATING REVENUES (EXPENSES) 42 4% 2,493 3,61 \$ 138 388 Interest Income 170 120 50 42% \$ 499 3,61 \$ 138 388 Interest Income 9,17 1,120 50 42% \$ 499 3,61 \$ 138	Pumping		217		235		(18)	-8%			634		705			-10%
Customer Service (3) 9 (12) 7 15 26 (11) -429 Administrative & General 335 44 (9) -20% 81 157 (76) -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488 157 -488			230								489		702			-30%
Administrative & General 35			(3)				(12)				15					-42%
Depreciation & Amortization 912 1,032 (120) -12% 2,738 3,096 358 -12% 5 5 5 5 5 5 5 5 5	Administrative & General		35		44			-20%			81		157		(76)	-48%
Support Services Allocated Operating Expenses 1,070 1,028 42 4% 2,463 3,045 (582) 1-199					1.032											-12%
TOTAL WATER OPERATING EXPENSE \$ 3,705 \$ 3,941 \$ (236) -6% \$ 9,905 \$ 11,759 \$ (1,854) -169 \$ (1,8	·															-19%
NONOPERATING REVENUES (EXPENSES) Interest Income		\$		\$		\$			-	\$		\$	-	\$		-16%
Interest Income \$170	WATER NET OPERATING INCOME	\$	276	\$	(381)	\$	657	*	_	\$	3,158	\$	1,095	\$	2,063	*
Intergovernmental Expense (94) (90) (4) 4% (280) (270) (10) 49 (10) (10) (10) (10) (10) (10) (10) (10)	NONOPERATING REVENUES (EXPENSES)															
Interest and Amortization Expense (604) (578) (26) 4% (1,716) (1,733) 17 -19 Other 52 73 (21) -29% 127 220 (93) -429 TOTAL NONOPERATING REVENUES (EXPENSES) \$ (476) \$ (475) \$ (1) 0% \$ (1,370) \$ (1,422) \$ 52 -4% OTHER CAPITAL CONTRIBUTIONS \$ (200) \$ (856) \$ 656 -77% \$ 1,788 \$ (327) \$ 2,115 OTHER CAPITAL CONTRIBUTIONS \$ 233 \$ 1,016 \$ (783) -77% \$ 2,499 \$ 3,049 \$ (550) -189 Services 74 51 23 45% 325 \$ 152 173 OTHER CAPITAL CONTRIBUTIONS \$ 307 \$ 1,067 \$ (760) -71% \$ 2,824 \$ 3,201 \$ (377) -12% OTHER CAPITAL CONTRIBUTIONS	Interest Income	\$	170	\$	120	\$	50	42%		\$	499	\$	361	\$	138	38%
Other 52 73 (21) -29% 127 220 (93) -42% TOTAL NONOPERATING REVENUES (EXPENSES) \$ (476) \$ (475) \$ (11) 0% \$ (1,370) \$ (1,422) \$ 52 -4% CHANGE IN NET POSITION BEFORE CONTRIBUTIONS \$ (200) \$ (856) \$ 656 -77% \$ 1,788 \$ (327) \$ 2,115 WATER CAPITAL CONTRIBUTIONS \$ 233 \$ 1,016 \$ (783) -77% \$ 2,499 \$ 3,049 \$ (550) -189 Services 74 51 23 45% 325 \$ 152 173 TOTAL WATER CAPITAL CONTRIBUTIONS \$ 307 \$ 1,067 \$ (760) -71% \$ 2,824 \$ 3,201 \$ (377) -12%	Intergovernmental Expense		(94)		(90)		(4)	4%			(280)		(270)		(10)	4%
Other 52 73 (21) -29% 127 220 (93) -42% TOTAL NONOPERATING REVENUES (EXPENSES) \$ (476) \$ (475) \$ (1) 0% \$ (1,370) \$ (1,422) \$ 52 -4% CHANGE IN NET POSITION BEFORE CONTRIBUTIONS \$ (200) \$ (856) \$ 656 -77% \$ 1,788 \$ (327) \$ 2,115	Interest and Amortization Expense		(604)		(578)		(26)	4%			(1,716)		(1,733)		17	-1%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS \$ (200) \$ (856) \$ 656 -77% \$ 1,788 \$ (327) \$ 2,115 WATER CAPITAL CONTRIBUTIONS Impact Fees \$ 233 \$ 1,016 \$ (783) -77% \$ 2,499 \$ 3,049 \$ (550) -189 Services 74 51 23 45% 325 \$ 152 173 TOTAL WATER CAPITAL CONTRIBUTIONS \$ 307 \$ 1,067 \$ (760) -71% \$ 2,824 \$ 3,201 \$ (377) -12%			52		73			-29%			127		220		(93)	-42%
WATER CAPITAL CONTRIBUTIONS \$ 233 \$ 1,016 \$ (783) -77% \$ 2,499 \$ 3,049 \$ (550) -189 Services 74 51 23 45% 325 \$ 152 173 TOTAL WATER CAPITAL CONTRIBUTIONS \$ 307 \$ 1,067 \$ (760) -71% \$ 2,824 \$ 3,201 \$ (377) -12%	TOTAL NONOPERATING REVENUES (EXPENSES)	\$	(476)	\$	(475)	\$	(1)	0%	_	\$	(1,370)	\$	(1,422)	\$	52	-4%
Impact Fees \$ 233 \$ 1,016 \$ (783) -77% \$ 2,499 \$ 3,049 \$ (550) -189 Services 74 51 23 45% 325 \$ 152 173 TOTAL WATER CAPITAL CONTRIBUTIONS \$ 307 \$ 1,067 \$ (760) -71% \$ 2,824 \$ 3,201 \$ (377) -12%	CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$	(200)	\$	(856)	\$	656	-77%	_	\$	1,788	\$	(327)	\$	2,115	*
Impact Fees \$ 233 \$ 1,016 \$ (783) -77% \$ 2,499 \$ 3,049 \$ (550) -189 Services 74 51 23 45% 325 \$ 152 173 TOTAL WATER CAPITAL CONTRIBUTIONS \$ 307 \$ 1,067 \$ (760) -71% \$ 2,824 \$ 3,201 \$ (377) -12%	WATER CAPITAL CONTRIBUTIONS															
Services 74 51 23 45% 325 \$ 152 173 TOTAL WATER CAPITAL CONTRIBUTIONS \$ 307 \$ 1,067 \$ (760) -71% \$ 2,824 \$ 3,201 \$ (377) -12%		\$	233	\$	1,016	\$	(783)	-77%		\$	2.499	\$	3.049	\$	(550)	-18%
TOTAL WATER CAPITAL CONTRIBUTIONS \$ 307 \$ 1,067 \$ (760) -71% \$ 2,824 \$ 3,201 \$ (377) -12%	•	*		•	.,	•					_,		-,-	•		*
CHANGE IN NET POSITION AFTER CONTRIBUTIONS \$ 107 \$ 211 \$ (104) -49% \$ 4 611 \$ 2 874 \$ 1 737 60%		\$	307	\$		\$			_	\$				\$		-12%
Ψ 101 Ψ 111 Ψ (10-7)	CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$	107	\$	211	\$	(104)	-49%	-	\$	4,611	\$	2,874	\$	1,737	60%

^{*}Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES
WASTEWATER LINE OF BUSINESS
Statement of Revenues & Expenses
For the Period Ending October 31, 2023
Amounts Shown in Thousands

		ITD ctual		MTD idget	Va	riance	% Variance	ı	YTD Actual	В	YTD udget	Vá	ariance	% Variance
WASTEWATER OPERATING REVENUES								_						
WASTEWATER SERVICE REVENUE														
Wastewater Service	\$	2,760	\$	3,275	\$	(515)	-16%	\$	8,669	\$	9,791	\$	(1,122)	-11%
TOTAL WASTEWATER SERVICE REVENUE	\$:	2,760	\$:	3,275	\$	(515)	-16%	\$	8,669	\$	9,791	\$	(1,122)	-11%
OTHER WASTEWATER OPERATING REVENUE														
Wastewater Other	\$	31	\$	18	\$	13	72%	\$	89	\$	53	\$	36	68%
TOTAL OTHER WASTEWATER OPERATING REVENUE	\$	31	\$	18	\$	13	72%	\$	89	\$	53	\$	36	68%
TOTAL WASTEWATER OPERATING REVENUE	\$	2,791	\$ 3	3,293	\$	(502)	-15%	\$	8,758	\$	9,844	\$	(1,086)	-11%
WASTEWATER OPERATING EXPENSES														
Wastewater Operations & Maintenance		579		696		(117)	-17%		1,574		2,050		(476)	-23%
Customer Service		(2)		9		(11)	*		19		27		(8)	-30%
Administrative & General		94		99		(5)	-5%		117		154		(37)	-24%
Depreciation & Amortization		1,138		1,306		(168)	-13%		3,402		3,919		(517)	-13%
Support Services Allocated Operating Expenses		669		695		(26)	-4%		1,661		2,066		(405)	-20%
TOTAL WASTERWATER OPERATING EXPENSE	\$	2,479	\$ 2	2,805	\$	(326)	-12%	\$	6,774	\$	8,216	\$	(1,442)	-18%
WASTEWATER NET OPERATING INCOME	\$	312	\$	488	\$	(176)	-36%	\$	1,984	\$	1,628	\$	356	22%
NONOPERATING REVENUES (EXPENSES)														
Interest Income	\$	181	\$	128	\$	53	41%	\$	531	\$	383	\$	148	39%
Intergovernmental Expense		(99)		(100)		1	-1%		(297)		(299)		2	-1%
Interest and Amortization Expense		(534)		(552)		18	-3%		(1,489)		(1,657)		168	-10%
Other		28		14		14	100%		49		42		7	17%
TOTAL NONOPERATING REVENUES (EXPENSES)	\$	(424)	\$	(510)	\$	86	-17%	\$	(1,206)	\$	(1,531)	\$	325	-21%
CHANGE IN NET POSITION BEFORE CONTRIBUTIONS	\$	(112)	\$	(22)	\$	(90)	*	\$	778	\$	97	\$	681	*
WASTEWATER CAPITAL CONTRIBUTIONS														
Impact Fees	\$	429	\$	383	\$	46	12%	\$	1,468	\$	1,149	\$	319	28%
GBRA Capital Participation Fee		-		66		(66)	-100%		-		199		(199)	-100%
TOTAL WASTEWATER CAPITAL CONTRIBUTIONS	\$	429	\$	449	\$	(20)	-4%	\$	1,468	\$	1,348	\$	120	9%
CHANGE IN NET POSITION AFTER CONTRIBUTIONS	\$	317	\$	428	\$	(111)	-26%	\$	2,246	\$	1,446	\$	800	55%

^{*}Denotes variance greater than 100%

NEW BRAUNFELS UTILITIES

Statement of Cash Flows

For the Period Ending October 31, 2023

Amounts Shown in Thousands

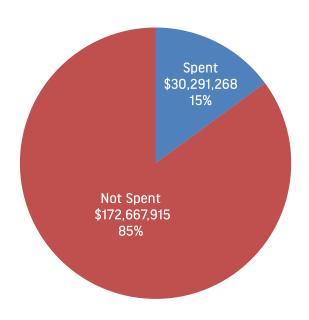
		MTD		YTD
NET POSITION BEFORE CONTRIBUTIONS	\$	1,255	\$	10,218
Operating activities, cash flows provided by or used in:				
Depreciation	\$	3,031	\$	9,379
Decrease (increase) in accounts receivable		4,571		9,038
Decrease (increase) in inventories		(265)		(2,148)
Decrease (increase) in other assets		10,513		(2,787)
Increase (decrease) in current liabilities		17,178		23,418
Increase (decrease) in other liabilities		475		(8,618)
Net Cash Flow from Operating Activities	\$	36,758	\$	38,499
Investing activities, cash flows provided by or used in: Capital Expenditures Investments Rents/Interest Receivable Net Cash Flow from Investing Activities	\$	(26,356) 5,462 197 (20,698)	\$	(34,648) (20,487) 507 (54,627)
Financing activities, cash flows provided by or used in: Transfers to City of New Braunfels	\$	(1,653)	\$	(4,532)
Increase (decrease) in long-term debt		(200)	_	(599)
Net Cash Flow from Financing Activities	<u>\$</u>	(1,853)	\$	(5,131)
Net Increase (Decrease) in Cash and Cash Equivalents	\$	14,207	<u>\$</u>	(21,259)

Denartment	Capital Equipment Description	YTD	FY 2024	Budget
ELECTRIC	Capital Equipment Description	Actual	Budget	Remaining
117 117	SEA Air Excavation Unit Altec Pressure Digger	429,317	650,000 400,000	650,00 (29,31
117 117	Altec AM 60E Altec 55' Articulating Boom	-	300,000 300,000	300,00 300,00
117	Altec AM 60E		185,000	185.00
117 117	Arc Demo Trailer Ford F-550 Electric	-	120,000	120,00
117	Ford F-550 Electric		111,982	111,98
117 117	Ford F-550 Electric Ford F-550 Electric	- :	111,982 111,982	111,98 111,98
117 117	Ford F-150 Ford F-150	- :	55,000 55,000	55,00 55,00
117	Ford F-150	-	55,000	55.00
117 117	Ford F-150 Locator Unit	-	55,000 45,000	55,00 45,00
117 119	Dump Trailer	12,733	15,000	2,26
119	Ford F-550 w/Crane Ford F-550 Electric	- 1	150,437 61,393	150,43 61,39
	TOTAL ELECTRIC	\$ 442,050	\$ 2,894,758	\$ 2,452,70
WATER				
216 220	Ford F-150 Ford F-550 w/Crane	-	55,000 150,437	55,00 150,43
220	Ford F-150	54,845	55,000	15
	TOTAL WATER	\$ 54,845	\$ 260,437	\$ 205,59
WASTEWATER				
320 320	Ford F-550 w/Crane Ford F-150	- 1	150,437 55,000	150,43 55,00
320	Small Utility Unit	-	15,000	15,00
	TOTAL WASTEWATER	\$ -	\$ 220,437	\$ 220,43
SHARED WATER/WASTEWATER 217/317	CAT 313 Excavator		250,000	250,00
217/317	Ford F-550	- :	244,534	244,53
217/317 217/317	International Dump Truck International M37	160,467	230,000 175,000	230,00 14.53
217/317	SEA Truck Mounted Jetter	,0/	150,000	150,00
217/317 217/317	CAT Backhoe w/Ext Ford F-550		125,000 122,267	125,00 122,26
217/317 217/317	Ford F-550 Ford F-550		122,267 122,267	122,26
217/317	International Dump Truck	- :	115,000	115,00
217/317 217/317	CAT Backhoe CAT Backhoe		115,000	115,00
217/317	CAT Backhoe		115,000	115.00
217/317 217/317	E.H. Wachs Large VE E.H. Wachs Large VE	- :	86,000 86,000	86,00 86,00
217/317	1500' of Bypass Hose		85,000	85,00
217/317 217/317	CAT Skid Steer Ford F-150	54,845	65,000 55,000	65,00
217/317 217/317	Scorpion Towable Attenuator Towable Air Compressor	-	35,000 25,000	35,00 25,00
217/317	Tools for F-550	-	15,000	15.00
217/317	DTS Trailer	6,637 \$ 221,949	10,000	3,36
	TOTAL SHARED WATER/WASTEWATER	\$ 221,949	\$ 2,463,335	\$ 2,241,38
Business Planning 425	Ford Escape		30,000	30,00
425	GPS Unit		30,000	30,00
	TOTAL BUSINESS PLANNING	\$ -	\$ 60,000	\$ 60,00
SAFETY				
524	Ford Explorer TOTAL SAFETY	\$4,845 \$ 54,845	\$ 38,000	\$ (16,84
PURCHASING				(10,0
527	Ford F-350		75,500	75,50
	TOTAL PURCHASING	\$ -	\$ 75,500	\$ 75,50
FLEET/FACILITIES				
528 528	Ford F-550 Fleet Service Ford F-350	-	185,000 85,576	185,00 85,57
528 528	Ford F-150	54,845	55,000	19
528 528	Ford F-150 Ford F-150	54,845 54,845	55,000 55,000	19
528 528	Ford F-150 Ford F-150		55,000 55,000	55,00 55,00
528	Ford Escape		30,000	30.00
528 528	Lawn Mowing Equipment Other		25,000 25,000	25,00 25,00
528 528	Pressure washing trailer		16,000	16,00
528	Janitorial Equipment TOTAL FLEET/FACILITIES	\$ 164,535	15,000 \$ 656,576	15.00 \$ 492,04
		*,		
SERVATION AND CUSTOMER SOLUTION 529	Ford Escape Plug-in Hybrid		40,000	40,00
529	Ford Escape Plug-in Hybrid TOTAL CONSERVATION AND CUSTOMER SOLUTIONS		40,000 \$ 80,000	40,00 \$ 80,00
	TOTAL CONSERVATION AND COSTONER SOCOTIONS	•	00,000	00,00
TECHNOLOGY 531	Server Replacements	-	600,000	600,00
531 531	PC Replacements	98,777	400,000	301,22
531	Dell Nodes Network Equipment Replacements	95,650	400,000 200,000	400,00 104,35
531 531	IT to Purchase Unit Copier and High-end Printer & Plotter Replacements		50,000 37,500	50,00 37,50
991	UPS Replacements		10,000	10,00
531		\$ 194,427	\$ 1,697,500	\$ 1,503,07
	TOTAL TECHNOLOGY	\$ 134,427		
531 SYSTEM CONTROL		\$ 154,427		
531	Ford Escape Ford Escape	\$ 134,427 -	30,000	30,00
531 SYSTEM CONTROL 532 532 532 532	Ford Escape Ford Escape Ford Escape		30,000 30,000	30,00
531 SYSTEM CONTROL 532 532 532 532 532 532	Ford Escape		30,000 30,000 30,000 30,000	30,00 30,00 30,00
531 SYSTEM CONTROL 532 532 532 532 532	Ford Excape	- - - - -	30,000 30,000 30,000 30,000 30,000	30,00 30,00 30,00 30,00 30,00
531 SYSTEM CONTROL 532 532 532 532 532 532	Ford Escape		30,000 30,000 30,000 30,000	30,00 30,00 30,00 30,00 30,00
531 SYSTEM CONTROL 532 532 532 532 532 532	Ford Escape TOTAL SYSTEM CONTROL	- - - - - - - - -	30,000 30,000 30,000 30,000 30,000 \$ 180,000	30,00 30,00 30,00 30,00 30,00 \$ 180,00
531 SYSTEM CONTROL 532 532 532 532 532 532	Ford Excape	- - - - - - - - -	30,000 30,000 30,000 30,000 30,000 \$ 180,000	
\$31 \$YSTEM CONTROL 532 532 532 532 532 532 532 532	Ford Escape TOTAL SYSTEM CONTROL	- - - - - - - - -	30,000 30,000 30,000 30,000 30,000 \$ 180,000	30,00 30,00 30,00 30,00 30,00 \$ 180,00
\$31 \$VITEM CONTROL 532 532 532 532 532 532 532 53	Ford Escape Total Escape Total Escape Total Capital Edulpment	\$ -	30,000 30,000 30,000 30,000 30,000 \$ 180,000	30,00 30,00 30,00 30,00 30,00 \$ 180,00 \$ 7,493,89
\$31 \$YSTEM CONTROL 532 532 532 532 532 532 532 WATER 220	Ford Escape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Aluminum Dump Trailer 2023 Ford F50 444 Super crew	\$ 1,132,651	30,000 30,000 30,000 30,000 30,000 \$ 180,000	30.00 30.00 30.00 30.00 30.00 \$ 180.00 \$ 7,493.89
\$31 \$YSTEM CONTROL 532 532 532 532 532 532 532 WATER 220	Ford Escape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Aluminum Dump Trailer 2023 Ford F190 Add Super crew 2023 Ford F190 Add Super crew	\$ - \$ 1,132,651 21,080 54,845 54,845	30,000 30,000 30,000 30,000 30,000 \$ 180,000	\$ 7,493,85 (21,06 (54,84
\$31 \$YSTEM CONTROL 532 532 532 532 532 532 532 WATER 220	Ford Escape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Aluminum Dump Trailer 2023 Ford F50 444 Super crew	\$ 1,132,651	30,000 30,000 30,000 30,000 30,000 \$ 180,000	\$ 7,493,85 (21,06 (54,84
\$31 \$VSTEM CONTROL 532 532 532 532 532 532 532 53	Ford Escape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Aluminum Dump Trailer 2023 Ford F150 AVA Super crew 2023 Ford F150 AVA Super crew TOTAL WATER	\$ 1,132,651 \$ 1,132,651 21,080 54,845 54,845 \$ 130,770	30,000 30,000 30,000 30,000 30,000 \$ 180,000	30.00 30.00 30.00 30.00 \$ 180.00 \$ 7,493,89 (21.06 (54.8) (54.8) \$ (130.77)
\$31 \$YSTEM CONTROL 532 532 532 532 532 532 532 53	Ford Escape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Aluminum Dump Trailer 2023 Ford F190 Add Super crew 2023 Ford F190 Add Super crew	\$ - \$ 1,132,651 21,080 54,845 54,845	30,000 30,000 30,000 30,000 30,000 \$ 180,000	30.00 30.00 30.00 30.00 \$ 180.00 \$ 7,493,89 (21.06 (54.8) (54.8) \$ (130.77)
\$31 \$VSTEM CONTROL 532 532 532 532 532 532 532 53	Ford Escape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Aluminum Dump Trailer 2023 Ford F150 AVA Super crew 2023 Ford F150 AVA Super crew TOTAL WATER	\$ 1,132,651 \$ 1,132,651 21,080 54,845 54,845 \$ 130,770	\$ 180,000 \$10,000 \$10,000 \$10,000 \$180,000 \$ 180,000 \$ 8,626,543	30.00 30.00 30.00 30.00 \$ 180.00 \$ 7,493.85 \$ 7,493.85 \$ (21.06 54.84 \$ (130.77
\$31 \$YSTEM CONTROL \$32 \$32 \$32 \$32 \$32 \$32 \$32 \$3	Ford Excape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Aluminum Damp Trailer 2023 Ford FISO 4MA Super crew 2023 Ford FISO 4MA Super crew 2023 Ford FISO 4MA Super crew TOTAL WATER	\$ \$ 1,132,651 \$ 1,132,651	\$ 180,000 \$10,000 \$10,000 \$10,000 \$180,000 \$ 180,000 \$ 8,626,543	30,000 30,000 30,000 30,000 \$ 180,000 \$ 7,493,89 (21,08 (54,84 \$ (13,0,77 (54,84 \$ (54,84
\$31 \$YSTEM CONTROL 532 532 532 532 532 532 532 541 551ED PRIOR YEAR HEMS: WATER 220 220 220 WASTEMATER 317	Ford Excape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Auminum Dump Trailer 2023 Ford FISO ANA Super crew 2023 Ford FISO ANA Super crew TOTAL WATER 2023 Ford FISO ANA Super crew 2022 Ford FISO ANA Super crew 2022 Ford FISO ANA Super crew 2022 Ford FISO ANA Super crew	\$ 1.132,651 \$ 1,132,651 21,080 54,845 54,845 \$ 130,770 54,845 \$ 54,845	\$ 180,000 \$10,000 \$10,000 \$10,000 \$180,000 \$ 180,000 \$ 8,626,543	30.00 30.00 30.00 30.00 \$ 180.00 \$ 7,493.85 \$ 7,493.85 \$ (21.06 54.84 \$ (130.77
\$31 \$YSTEM CONTROL 532 532 532 532 532 532 532 53	Ford Excape TOTAL SYSTEM CONTROL TOTAL CAPITAL EQUIPMENT 2023 Aluminum Dump Trailer 2023 Ford F150 AX4 Super crew 2023 Ford F150 AX4 Super crew TOTAL WASTEWATER 2023 Ford F150 AX4 Super crew 2023 Ford F150 AX4 Super crew TOTAL WASTEWATER	\$ 1.132,651 \$ 1,132,651 21,080 54,845 54,845 \$ 130,770 54,845 \$ 54,845	30,000 30,000 30,000 30,000 \$ 180,000 \$ 180,000 \$ 5 6,626,543	30.00 30.00 30.00 30.00 \$ 180.00 \$ 7,493.85 \$ 7,493.85 \$ (54.84 \$ (130.77)

FY 2024 Capital Expenditure Summary As of October 31, 2023

25% of Year Completed

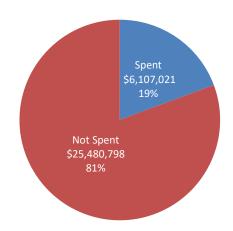
	<u>Spent</u>	Not Spent	Total Budget	% of Total Budget Spent
Electric	\$ 6,107,021	\$ 25,480,798	\$ 31,587,819	19%
Water	9,724,870	62,260,286	71,985,156	14%
Wastewater	1,449,046	50,881,509	52,330,555	3%
Support Services	13,010,332	34,045,321	47,055,653	28%
TOTAL	\$ 30,291,268	\$ 172,667,915	\$ 202,959,183	
-	15%	85%	100%	



25% of Year Completed

Electric Line of Business FY 2024 Capital Expenditure Summary As of October 31, 2023

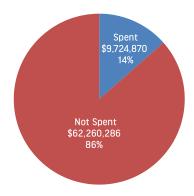
	Total		FY23 Project		Y23 Budget		Project Life	(1)/(2) % Spent	% Physical
Project Project	Spent YT	<u>D</u>	Budget		Remaining	T	otal Budget	YTD	Completion
Budgeted Projects:	A 0.046	. FOO	E E00 00E	.	2 226 247	φ.	F F00 00F	400/	05%
System Extensions		5,588 \$	5,582,835	\$	3,236,247	\$	5,582,835	42%	25% 25%
Distribution Transformers	2,014		5,642,698		3,627,891		5,642,698	36%	
Electric Meters),426	3,514,000		2,853,574		3,514,000	19%	25% 25%
Electric Aging Infrastructure	384	1,908	2,967,536		2,582,628		2,967,536	13%	
Electric Technology Upgrades		828	149,106		148,278		149,106	1%	10%
Three-Phase Extensions		-	1,806,177		1,806,177		9,313,421	0%	33%
Fiber Optic Extensions		287	102,624		102,337		1,086,371	0%	5%
Hueco Springs Substation		3,083	7,301,106		7,138,023		9,939,535	2%	5%
Electric Aging Infrastructure, Substation		3,798	115,672		51,874		4,666,606	55%	10%
Freiheit Breaker Addiitons & Control House	70),025	2,371,748		2,301,723		2,445,650	3%	20%
EC23 FM 482 Feeder		-	712,665		712,665		812,622	0%	50%
HE11 Conrads Rd Feeder		1,651	114,026		112,375		1,966,183	1%	10%
Transmission Access & Wildlife Protection		-	175,117		175,117		953,166	0%	10%
Comal T3 Replacement & Feeder CO33	18	3,067	377,427		359,360		3,644,220	5%	10%
Distribution Feeder Breaker Addition & Replacements		-	159,067		159,067		3,113,453	0%	10%
FR24 Kowald Ln. Feeder		2,732	91,221		88,489		880,778	3%	10%
Henne Substation Breaker & Half		1,552	171,040		166,488		2,419,085	3%	10%
CONB Road Widening Adjustments	16	6,588	233,754		217,166		2,256,995	7%	10%
Total Budgeted Projects	\$ 5,748	,342 \$	31,587,819	\$	25,839,477	\$	61,354,259	18%	
Jnbudgeted Projects:									
Sheriff's Posse T3 Addition	\$	5,160 \$	-	\$	(6,160)	\$	7,622,556	0%	99%
E.C. Mornhinweg T2 & Feeders	3	3,446	-		(3,446)		4,093,931	0%	85%
Residential OH to UG Conversion	199	9,389	-		(199,389)		3,776,463	0%	90%
Weltner Rd Feeder 13, Clear Springs	Ę	5,709	-		(5,709)		965,027	0%	100%
LO23 Loop 337 FM 1863 Extension Phase 2	;	3,019	-		(3,019)		1,224,681	0%	100%
CO14 Kentucky Rd Feeder	70	,600	-		(70,600)		601,370	0%	40%
HE23 IH-35 Stolte Feeder	1	7,105	-		(17,105)		1,564,074	0%	10%
Freiheit Feeder 11, Alves Ln	4	1,874	-		(41,874)		1,006,909	0%	100%
Kohlenberg Rd Substation	1	1,377	•		(11,377)		-	0%	10%
Takal Habitat (D. C.)	¢ 250	,679 \$	-	\$	(358,679)	¢	20.855.011		
Total Unbudgeted Projects	ў 330	,079 p		Ψ	(330,073)	Ψ	20,033,011		



25% of Year Completed

Water Line of Business FY 2024 Capital Expenditure Summary As of October 31, 2023

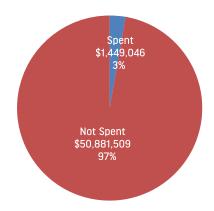
			Total	F	Y23 Project	FY23 Budget	Project Life	(1)/(2) % Spent	% Physical
Project		S	pent YTD		Budget	Remaining	Total Budget	YTD	Completion
Budgeted Projects:									•
System Extensions		\$	180,263	\$	375,703	\$ 195,440	\$ 375,703	48%	25%
Water Meters			1,001,273		1,844,670	843,397	1,844,670	54%	25%
Water Technology Upgrades			-		140,116	140,116	140,116	0%	2%
Aging System Replacements			285,712		2,092,123	1,806,411	2,092,123	14%	100%
ASR Feasibility Dev (IF)			546		2,069,462	2,068,916	38,120,155	0%	40%
Wood Meadows Water Line River Crossing			6,287		216,373	210,086	3,052,319	3%	11%
I-35 Water Line (Downtown)			3,161,668		7,963,912	4,802,244	11,468,136	40%	21%
1.00MG Solms Ground Storage Tank and Flow Control Valv	e		-		235,473	235,473	4,337,137	0%	6%
Western Downtown to Morningside PZ Conversion			49,164		308,393	259,229	8,525,525	16%	21%
FM 306 Pump Station & Discharge Pipeline			356,287		1,885,704	1,529,417	10,821,940	19%	66%
Conrads EST			-		5,488,218	5,488,218	6,852,776	0%	10%
Goodwin Lane Water Main			2,849,124		6,884,157	4,035,033	12,624,155	41%	47%
Klein Rd Reconstruction Phase 2			336,113		1,126,496	790,383	1,404,382	30%	39%
Landa Pump Station Phase 2/Well 5			348,998		6,242,981	5,893,983	15,931,146	6%	61%
Trinity Expansion- Treatment Plant			1,181,016		17,173,917	15,992,901	27,357,602	7%	37%
Trinity Expansion- Well Field			(149,517)		7,057,207	7,206,724	10,222,796	-2%	20%
FM 1044 EST			6,129		1,373,451	1,367,322	13,187,743	0%	2%
GBRA Interconnect Metering Station			6,308		701,780	695,472	996,909	1%	16%
Garden Street Bridge Water Line			758		390,851	390,093	587,926	0%	27%
Goodwin/Conrads Water Adjustments			167		403,683	403,516	434,276	0%	3%
Misison/Westpointe Connection Waterlines			8,909		5,539,877	5,530,968	6,495,952	0%	9%
Senate Bill 3 EPP Generators			29,466		1,301,224	1,271,758	1,328,362	2%	0%
Tank Decommission			4,159		865,803	861,644	954,937	0%	10%
Water Tank Rehabilitations			-		303,582	303,582	303,582	0%	10%
	Total Budgeted Projects _	\$	9,662,832	\$	71,985,156	\$ 62,322,324	\$ 179,460,368	13%	
Unbudgeted Projects:									
Castell Ave Rehabilitation (CNB)		\$	-	\$	-	\$ -	\$ 26,681,290		100%
Infrastructure Replacement Package 1-W			234		-	(234)	2,762		10%
30/24-inch SWTP Discharge Line (Downtown)			2,028		-	(2,028)	21,587,112		100%
Well 4 to Grandview Pump Station & Discharge Line Upgra	des		56,561		-	(56,561)	9,460,061		100%
Weltner Rd Ground Strg Tank & Pump Station-Ph 1			3,215		-	(3,215)	12,019,828		95%
To	tal Unbudgeted Projects	\$	62,037	\$	-	\$ (62,037)	\$ 69,751,052		
	TOTAL	\$	9,724,870	\$	71,985,156	\$ 62,260,286	\$ 249,211,420	14%	



25% of Year Completed

Wastewater Line of Business FY 2024 Capital Expenditure Summary As of October 31, 2023

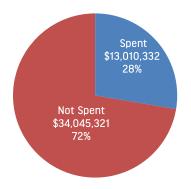
Project		Total Spent YTD	F	² Y23 Project Budget	23 Budget emaining	Project Life Total Budget	% Spent YTD	% Physical Completion
Budgeted Projects:								
System Extensions	\$	170,529	\$	249,038	\$ 78,509	\$ 249,038	68%	25%
Aging System Replacements		331,058		2,046,224	1,715,166	2,046,224	16%	25%
Wastewater Technology Upgrades		-		145,563	145,563	145,563	0%	1%
Manhole Rehabilitation		-		789,673	789,673	789,673	0%	42%
South Kuehler Interceptor Phase 1		10,532		480,284	469,752	5,426,066	2%	15%
Gruene Rd Sewer Main Rehabilitation/Relocation		-		107,441	107,441	2,896,802	0%	6%
McKenzie WRF Expansion		762,913		20,026,694	19,263,781	72,312,120	4%	7%
Solms Lift Station Expansion		21,658		1,076,397	1,054,739	1,705,332	2%	18%
I-35 Interceptor Upgrade		97,770		4,090,487	3,992,717	14,155,678	2%	10%
Kuehler WRF Access Road-Courtyard Dr		5,672		3,265,043	3,259,371	3,739,824	0%	14%
McKenzie Interceptor Upgrade		89,538		2,291,295	2,201,757	50,706,156	4%	10%
Kuehler WRF Rehabilitation		5,887		12,890,556	12,884,669	44,788,333	0%	10%
Sewer Infrastructure Replacement Package 2		47,518		739,180	691,662	4,957,511	6%	7%
Saengerhalle North Interceptor		32,265		215,817	183,552	5,888,532	15%	15%
Goodwin/Conrads Adjustments (CNB)-WW		231		406,908	406,677	1,114,676	0%	4%
Gruene WRF Spoils & Materials Yard		41,024		447,632	406,608	1,061,999	9%	91%
North Kuehler Manhole Rehabilitation-Segment 3		-		494,109	494,109	1,016,271	0%	20%
Kuehler WRF Rehabilitation-Clarifier Replacement		10,342		2,568,214	2,557,872	2,758,806	0%	35%
Total Budget	ed Projects \$	1,626,937	\$	52,330,555	\$ 50,703,618	\$ 215,758,603	3%	
Unbudgeted Projects:								
Castell Ave Rehabilitation (CNB)	\$	-	\$	-	\$ -	\$ 5,585,413		100%
North Kuehler 42" Interceptor Upgrade		771		-	(771)	15,524,017		100%
North Kuehler 30 and 33-inch Interceptor Upgrade		40		-	(40)	26,748,112		100%
Gruene Rd Sewer Main Odor Control		-		-	-	239,659		44%
Infrastructure Replacement Package 1-WW		9,132		-	(9,132)	123,819		10%
Rio Lift Station Expansion		48,239		-	(48,239)	3,576,417		100%
Schmidt I-35 N Sewer Main Replacement		(239,067)		-	239,067	376,069		97%
Saengerhalle Lift Station Expansion & Force Main		2,995		-	(2,995)	2,580,475		100%
Total Unbudget	ed Projects \$	(177,891)	\$	-	\$ 177,891	\$ 54,753,981		
	TOTAL \$	1,449,046	\$	52,330,555	\$ 50,881,509	\$ 270,512,584	3%	



25% of Year Completed

Support Services Line of Business FY 2024 Capital Expenditure Summary As of October 31, 2023

	1 Total	FY23 Project	EV22 Budget		Drainet Life	(1)/(2)	0/ Dhysical
Project	Total Spent YTD		FY23 Budget Remaining		Project Life	% Spent YTD	% Physical Completion
Budgeted Projects:	Spent YID	Budget	Kemaming		Total Budget	טוץ	Completion
-	624,644	\$ 4,500,000	\$ 3.875,356	- ф	25.670,681	14%	60%
Headwaters at the Comal \$ Cyber Security System	41.700	325.000	283.300		325.000	13%	15%
Software Replacement and Enhancements	41,700	130.000	130.000		130.000	0%	10%
·	11.526.998				,	46%	10%
NBU Headquarters, Maint & Support Facility	11,526,998	25,000,000	13,473,002		134,505,960	0%	
Laserfiche Development Backup Operations Center	34.430	300,000 1,280,000	300,000 1,245,570		570,867 8,452,700	3%	20% 20%
	34,430				, ,		
Upgrade or Replace all NBU Radios	-	200,000	200,000		200,000	0%	10%
Kerlick Tower Modifications		450,000	450,000		457,597	0%	20%
Data Strategy Upgrades - BDAP	194,202	1,185,653	991,451		1,185,653	16%	33%
System Technology Upgrades - Monitoring	38,625	400,000	361,375		400,000	10%	0%
Fiber Network Distribution Expansion	-	650,000	650,000		1,428,700	0%	10%
Fleet AVL	-	75,000	75,000		75,000	0%	0%
Data Strategy Upgrades - GIS Upgrades	-	200,000	200,000		1,900,000	0%	15%
Pioneer Upgrade	-	171,000	171,000		171,000	0%	5%
Smartsheet Control Center	-	73,000	73,000		73,000	0%	0%
Tele-Communications Enhancements	-	102,000	102,000		181,754	0%	40%
Water/Wastewater SCADA Aging Infrastructure	-	1,000,000	1,000,000		1,000,000	0%	0%
Water SCADA Replacement & Integration	67,844	2,000,000	1,932,156		3,413,098	3%	49%
OT Security	-	50,000	50,000		50,000	0%	0%
Customer Bill Pay Portal	7,004	160,000	152,996		230,044	4%	0%
ARCGIS Indoors	-	50,000	50,000		50,000	0%	0%
Loop 337 Substation Control House	-	42,000	42,000	ı	42,000	0%	0%
Replace Control Center Console	-	100,000	100,000	l	100,000	0%	0%
Future Facilities Rehab Projects	-	150,000	150,000	ı	1,229,990	0%	0%
Firewall and VPN Replacement	-	120,000	120,000		120,000	0%	0%
Gruene Rd Fence	-	32,000	32,000	ı	32,000	0%	0%
CIS Functionality Upgrade	-	1,500,000	1,500,000	l	1,500,000	0%	0%
Ipads for Cityworks Mobile & mcare	-	125,000	125,000	ı	125,000	0%	30%
Customer Service Kiosk	-	78,000	78,000	l	78,000	0%	0%
Level 2 EV Chargers	-	72,000	72,000	ı	72,000	0%	0%
Meraki Wifi Replacement	74,397	125,000	50,603		125,000	60%	60%
RTU replacement 4.6.7 Main office	-	40.000	40.000	ı	40.000	0%	0%
New Braunfels Police Department	400,487	3,585,000	3,184,513		3,645,000	11%	0%
RuggedCom Switch Replacement	-	200.000	200.000		600,000	0%	10%
Sheriff's Posse Control House Recondition	-	35,000	35,000		35,000	0%	0%
Solar Array and Battery Storage	-	50.000	50.000		50,000	0%	0%
Mass Meter Change Out	-	2,000,000	2,000,000		2,000,000	0%	0%
Water Meter Study	-	500,000	500,000		500,000	0%	0%
Total Budgeted Projects \$	13,010,332	\$ 47,055,653	\$ 34,045,321	\$	190,765,042	28%	



47,055,653 \$ 34,045,321 \$

190,765,042

28%

Total \$

13,010,332 \$

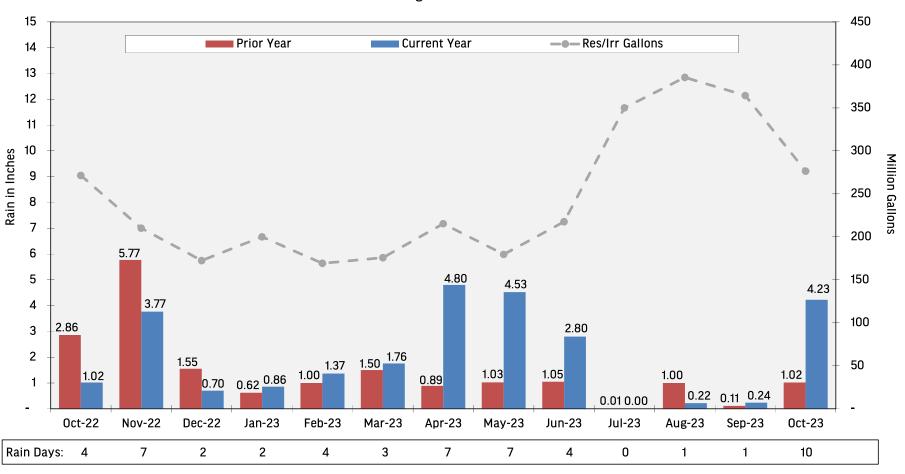
Electric Statistics are provided separately due to competitive matters.

WATER STATISTICS

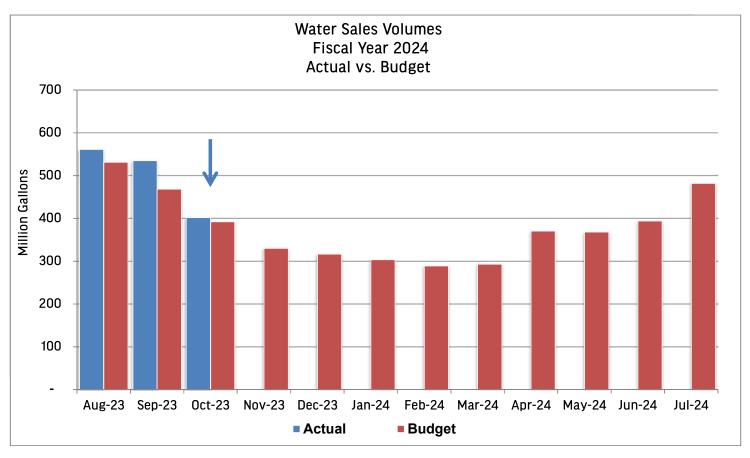
NEW BRAUNFELS UTILITIES WATER STATISTICS HIGHLIGHTS OVERVIEW

- October MTD rainfall was higher than the prior year rainfall, totaling 4.23 inches for the month. The October rainfall total of 4.23 inches was 0.73 inches higher than the historical average rainfall of 3.5 inches. For October 2023, there were ten rain days during the month compared to four rain days in October 2022.
- October YTD rainfall totaled 4.69 inches compared to the prior year total of 2.13 inches, which is an increase of 2.56 inches compared to prior year YTD. For YTD, there have been 12 rain days compared to eight rain days for prior year YTD.
- Average MTD consumption by residential water customer in October 2023 was 5,704 gallons compared to 6,016 gallons in October 2022, reflecting a 5.2% decrease.
- Actual YTD consumption by residential water customer through October 2023 was 21,248 gallons compared to 19,731 for YTD through October 2022, reflecting an increase of 7.7%.
- Overall trend for fiscal year-to-date in total water sales volume is more than the sales volume over the same period for the previous year with the change being 162.7 million gallons, or 12.2% (1,498.2 million gallons for FY 2024 YTD vs. 1,335.5 million gallons for FY 2023 YTD).
- Actual total water sales volume for year-to-date FY 2024 is 1,498.2 million gallons, which is 106.6 million more than the budgeted amount of 1,391.6 million gallons for the same time period.
 - The following are major contributors, by rate classification, towards the 106.6 million gallons change from budget:
 - Residential Domestic increase of 38.8 million gallons (up 5.4% from budget)
 - Multi-Unit 2-4 increase of 0.6 million gallons (up 10.2% from budget)
 - Multi-Unit 5+ increase of 1.8 million gallons (up 2.4% from budget)
 - Residential Irrigation increase of 5.4 million gallons (up 2.1% from budget)
 - Commercial Irrigation increase of 26.1 million gallons (up 29.7% from budget)
 - Small General Services increase of 68.3 million gallons (up 77.9% from budget)
 - Large General Services decrease of 59.4 million gallons (down 44.1% from budget)
 - Other Sales increase of 17.3 million gallons (up 99.3% from budget)
 - ReUse Water increase of 7.7 million gallons (up 1,745.4% from budget)

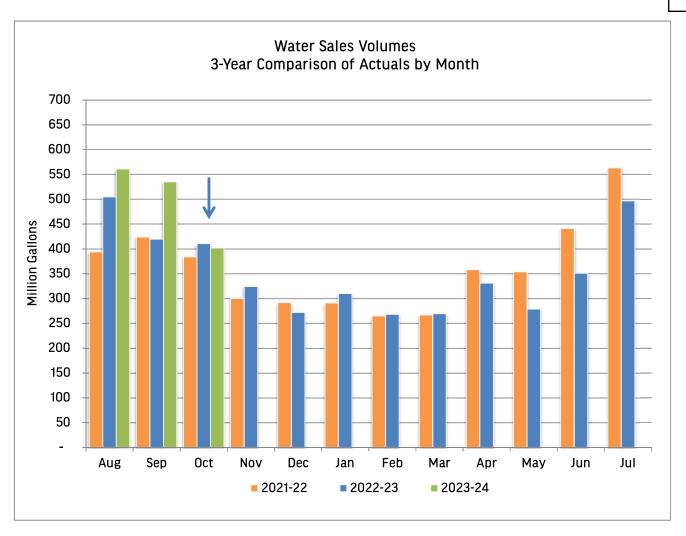
Monthly Rain Data Prior Year vs. Current Year Rolling 13 Months



5. Statistics - Wa



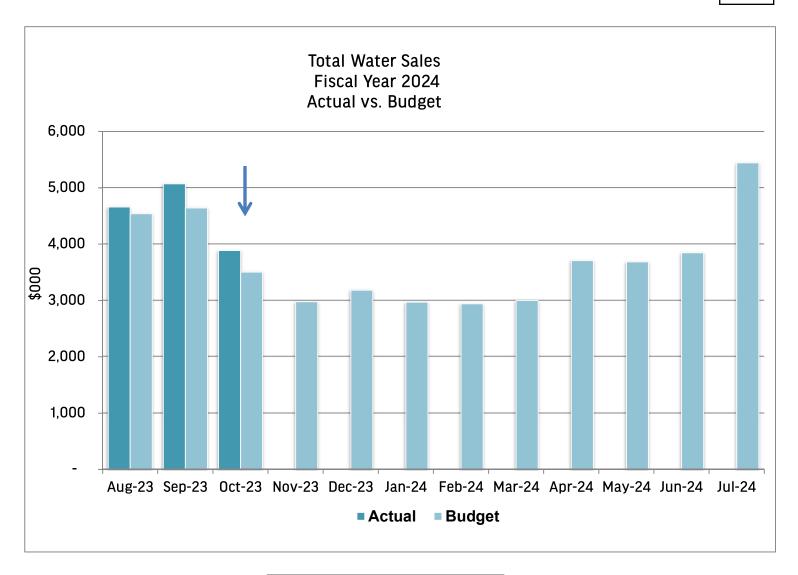
Month	Actual	Budget
Aug-23	561	531
Sep-23	535	468
Oct-23	402	392
Nov-23	-	330
Dec-23	-	317
Jan-24	-	304
Feb-24	-	289
Mar-24	-	293
Apr-24	-	371
May-24	-	368
Jun-24	-	394
Jul-24	-	482
TOTAL	1,498	4,539



	Water Sales	s Volumes (Milli	ion Gallons)
Month	2021-22	2022-23	2023-24
Aug	394	505	561
Sep	424	420	535
Oct	384	411	402
Nov	300	324	-
Dec	292	272	-
Jan	291	310	-
Feb	265	268	-
Mar	267	269	-
Apr	358	331	-
May	354	279	-
Jun	441	351	-
Jul	563	497	-
TOTAL	4,333	4,237	1,498

		% Change		% Change	
Meter Count	FY 2022	2022-2023	FY 2023	2023-2024	FY 2024
Residential	33,073	6.00%	35,058	2.76%	36,027
Irrigation	11,988	12.76%	13,518	6.69%	14,423
Other	2,945	1.19%	2,980	4.06%	3,101
TOTAL	48,006	7.39%	51,556	3.87%	53,551

19



	Total Water	Sale	s (\$000)
Month	Actual		Budget
Aug-23	\$ 4,660	\$	4,539
Sep-23	\$ 5,070	\$	4,642
Oct-23	\$ 3,888	\$	3,503
Nov-23	\$ -	\$	2,978
Dec-23	\$ -	\$	3,184
Jan-24	\$ -	\$	2,971
Feb-24	\$ -	\$	2,943
Mar-24	\$ -	\$	2,999
Apr-24	\$ -	\$	3,708
May-24	\$ -	\$	3,685
Jun-24	\$ -	\$	3,847
Jul-24	\$ -	\$	5,445
TOTAL	\$ 13,619	\$	44,444

WATER SUPPLEMENTAL INFORMATION

21

NEW BRAUNFELS UTILITIES Water Volume (Gallons) For Month Ending October 31, 2023

DESCRIPTION	AUG			FY 2024 YTD		
Г	AUG	SEP	OCT	ACT	AVG	
<i>i</i>						
Residential						
Actuals	286,378,437	269,971,015	205,507,686	761,857,138	253,952,379	
Budget	278,669,478	237,292,325	207,072,688	723,034,492	241,011,497	
Prior Year	264,945,370	214,133,721	210,921,150	690,000,241	230,000,080	
Multi-Unit 2-4	0.044.000	0.044.045	4 000 000	0.450.404	0.450.044	
Actuals	2,241,863	2,314,345	1,899,923	6,456,131	2,152,044	
Budget	2,133,762	2,020,591	1,702,965	5,857,317	1,952,439	
Prior Year	2,255,895	1,811,283	1,706,631	5,773,809	1,924,603	
Multi-Unit 5+						
Actuals	27.135,318	27,407,982	22,473,477	77,016,777	25,672,259	
Budget	25,326,666	25,620,852	24,285,693	75,233,211	25,077,737	
Prior Year	25,435,941	26,247,479	23,126,169	74,809,589	24,936,530	
Residential Irrigation						
Actuals	99,066,089	94,465,846	70,964,442	264,496,377	88,165,459	
Budget	101,916,516	89,848,970	67,370,554	259,136,040	86,378,680	
Prior Year	75,502,265	57,908,800	60,546,492	193,957,557	64,652,519	
Commercial Irrigation						
Actuals	39,196,600	41,949,117	32,913,746	114,059,463	38,019,821	
Budget	31,806,969	32,170,482	23,953,236	87,930,687	29,310,229	
Prior Year	33,744,774	30,535,334	28,118,852	92,398,960	30,799,653	
11101 1001	00,744,774	00,000,004	20,110,002	02,000,000	33,733,000	
sgs						
Actuals	88,144,880	36,085,131	31,847,997	156,078,008	52,026,003	
Budget	31,764,131	29,773,888	26,212,617	87,750,636	29,250,212	
Prior Year	78,178,199	78,468,416	69,448,844	226,095,459	75,365,153	
LGS		40.207.404	27.020.214	75 200 740	25 422 220	
Actuals		48,367,404	27,029,314	75,396,718	25,132,239	
Budget Prior Year	51,137,660	44,700,916	38,954,200	134,792,777	44,930,926	
Prior real	-	-	-		-	
Other Sales						
Actuals	14,773,264	12,569,962	7,367,839	34,711,065	11,570,355	
Budget	7,964,649	7,211,502	2,237,575	17,413,726	5,804,575	
Prior Year	19,291,639	10,429,974	11,829,866	41,551,479	13,850,493	
<u> </u>						
ReUse Water	40.000		4 00 1 45	0.000.05	0 000 ===	
Actuals	4,312,900	1,955,900	1,821,400	8,090,200	2,696,733	
Budget	613,050	(292,400)	117,738	438,388	146,129	
Prior Year	5,486,000	267,200	5,113,000	10,866,200	3,622,067	
Total Sales						
Actuals	561,249,351	535.086.702	401,825,824	1,498,161,877	499.387.292	
Budget	531,332,881	468,347,126	391,907,266	1,391,587,273	463,862,424	
Prior Year	504,840,083	419,802,207	410,811,004	1,335,453,294	445,151,098	

NEW BRAUNFELS UTILITIES Water Volume (Gallons) Variance

	2023	2023	2023	FY 20:	24 YTD
DESCRIPTION	AUG	SEP	OCT	ACT	AVG
	1122				
Residential					
Actuals	286,378,437	269,971,015	205,507,686	761,857,138	253,952,379
Actual vs Budget	7,708,959	32,678,690	(1,565,002)	38,822,646	12,940,882
Actual vs Prior Year	21,433,067	55,837,294	(5,413,464)	71,856,897	23,952,299
Accedit 45 Filor Four	21,400,007	00,007,E04	(0,410,404)	71,000,007	20,002,200
Multi-Unit 2-4					
Actuals	2,241,863	2,314,345	1,899,923	6,456,131	2,152,044
Actual vs Budget	108,101	293,754	196,958	598,814	199,605
Actual vs Prior Year	(14,032)	503,062	193,292	682,322	227,441
Multi-Unit 5+					
Actuals	27,135,318	27.407.982	22,473,477	77,016,777	25,672,259
Actuals Actual vs Budget	1.808.652	1,787,130	(1,812,216)	1,783,566	594.522
Actual vs Budget Actual vs Prior Year	1,608,032	1,160,503		2.207.188	735,729
Actual VS Prior Year	1,039,377	1,160,503	(652,692)	2,207,100	/35,/29
Residential Irrigation					
Actuals	99,066,089	94,465,846	70,964,442	264,496,377	88,165,459
Actual vs Budget	(2,850,427)	4,616,876	3,593,888	5,360,337	1,786,779
Actual vs Prior Year	23,563,824	36,557,046	10,417,950	70,538,820	23,512,940
Commercial Irrigation					
Actuals	39.196.600	41.949.117	32.913.746	114.059.463	38.019.821
Actual vs Budget	7,389,631	9,778,635	8,960,510	26,128,776	8,709,592
Actual vs Budget Actual vs Prior Year	5,451,826	11.413.783	4,794,894	21,660,503	7.220.168
Actual VS FIIOI Teal	3,431,620	11,413,763	4,754,054	21,000,303	7,220,100
sgs					
Actuals	88,144,880	36,085,131	31,847,997	156,078,008	52,026,003
Actual vs Budget	56,380,749	6,311,243	5,635,380	68,327,372	22,775,791
Actual vs Prior Year	9,966,681	(42,383,285)	(37,600,847)	(70,017,451)	(23,339,150)
LGS					
Actuals	_	48,367,404	27,029,314	75,396,718	25,132,239
Actual vs Budget	(51,137,660)	3,666,488	(11,924,886)	(59,396,059)	(19,798,686)
Actual vs Prior Year	(01,107,000)	48,367,404	27,029,314	75,396,718	25,132,239
Accedit vo Frior Tour		10,007, 10 1	27,020,011	70,000,710	20,102,200
Other Sales					
Actuals	14,773,264	12,569,962	7,367,839	34,711,065	11,570,355
Actual vs Budget	6,808,615	5,358,460	5,130,264	17,297,339	5,765,780
Actual vs Prior Year	(4,518,375)	2,139,988	(4,462,027)	(6,840,414)	(2,280,138)
ReUse Water					
Actuals	4,312,900	1,955,900	1,821,400	8,090,200	2,696,733
Actual vs Budget	3,699,850	2,248,300	1,703,662	7,651,812	2,550,604
Actual vs Prior Year	(1,173,100)	1,688,700	(3,291,600)	(2,776,000)	(925,333)
, 101000 100	(1,175,100)	1,000,700	(3,237,000)	(2,775,000)	(323,333)
Total Sales					
Actuals	561,249,351	535,086,702	401,825,824	1,498,161,877	499,387,292
Actual vs Budget	29,916,470	66,739,576	9,918,558	106,574,604	35,524,868
Actual vs Prior Year	56,409,268	115,284,495	(8,985,180)	162,708,583	54,236,194

NEW BRAUNFELS UTILITIES

Water Revenue

	Т	2023		2023		2023	г	FY 202	4 YT	D I
DESCRIPTION		AUG		SEP		OCT		ACT		AVG
	1						Т			
Residential										
Actuals	\$	1,827,272	\$	2,392,640	\$	1,747,250	\$	5,967,162	\$	1,989,054
Budget	\$	1,675,906	\$	1,751,798	\$	1,399,790	\$	4,827,494	\$	1,609,165
Prior Year	\$	1,435,468	\$	1,424,172	\$	1,284,509	\$	4,144,149	\$	1,381,383
Multi-Unit 2-4										
Actuals	\$	19.957	\$	20.786	\$	18.489	\$	59,233	\$	19,744
Budget	\$	20,133	\$	22,197	\$	18,479	\$	60,808	\$	20,269
Prior Year	\$	19,176	\$	17,926	\$	16,683	\$	53,785	\$	17,928
Mandai Hais Fr										
Multi-Unit 5+	\$	260,228	\$	257.270	4	230,761	,	748,258	\$	249,419
Actuals	1 '		l '		\$		\$			
Budget	\$	266,804	\$	279,964	\$	279,474	\$	826,242	\$	275,414
Prior Year	\$	241,401	\$	258,388	\$	239,757	\$	739,546	\$	246,515
Residential Irrigation										
Actuals	\$	1,117,789	\$	1,105,950	\$	869,979	\$	3,093,718	\$	1,031,239
Budget	\$	1,313,660	\$	1,294,138	\$	883,179	\$	3,490,978	\$	1,163,659
Prior Year	\$	876,750	\$	751,431	\$	715,064	\$	2,343,244	\$	781,081
Commercial Irrigation										
Actuals	\$	477,522	\$	504.909	\$	398,908	\$	1.381.339	\$	460,446
Budget	\$	424,000	\$	469,064	\$	310,403	\$	1,203,467	\$	401,156
Prior Year	\$	405,253	\$	401,101	\$	328,274	\$	1,134,629	\$	378,210
SGS										
Actuals	\$	765,231	\$	343,842	\$	309,028	\$	1,418,101	\$	472,700
Budget	\$	434,693	\$	388,629	\$	291,965	\$	1,115,287	\$	371,762
Prior Year	\$	616,047	\$	678,287	\$	558,030	\$	1,852,364	\$	617,455
THO TEM	*	010,047	*	070,207	Ψ	330,030	*	1,002,004	ľ	017,433
LGS	1		,	000.040		000 500	 	407 500	,	405.040
Actuals	\$	200,420	\$	288,946	\$	208,593	\$	497,539	\$	165,846
Budget	\$	290,436	\$	325,951	\$	289,257	\$	905,644	\$ \$	301,881
Prior Year	\$	-)	-	\$	-	\$	-	Þ	-
Other Sales							l			
Actuals	\$	179,419	\$	155,792	\$	105,303	\$	440,514	\$	146,838
Budget	\$	110,730	\$	111,853	\$	30,081	\$	252,665	\$	84,222
Prior Year	\$	241,628	\$	145,742	\$	143,275	\$	530,644	\$	176,881
ReUse Water										
Actuals	\$	12,545	\$	173	\$	165	\$	12,882	\$	4,294
Budget	\$	3,125	\$	(1,309)	\$	634	\$	2,450	\$	817
Prior Year	\$	25,191	\$	1,078	\$	24,810	\$	51,078	\$	17,026
Total Sales	+						\vdash		\vdash	
Actuals	\$	4,659,963	\$	5,070,307	\$	3,888,476	\$	13,618,746	\$	4,539,582
Budget	\$	4,539,486	\$	4,642,285	\$	3,503,262	\$	12,685,033	\$	4,228,344
Prior Year	\$	3,860,913	\$	3,678,125	\$	3,310,402	\$	10,849,440	\$	3,616,480
i iioi itai	Ψ	5,000,313	Ψ	3,070,123	Ψ	3,310,402	Ψ	10,043,440	Ψ	3,010,400

NEW BRAUNFELS UTILITIES

Water Revenue Variance

	T	2023		2023		2023		FY 202	4 Y	ΓD
DESCRIPTION		AUG		SEP		OCT		ACT AVG		
									Н	
Residential									ı	
Actuals	\$	1.827.272	\$	2.392.640	\$	1.747.250	\$	5.967.162	\$	1.989.054
Actual vs Budget	\$	151,366	\$	640,842	\$	347,460	\$	1,139,669	\$	379,890
Actual vs Prior Year	\$	391.804	\$	968.468	\$	462,741	\$	1,823,013	\$	607,671
	ľ	,	Ť	,	ľ	,	ľ	.,,	ľ	,
Multi-Unit 2-4									ı	
Actuals	\$	19.957	\$	20,786	\$	18,489	\$	59,233	\$	19.744
Actual vs Budget	\$	(176)	\$	(1,410)	\$	10	\$	(1,576)	\$	(525)
Actual vs Prior Year	\$	781	\$	2,861	\$	1,806	\$	5,448	\$	1,816
					ľ		ľ	.,	ľ	
Multi-Unit 5+									ı	
Actuals	\$	260.228	\$	257,270	\$	230,761	\$	748,258	\$	249,419
Actual vs Budget	\$	(6.575)	\$	(22.694)	\$	(48,714)	\$	(77,983)	\$	(25.994)
Actual vs Prior Year	\$	18.828	\$	(1.119)	\$	(8.997)	\$	8.712	\$	2.904
	ľ	,	ľ		ľ		ľ	-,-	ľ	
Residential Irrigation									ı	
Actuals	\$	1,117,789	\$	1,105,950	\$	869,979	\$	3,093,718	\$	1,031,239
Actual vs Budget	\$	(195,872)	\$	(188.188)	\$	(13,200)	\$	(397,259)	\$	(132,420)
Actual vs Prior Year	\$	241.039	\$	354.519	\$	154.916	\$	750.474	\$	250.158
	ľ	,	ľ	,	ľ	, i	ľ	,	ľ	,
Commercial Irrigation									ı	
Actuals	\$	477.522	\$	504.909	\$	398,908	\$	1.381.339	\$	460.446
Actual vs Budget	\$	53.522	\$	35.845	\$	88,505	\$	177,873	\$	59.291
Actual vs Prior Year	\$	72.269	\$	103,808	\$	70,634	\$	246,710	\$	82.237
	ļ ·	,	ľ	*			ľ			·
SGS									ı	
Actuals	\$	765,231	\$	343,842	\$	309,028	\$	1,418,101	\$	472,700
Actual vs Budget	\$	330,538	\$	(44,787)	\$	17,063	\$	302,814	\$	100,938
Actual vs Prior Year	\$	149,184	\$	(334,445)	\$	(249,002)	\$	(434,263)	\$	(144,754)
									ı	
LGS									ı	
Actuals	\$	-	\$	288,946	\$	208,593	\$	497,539	\$	165,846
Actual vs Budget	\$	(290,436)	\$	(37,006)	\$	(80,664)	\$	(408,105)	\$	(136,035)
Actual vs Prior Year	\$	-	\$	288,946	\$	208,593	\$	497,539	\$	165,846
									ı	
Other Sales									ı	
Actuals	\$	179,419	\$	155,792	\$	105,303	\$	440,514	\$	146,838
Actual vs Budget	\$	68,689	\$	43,939	\$	75,222	\$	187,849	\$	62,616
Actual vs Prior Year	\$	(62,209)	\$	10,051	\$	(37,972)	\$	(90,130)	\$	(30,043)
	1								ı	
ReUse Water	1								ı	
Actuals	\$	12,545	\$	173	\$	165	\$	12,882	\$	4,294
Actual vs Budget	\$	9,420	\$	1,482	\$	(470)	\$	10,432	\$	3,477
Actual vs Prior Year	\$	(12,646)	\$	(905)	\$	(24,645)	\$	(38,196)	\$	(12,732)
	L								L	
<u>Total Sales</u>										
Actuals	\$	4,659,963	\$	5,070,307	\$	3,888,476	\$	13,618,746	\$	4,539,582
Actual vs Budget	\$	120,477	\$	428,022	\$	385,214	\$	933,713	\$	311,238
Actual vs Prior Year	\$	799,050	\$	1,392,183	\$	578,074	\$	2,769,307	\$	923,102

NEW BRAUNFELS UTILITIES

Water Meters

	2023	2023	2023	FY 2024 YTD	
DESCRIPTION	AUG	SEP	OCT	AVG	
Residential					
Actuals	35,651	35,942	36,027	35,873	
Budget	35,570	35,716	35,862	35,716	
Prior Year	34,863	35,017	35,058	34,979	
Multi-Unit 2-4					
Actuals	208	221	225	218	
Budget	208	208	208	208	
Prior Year	208	209	207	208	
Multi-Unit 5+					
Actuals	262	269	270	267	
Budget	260	262	263	262	
Prior Year	257	257	259	258	
Residential Irrigation					
Actuals	13,351	13,533	13,592	13,492	
Budget	13,187	13,347	13,507	13,347	
Prior Year	12,525	12,620	12,669	12,605	
Commercial Irrigation					
Actuals	884	830	831	848	
Budget	860	862	865	862	
Prior Year	845	835	849	843	
SGS					
Actuals	2,412	2,282	2,276	2,323	
Budget	2,268	2,271	2,275	2,272	
Prior Year	2,380	2,383	2,383	2,382	
LGS					
Actuals	_	198	213	137	
Budget	133	134	134	134	
Prior Year	-	-	-	-	
Other Sales					
Actuals	109	111	116	112	
Budget	151	153	154	153	
Prior Year	124	124	130	126	
ReUse Water					
Actuals	1	1	1	1	
Budget	l il	i i	i	1	
Prior Year	1	1	1	1	
Total Meters					
Actuals	52,878	53,387	53,551	53,272	
Budget	52,638	52,954	53,271	52,954	
Prior Year	51,203	51,446	51,556	51,402	
New Meters	241	509	164	305	
New Meters	241	509	104	305	
New Meter Growth	0.5%	1.0%	0.3%	0.6%	

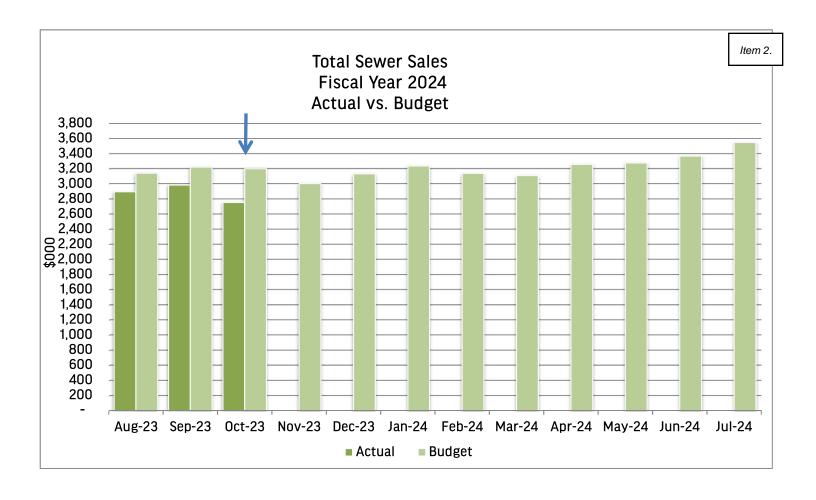
NEW BRAUNFELS UTILITIES Water Volume per Meter (Gallons) For Month Ending October 31, 2023

	2023	2023	2023	FY 202	4 YTD
DESCRIPTION	AUG	SEP	ОСТ	ACT	AVG
Residential					
Actuals	8,033	7,511	5,704	21,248	7,083
Budget	7,834	6,644	5,774	20,252	6,751
Prior Year	7,600	6,115	6,016	19,731	6,577
Multi-Unit 2-4					
Actuals	10,778	10,472	8,444	29,694	9,898
Budget	10,258	9,714	8,187	28,160	9,387
Prior Year	10,846	8,666	8,245	27,757	9,252
Multi-Unit 5+					
Actuals	103,570	101,888	83,235	288,693	96,231
Budget	97,504	97,976	92,253	287,734	95,911
Prior Year	98,973	102,130	89,290	290,393	96,798
Residential Irrigation					
Actuals	7.420	6.980	5.221	19.622	6.541
Budget	7,729	6,732	4,988	19,448	6,483
Prior Year	6,028	4,589	4,779	15,396	5,132
Commercial Irrigation					
Actuals	44,340	50,541	39,607	134,489	44,830
Budget	36,995	37.302	27.689	101,986	33,995
Prior Year	39,935	36,569	33,120	109,624	36,541
SGS					
Actuals	36,544	15,813	13,993	66,350	22,117
Budget	14,002	13,108	11,520	38,629	12.876
Prior Year	32,848	32,928	29,143	94,920	31,640
LGS					
Actuals	_	244,280	126,898	371,178	123,726
Budget	384.494	333,589	290,703	1,008,786	336,262
Prior Year	-	-	-	-	-
Other Sales					
Actuals	135,535	113,243	63,516	312,293	104,098
Budget	52,714	47,203	14,487	114,404	38,135
Prior Year	155,578	84,113	90,999	330,689	110,230
ReUse Water					
Actuals	4,312,900	1,955,900	1,821,400	8,090,200	2,696,733
Budget	613,050	(292,400)	117,738	438,388	146,129
Prior Year	5,486,000	267,200	5,113,000	10,866,200	3,622,067

NEW BRAUNFELS UTILITIES Water Rates (per Gallon) For Month Ending October 31, 2023

	2023	2023	2023	FY 2024 YTD		
DESCRIPTION	AUG	SEP	OCT	AVG		
Residential						
Actuals	\$ 0.0064	\$ 0.0089	\$ 0.0085	\$	0.0079	
Budget	\$ 0.0060	\$ 0.0074	\$ 0.0068	\$	0.0067	
Prior Year	\$ 0.0054	\$ 0.0067	\$ 0.0061	\$	0.0061	
Multi-Unit 2-4						
Actuals	\$ 0.0089	\$ 0.0090	\$ 0.0097	\$	0.0092	
Budget	\$ 0.0094	\$ 0.0110	\$ 0.0109	\$	0.0104	
Prior Year	\$ 0.0085	\$ 0.0099	\$ 0.0098	\$	0.0094	
Multi-Unit 5+						
Actuals	\$ 0.0096	\$ 0.0094	\$ 0.0103	\$	0.0097	
Budget	\$ 0.0105	\$ 0.0109	\$ 0.0115	\$	0.0110	
Prior Year	\$ 0.0095	\$ 0.0098	\$ 0.0104	\$	0.0099	
Residential Irrigation						
Actuals	\$ 0.0113	\$ 0.0117	\$ 0.0123	\$	0.0118	
Budget	\$ 0.0129	\$ 0.0144	\$ 0.0131	\$	0.0135	
Prior Year	\$ 0.0116	\$ 0.0130	\$ 0.0118	\$	0.0121	
Commercial Irrigation						
Actuals	\$ 0.0122	\$ 0.0120	\$ 0.0121	\$	0.0121	
Budget	\$ 0.0133	\$ 0.0146	\$ 0.0130	\$	0.0136	
Prior Year	\$ 0.0120	\$ 0.0131	\$ 0.0117	\$	0.0123	
SGS						
Actuals	\$ 0.0087	\$ 0.0095	\$ 0.0097	\$	0.0093	
Budget	\$ 0.0137	\$ 0.0131	\$ 0.0111	\$	0.0126	
Prior Year	\$ 0.0079	\$ 0.0086	\$ 0.0080	\$	0.0082	
LGS						
Actuals	\$ -	\$ 0.0060	\$ 0.0077	\$	0.0046	
Budget	\$ 0.0057	\$ 0.0073	\$ 0.0074	\$	0.0068	
Prior Year	\$ -	\$ -	\$ -	\$	-	
Other Sales						
Actuals	\$ 0.0121	\$ 0.0124	\$ 0.0143	\$	0.0129	
Budget	\$ 0.0139	\$ 0.0155	\$ 0.0134	\$	0.0143	
Prior Year	\$ 0.0125	\$ 0.0140	\$ 0.0121	\$	0.0129	
ReUse Water						
Actuals	\$ 0.0029	\$ 0.0001	\$ 0.0001	\$	0.0010	
Budget	\$ 0.0051	\$ 0.0045	\$ 0.0054	\$	0.0050	
Prior Year	\$ 0.0046	\$ 0.0040	\$ 0.0049	\$	0.0045	

SEWER STATISTICS



	To	tal Sewer	Sale	s (\$000)
Month		Actual	E	Budget
Aug-23	\$	2,896	\$	3,143
Sep-23	\$	2,985	\$	3,224
Oct-23	\$	2,755	\$	3,201
Nov-23	\$	-	\$	3,005
Dec-23	\$	-	\$	3,134
Jan-24	\$	-	\$	3,238
Feb-24	\$	-	\$	3,140
Mar-24	\$	-	\$	3,111
Apr-24	\$	-	\$	3,260
May-24	\$	-	\$	3,279
Jun-24	\$	-	\$	3,370
Jul-24	\$	-	\$	3,549
TOTAL	\$	8,637	\$	38,653

		% Change		% Change	
Customer Count	FY 2022	2022-2023	FY 2023	2023-2024	FY 2024
Residential	29,692	6.43%	31,602	3.03%	32,558
Other _	2,318	10.61%	2,564	2.46%	2,627
TOTAL	32,010	6.74%	34,166	2.98%	35,185

SEWER SUPPLEMENTAL INFORMATION

NEW BRAUNFELS UTILITIES Sewer Revenue For Month Ending October 31, 2023

	2023	2023	2023	FY 202	4 Y1	D
DESCRIPTION	AUG	SEP	OCT	ACT		AVG
Residential						
Actuals	\$ 1,620,385	\$ 1,780,256	\$ 1,690,795	\$ 5,091,436	\$	1,697,145
Budget	\$ 1,877,005	\$ 1,952,128	\$ 1,949,215	\$ 5,778,348	\$	1,926,116
Prior Year	\$ 1,431,988	\$ 1,602,167	\$ 1,517,326	\$ 4,551,480	\$	1,517,160
Multi-Unit 2-4						
Actuals	\$ 14,354	\$ 16,278	\$ 15,918	\$ 46,549	\$	15,516
Budget	\$ 15,982	\$ 16,707	\$ 16,656	\$ 49,345	\$	16,448
Prior Year	\$ 12,873	\$ 14,215	\$ 13,595	\$ 40,682	\$	13,561
Multi-Unit 5+						
Actuals	\$ 362,783	\$ 369,364	\$ 327,198	\$ 1,059,346	\$	353,115
Budget	\$ 387,068	\$ 401,507	\$ 399,515	\$ 1,188,089	\$	396,030
Prior Year	\$ 324,197	\$ 352,643	\$ 334,562	\$ 1,011,402	\$	337,134
SGS						
Actuals	\$ 897,364	\$ 818,036	\$ 720,079	\$ 2,435,479	\$	811,826
Budget	\$ 861,177	\$ 851,972	\$ 833,952	\$ 2,547,100	\$	849,033
Prior Year	\$ 720,511	\$ 787,794	\$ 743,962	\$ 2,252,267	\$	750,756
Schertz Sewer						
Actuals	\$ 1,307	\$ 1,320	\$ 1,296	\$ 3,923	\$	1,308
Budget	\$ 1,902	\$ 1,867	\$ 1,902	\$ 5,671	\$	1,890
Prior Year	\$ 1,476	\$ 1,282	\$ 1,310	\$ 4,068	\$	1,356
Total Sales						
Actuals	\$ 2,896,192	\$ 2,985,254	\$ 2,755,286	\$ 8,636,733	\$	2,878,911
Budget	\$ 3,143,133	\$ 3,224,180	\$ 3,201,239	\$ 9,568,553	\$	3,189,518
Prior Year	\$ 2,491,044	\$ 2,758,100	\$ 2,610,754	\$ 7,859,899	\$	2,619,966

NEW BRAUNFELS UTILITIES

Sewer Revenue Variance

For Month Ending October 31, 2023

		2023		2023	2023		FY 202	4 YT	.D
DESCRIPTION		AUG		SEP	OCT		ACT		AVG
Residential						١.			
Actuals	\$	1,620,385	\$	1,780,256	\$ 1,690,795	\$	5,091,436	\$	1,697,145
Actual vs Budget	\$	(256,620)	\$	(171,872)	\$ (258,420)	\$	(686,912)	\$	(228,971)
Actual vs Prior Year	\$	188,397	\$	178,089	\$ 173,470	\$	539,956	\$	179,985
Multi-Unit 2-4									
Actuals	\$	14,354	\$	16,278	\$ 15,918	\$	46,549	\$	15,516
Actual vs Budget	\$	(1,628)	\$	(430)	\$ (738)	\$	(2,796)	\$	(932)
Actual vs Prior Year	\$	1,481	\$	2,063	\$ 2,323	\$	5,867	\$	1,956
Multi-Unit 5+									
Actuals	\$	362,783	\$	369,364	\$ 327,198	\$	1,059,346	\$	353,115
Actual vs Budget	\$	(24,285)	\$	(32,143)	(72,316)	\$	(128,744)	\$	(42,915)
Actual vs Prior Year	\$	38,586	\$	16,721	\$ (7,364)	\$	47,944	\$	15,981
SGS									
Actuals	\$	897,364	\$	818,036	\$ 720,079	\$	2,435,479	\$	811,826
Actual vs Budget	\$	36,188	\$	(33,935)	(113,873)	\$	(111,621)	\$	(37,207)
Actual vs Prior Year	\$	176,854	\$	30,242	\$ (23,883)	\$	183,213	\$	61,071
Schertz Sewer									
Actuals	\$	1,307	\$	1,320	\$ 1,296	\$	3,923	\$	1,308
Actual vs Budget	\$	(595)	\$	(547)	 (606)	\$	(1,748)	\$	(583)
Actual vs Prior Year	\$	(169)	\$	38	\$ (14)	\$	(145)	\$	(48)
Total Sales	1								
Actuals	\$	2,896,192	\$	2,985,254	\$ 2,755,286	\$	8,636,733	\$	2,878,911
Actuals Actual vs Budget	\$	(246,941)	\$	(238,926)	(445,953)	\$ \$	(931,820)	\$ \$	(310,607)
Actual vs Buuget Actual vs Prior Year	\$	405,148	\$	227,154	144,532	⊅ \$	776,834	\$ \$	
Actual vs Pilor Year	1 2	405,148	Φ	227,154	\$ 144,532	Þ	//0,834	Ψ	258,945

NEW BRAUNFELS UTILITIES Sewer Usage (Gallons) For Month Ending October 31, 2023

	2023	2023	2023	FY 202	24 YTD
DESCRIPTION	AUG	SEP	ОСТ	ACT	AVG
Daaidantial					
Residential	10.4.70.4.0.4			010 000 ==0	
Actuals	104,591,818	110,400,361	98,017,580	313,009,759	104,336,586
Prior Year	105,945,683	113,046,276	100,144,142	319,136,101	106,378,700
Multi-Unit 2-4					
Actuals	835,859	859,259	803,385	2,498,503	832,834
Prior Year	834,405	876,991	783,357	2,494,753	831,584
Multi-Unit 5+					
Actuals	26,464,494	26,498,569	21,294,621	74,257,684	24,752,561
Prior Year	25,753,140	28,032,246	23,907,336	77,692,722	25,897,574
SGS					
Actuals	147,287,980	131,416,134	111,637,606	390,341,721	130,113,907
Prior Year	130,005,417	129,722,018	125,164,836	384,892,272	128,297,424
Schertz Sewer					
Actuals	433,200	437,700	429,500	1,300,400	433,467
Prior Year	145,500	141,667	144,733	431,900	143,967
<u>Total Sales</u>					
Actuals	279,613,351	269,612,023	232,182,693	781,408,067	260,469,356
Prior Year	262,684,145	271,819,198	250,144,405	784,647,748	261,549,249

NEW BRAUNFELS UTILITIES Sewer Customers For Month Ending October 31, 2023

Residential Actuals 32,187 32,472 32,558 32,406 Budget 34,071 34,211 34,352 34,211 Prior Year 31,424 31,569 31,602 31,532 Multi-Unit 2-4 Actuals 173 186 189 183 Budget 182 182 182 182 Prior Year 174 174 173 174 Multi-Unit 5+ Actuals 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 SGS Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 Budget 1 1 1 1 1 Prior Year 1 1 1 1 1		2023	2023	2023	FY 2024 YTD
Actuals 32,187 32,472 32,558 32,406 Budget 34,071 34,211 34,352 34,211 Prior Year 31,424 31,569 31,602 31,532 Multi-Unit 2-4 Actuals 173 186 189 183 Budget 182 182 182 182 182 Prior Year 174 174 173 174 Multi-Unit 5+ Actuals 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 SGS Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 1 Budget 1 1 1 1 1 Prior Year 1 1 1 1 1 Interior Year 1 1 1 1 1 Interior Year 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	DESCRIPTION	AUG	SEP	ОСТ	AVG
Actuals 32,187 32,472 32,558 32,406 Budget 34,071 34,211 34,352 34,211 Prior Year 31,424 31,569 31,602 31,532 Multi-Unit 2-4 Actuals 173 186 189 183 Budget 182 182 182 182 182 Prior Year 174 174 173 174 Multi-Unit 5+ Actuals 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 SGS Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 1 Budget 1 1 1 1 1 Prior Year 1 1 1 1 1 Interior Year 1 1 1 1 1 Interior Year 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 1 1 Interior Year 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1					
Budget 34,071 34,211 34,352 34,211 Prior Year 31,424 31,569 31,602 31,532 Multi-Unit 2-4 Actuals 173 186 189 183 Budget 182 182 182 182 182 Prior Year 174 174 173 174 Multi-Unit 5+ 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 SGS 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 Prior Year 1 1 1 1 1 Total Accounts Actuals 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,941		22.12			
Prior Year 31,424 31,569 31,602 31,532 Multi-Unit 2-4 4 Actuals 173 186 189 183 Budget 182 182 182 182 Prior Year 174 174 173 174 Multi-Unit 5+ 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 SGS Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 Prior Year 1 1 1 1 1 Prior Year 1 1 1 1 1 Total Accounts Actuals 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,795		· · · · · · · · · · · · · · · · · · ·			· ·
Multi-Unit 2-4 Actuals 173 186 189 183 Budget 182 182 182 182 Prior Year 174 174 173 174 Multi-Unit 5+ Actuals 260 261 263 261 Prior Year 256 257 259 257 SGS Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 1 Budget 1 1 1 1 1 1 Prior Year 1 1 1 1 1 Total Accounts Actuals 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,955	_				· ·
Actuals 173 186 189 183 Budget 182 182 182 182 Prior Year 174 174 173 174 Multi-Unit 5+ Actuals 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 SGS Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 1 Budget 1 1 1 1 1 1 Prior Year 1 1 1 1 1 1 Total Accounts Actuals 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,795	Prior Year	31,424	31,569	31,602	31,532
Budget 182 182 182 182 182 Prior Year 174 174 173 174 Multi-Unit 5+ Actuals 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 SGS Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 1 Budget 1 1 1 1 1 1 Prior Year 1 1 1 1 1 1 Total Accounts Actuals 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,795	Multi-Unit 2-4				
Budget 182 <t< td=""><td>Actuals</td><td>173</td><td>186</td><td>189</td><td>183</td></t<>	Actuals	173	186	189	183
Prior Year 174 174 173 174 Multi-Unit 5+ 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 SGS 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 Prior Year 1 1 1 1 1 Total Accounts 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,795	Budget	182	182	182	
Actuals 261 268 269 266 Budget 260 261 263 261 Prior Year 256 257 259 257 257 257 257 257 257 257 257 257 257	_				
Budget 260 261 263 261 Prior Year 256 257 259 257 SGS 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer 360 1	Multi-Unit 5+				
Prior Year 256 257 259 257 SGS 368 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer 36,041 1 </td <td>Actuals</td> <td>261</td> <td>268</td> <td>269</td> <td>266</td>	Actuals	261	268	269	266
Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 1 Budget 1 1 1 1 1 1 Prior Year 1 1 1 1 1 1 Total Accounts Actuals 34,780 35,094 Budget 36,648 36,794 36,941 36,795	Budget	260	261	263	261
Actuals 2,158 2,167 2,168 2,164 Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer Actuals 1 1 1 1 1 1 Budget 1 <t< td=""><td>Prior Year</td><td>256</td><td>257</td><td>259</td><td>257</td></t<>	Prior Year	256	257	259	257
Budget 2,135 2,139 2,142 2,139 Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer 3 1 2 2 2 3	SGS				
Prior Year 2,125 2,127 2,131 2,128 Schertz Sewer 3 1 2	Actuals	2,158	2,167	2,168	2,164
Schertz Sewer Actuals 1 1 1 1 1 Budget 1 1 1 1 1 Prior Year 1 1 1 1 1 Total Accounts Actuals 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,991	Budget	2,135	2,139	2,142	2,139
Actuals 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Prior Year	2,125	2,127	2,131	2,128
Budget 1 1 1 1 1 Prior Year 1 1 1 1 1 Total Accounts 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,795	Schertz Sewer				
Prior Year 1 1 1 1 Total Accounts 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,795	Actuals	1	1	1	1
Total Accounts Actuals 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,795	Budget	1	1	1	1
Actuals 34,780 35,094 35,185 35,020 Budget 36,648 36,794 36,941 36,945	Prior Year	1	1	1	1
Budget 36,648 36,794 36,941 36,795	Total Accounts				
	Actuals	34,780	35,094	35,185	35,020
	Budget	36,648	36,794	36,941	36,795
	Prior Year		34,128		

New Customers	85	314	91	163
New Costs are a Cost the 0/	0.00/	0.00/	0.20/	0.5%
New Customer Growth %	0.2%	0.9%	0.3%	0.5%

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NEW BRAUNFELS UTILITIES Sewer Rates (per Customer) For Month Ending October 31, 2023

	2023	2023	2023	FY 2024 YTD	
DESCRIPTION	AUG	SEP	OCT		AVG
Residential					
Actuals	\$ 50.34	\$ 54.82	\$ 51.93	\$	52.37
Budget	\$ 55.09	\$ 57.06	\$ 56.74	\$	56.30
Prior Year	\$ 45.57	\$ 50.75	\$ 48.01	\$	48.11
Multi-Unit 2-4					
Actuals	\$ 82.97	\$ 87.52	\$ 84.22	\$	84.90
Budget	\$ 87.80	\$ 91.78	\$ 91.48	\$	90.35
Prior Year	\$ 73.98	\$ 81.69	\$ 78.58	\$	78.09
Multi-Unit 5+					
Actuals	\$ 1,389.97	\$ 1,378.22	\$ 1,216.35	\$	1,328.18
Budget	\$ 1,490.48	\$ 1,535.99	\$ 1,518.40	\$	1,514.96
Prior Year	\$ 1,266.40	\$ 1,372.15	\$ 1,291.75	\$	1,310.10
SGS					
Actuals	\$ 415.83	\$ 377.50	\$ 332.14	\$	375.16
Budget	\$ 403.40	\$ 398.37	\$ 389.25	\$	397.01
Prior Year	\$ 339.06	\$ 370.38	\$ 349.11	\$	352.85
Schertz Sewer					
Actuals	\$ 1,306.75	\$ 1,320.32	\$ 1,295.59	\$	1,307.55
Budget	\$ 1,902.07	\$ 1,866.97	\$ 1,901.70	\$	1,890.25
Prior Year	\$ 1,476.00	\$ 1,282.01	\$ 1,309.76	\$	1,355.92



Financial Update

October 2023 Financials
Kimberly Huffman
Accounting Manager

Board Financial Policy Compliance October 2023 YTD

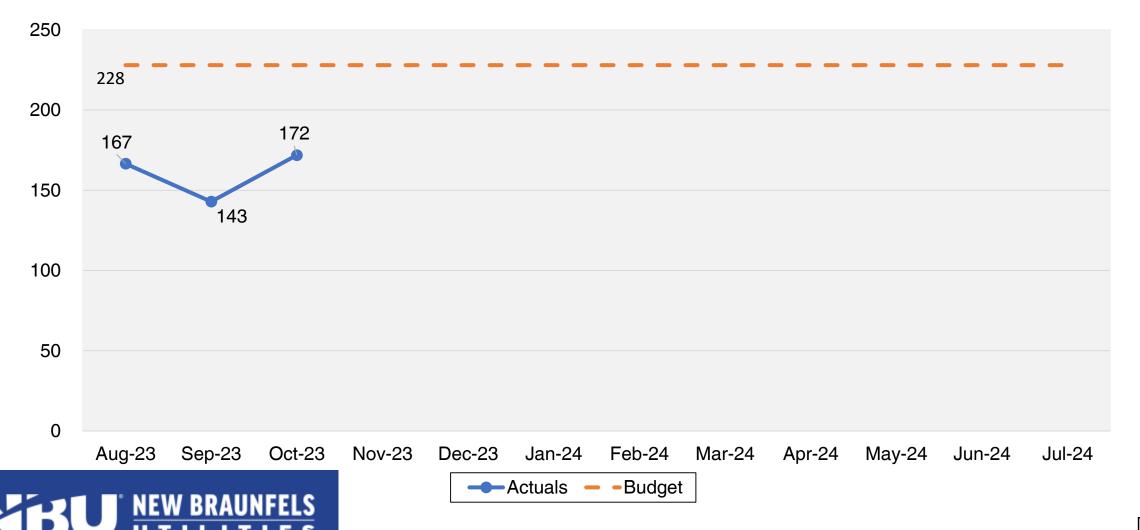
	FY 2023 Actual**	FY 2024 Budget	Financial Policy	FY 2024 Actual*
Debt to Capitalization (lower is better)	44.5%	47.4%	≤55.0%	38.4%
Debt Service Coverage (higher is better)	5.44	4.28	≥2.40	5.48
Days Cash on Hand (higher is better)	162	228	≥140	172
Days Liquidity on Hand (higher is better)	352	N/A	N/A	355



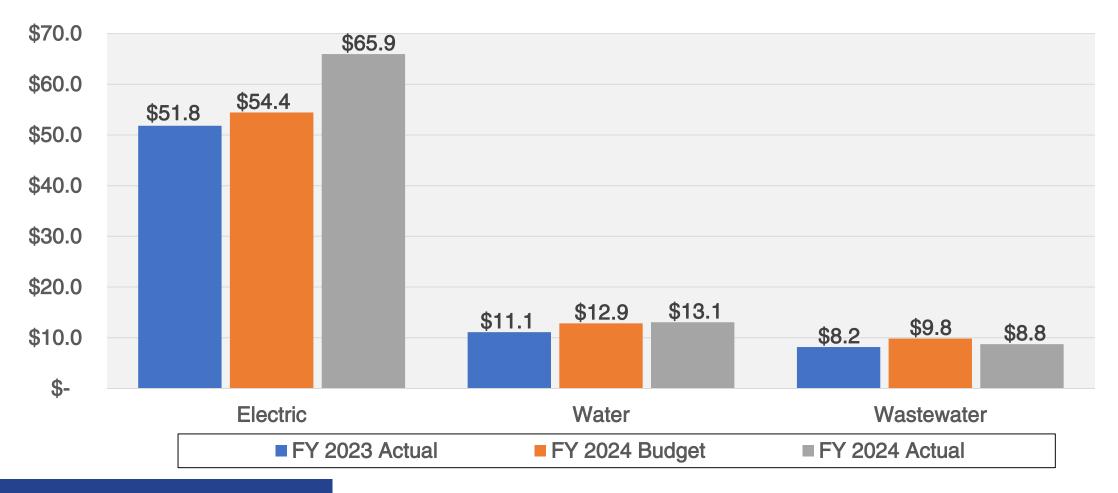
^{*} Amounts are calculated by annualizing the YTD

^{*}results Unaudited amounts

Days Cash on Hand October 2023 YTD

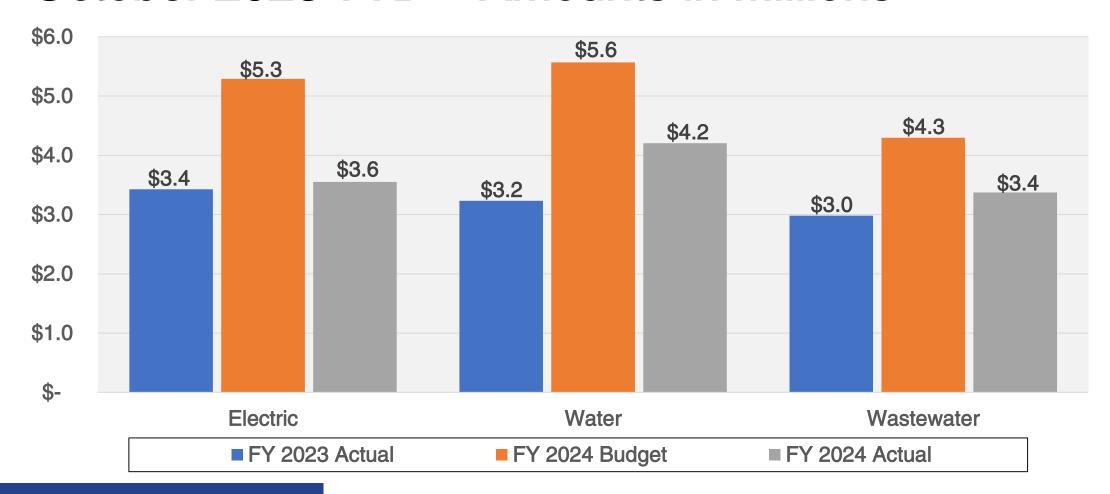


Operating Revenue by LOB October 2023 YTD – Amounts in Millions





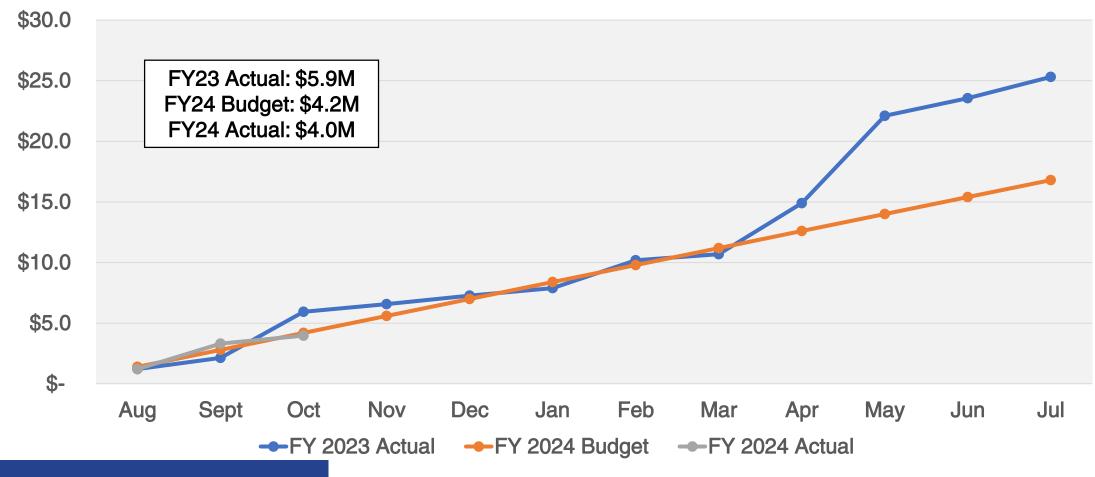
Operating Expenses* by LOB October 2023 YTD – Amounts in Millions





*Excludes purchased power, purchased water, and depreciation expense

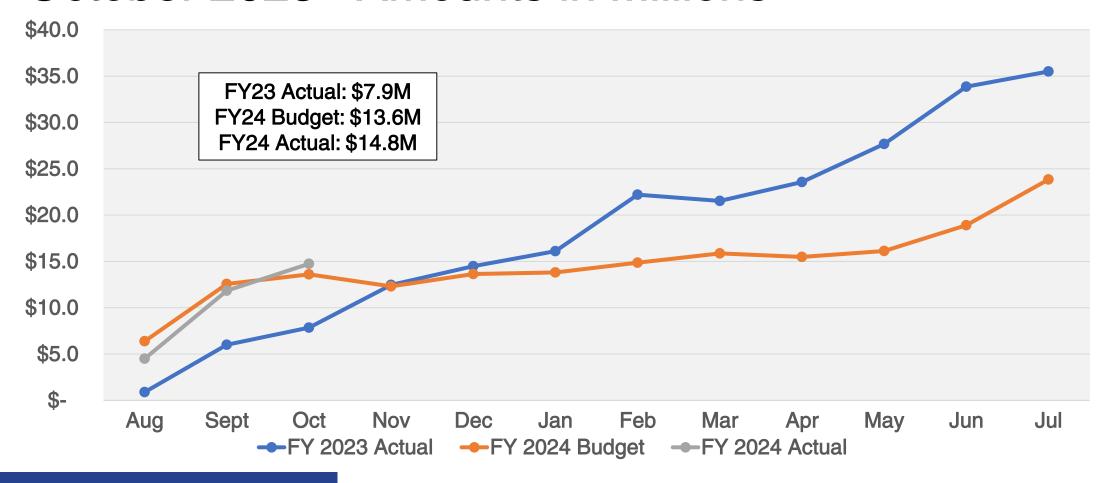
Impact Fees October 2023 YTD – Amounts in Millions*





^{*} Amounts shown are YTD for each month

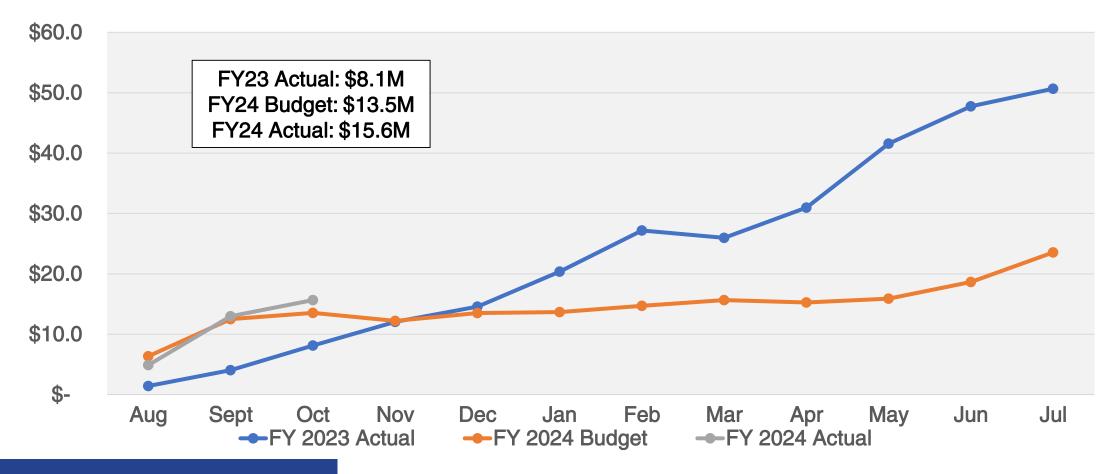
Net Operating Income October 2023— Amounts in Millions*





^{*} Amounts shown are YTD for each month

Change in Net Position After Contributions October 2023— Amounts in Millions*

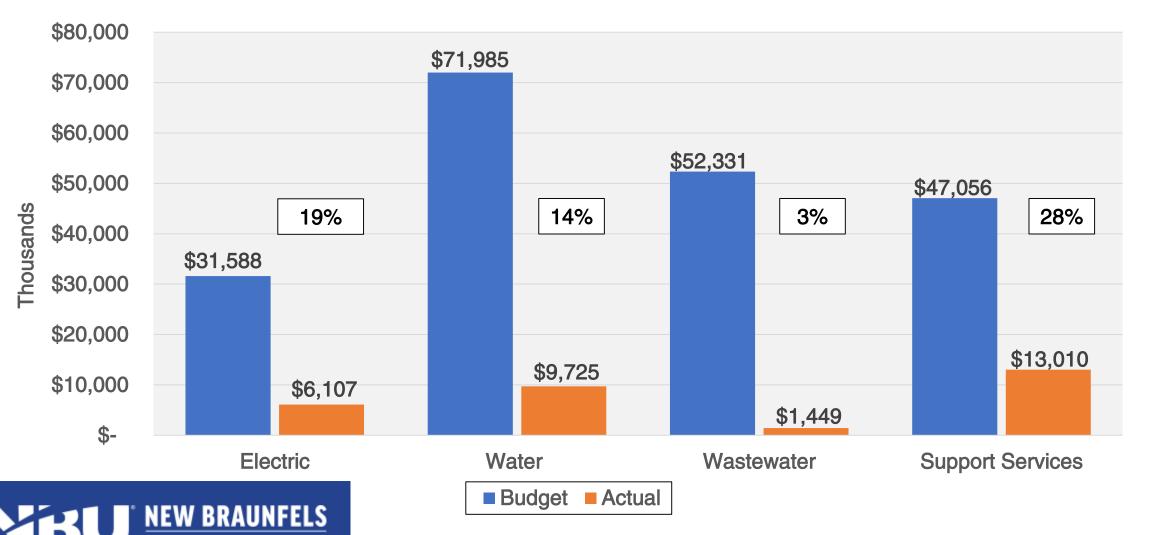




^{*} Amounts shown are YTD for each month

Item 2.

Capital Project Expenditures October 2023 YTD – Amounts in Thousands



Item 2.

Questions?



Meeting Date:	Ieeting Date: December 14, 2023		Items from Staff		
From:	John Warren	Reviewed by:	Ashley Van Booven		
	Finance Manager		Director of Finance		
Submitted by:	Dawn Schriewer	Approved by:	Ryan Kelso		
	Chief Financial Officer		Interim Chief Executive Officer		
RECOMMEND	DED ACTION: Quarterly Inve	stment Report			

BACKGROUND

As required by the Public Funds Investment Act and the New Braunfels Utilities Investment Policy, the Investment Officers of NBU submit the quarterly report of investment activity for the quarter ended October 31, 2023. Attached is the NBU Investment Portfolio beginning July 31, 2023 and ending October 31, 2023.

This is a report showing the changes to the portfolio during the quarter. This report has been modified to conform to the preferred reporting format illustrated in Statement No. 31 of the Governmental Accounting Standards Board, which mandates fair value accounting on investments held by public entities.

FINANCIAL IMPACT

NBU budgeted \$5,173,000 in interest income for FY 2024.

LINK TO STRATEGIC PLAN

People and Culture

Financial Excellence

EXHIBITS

1. Quarterly Investment Report

New Braunfels Utilities Quarterly Investment Report 07/31/2023 – 10/31/2023

Investment Balances and Activity

As required by the Public Funds Investment Act and the New Braunfels Utilities Investment Policy, the Investment Officers of NBU hereby submit this quarterly report of investment activity for the quarter ended October 31, 2023. Statement No. 31 of the Governmental Accounting Standards Board, effective for reporting periods beginning after June 15, 1997, mandates fair value accounting on investments held by public entities. Attached is the NBU Investment Portfolio beginning July 31, 2023 and ending October 31, 2023. This is a report showing the changes to the portfolio during the quarter. This report has been modified to conform to the preferred reporting format illustrated in Statement No. 31.

The fair values of the Federally Insured Cash Account, Pooled, and Money Market Fund Groups (including \$25,163,182.72 in demand deposits and \$37,670,563.21 in escrow funds at October 31, 2023) for the beginning and end of the reporting period are as follows:

Fair Value 07/31/2023 \$155,257,863.84

10/31/2023 \$157,587,931.54

NBU had additions to the Pooled Fund Groups of \$104,248,257.26 and withdrawals totaling \$101,918,189.56.

The fair values of the Separately Invested Assets for the beginning and end of the reporting period are as follows:

Fair Value \$47,529,752.80

10/31/2023 \$46,751,876.68

NBU had additions to the Separately Invested Assets of \$9,859,628.14 and withdrawals of \$11,000,000.00 due to maturities. The change in fair value due to amortization of premium and discount and mark to market changes from July 31, 2023 to October 31, 2023 was an increase of \$362,495.74.

The fair values of the entire portfolio for the beginning and end of the reporting period for the quarter ended October 31, 2023 are as follows:

Fair Value 97/31/2023 \$202,787,616.64

10/31/2023 \$204,339,808.22

New Braunfels Utilities Quarterly Investment Report 07/31/2023 – 10/31/2023

Compliance with GAAP

The investment portfolio complied with generally accepted accounting principles (GAAP) throughout the quarter. Although the Public Funds Investment Act requires book value accounting for investments, it also contains a clause that requires conformance to GAAP. Statement No. 31 supersedes the Public Funds Investments Act in the GAAP hierarchy and mandates fair value accounting. The fair market value of investments was determined by utilizing a third-party service provider, ICE Data Pricing and Reference Data, LLC, formerly called Interactive Data Pricing.

Compliance with NBU Investment Policy

The investment portfolio funds are invested in compliance with the strategies outlined in the NBU Investment Policy, which the Board re-affirmed on March 30, 2023. Investments in each security type are within the allowable range established by the Investment Policy. The investment portfolio's weighted-average maturity of 30 days and weighted-average maturity to first call date of 16 days are within the 450 days and 300 days limit, respectively, stated in the NBU Investment Policy. Please note that the WAM and WAMC do not include the investment in the Community Assistance Fund, which was specifically authorized in the Investment Policy to permit investments up to ten years.

NBU is also required to maintain daily liquid funds of at least 30 days of budgeted operating expenses. At October 31, 2023, NBU had daily liquid funds of 226 days. Pooled investments are in no-load money market mutual funds and eligible specified investment pools that are continuously rated AAA or higher by at least one nationally recognized rating agency and that have a dollar-weighted average stated maturity of 90 days or less. These same investments maintain a stable net asset value of \$1 for each share.

NBU has obtained collateral reports at quarter-end from third party custodians that confirm the collateral securities in NBU's name are at least equal to or greater than the required amount of uninsured balances as of October 31, 2023.

NBU Investment Officers:

Finance Manager

When Warrend

Director of Finance

Chief Financial Officer



NBU Investments GASB 31 Compliance Detail Sorted by Fund - Fund August 1, 2023 - October 31, 2023

CUSIP	Investment #	Fund	Maturity Date	Beginning Invested Value	Purchase of Principal	Addition to Principal	Redemption of Principal	Change in Market Value/Amortization	Ending Invested Value
Fund: Special Funds-Cont. Sys.									
912797FK8	10901	114F	11/16/2023	5,905,911.36	-	-	-	80,913.66	5,986,825.02
313384PG8	10903	114F	11/15/2023	985,032.93	-	-	-	12,971.80	998,004.73
			Subtotal	6,890,944.29	-	-	-	93,885.46	6,984,829.75
Fund: Consumer Deposit									
91282CAK7	10868	119F	09/15/2023	1,987,500.00	-	-	2,000,000.00	12,500.00	
3130APM77	10869	119F	11/24/2023	1,968,519.36	-	-	-	25,013.84	1,993,533.20
3130APMC6	10870	119F	11/24/2023	1,968,298.30	-	-	-	25,138.32	1,993,436.62
313384KK4	10900	119F	08/14/2023	4,990,855.45	-	-	5,000,000.00	9,144.55	
912797GN1	10907	119F	02/15/2024	- · · · · · -	4,867,769.44	-	-	54,165.96	4,921,935.40
			Subtotal	10,915,173.11	4,867,769.44	-	7,000,000.00	125,962.67	8,908,905.22
Fund: Special Funds- Community As	sistance								
912828YS3	10853	117F	11/15/2029	4,366,601.55	-	-	-	(164,843.75)	4,201,757.8
			Subtotal	4,366,601.55	-	-	-	(164,843.75)	4,201,757.80
Fund: Unrestricted Short Term									
912797FV4	10905	110F	12/21/2023	3,898,702.22	-	-	-	71,853.34	3,970,555.56
313384SE0	10906	110F	01/24/2024	3,901,178.76	-	-	-	50,778.80	3,951,957.56
			Subtotal	7,799,880.98	-	-	-	122,632.14	7,922,513.12
Fund: Bond Reserve Fund									
3133EMMN9	10862	170F	01/11/2024	2,927,249.40	-	-	-	41,833.65	2,969,083.0
91282CCC3	10864	170F	05/15/2024	3,841,718.76	-	-	-	47,656.24	3,889,375.00
3130ANRB8	10867	170F	12/17/2024	1,868,058.26	-	-	-	23,468.38	1,891,526.64
3130AT5Y9	10892	170F	08/28/2023	3,994,961.80	-	-	4,000,000.00	5,038.20	
313384PG8	10902	170F	11/15/2023	4,925,164.65	-	-	-	64,859.00	4,990,023.6
3130AVRK0	10909	170F	05/17/2024	-	4,991,858.70	-	-	2,003.75	4,993,862.45
			Subtotal	17,557,152.87	4,991,858.70	-	4,000,000.00	184,859.22	18,733,870.79
			Total	47,529,752.80	9,859,628.14	-	11,000,000.00	362,495.74	46,751,876.68

 Change due to amortization of premium/discount
 328,873.41

 Change due to mark to market
 33,622.33

 Total
 362,495.74



NBU Investments GASB 31 Compliance Detail Sorted by Fund - Fund August 1, 2023 - October 31, 2023

		Investment	# Fund	Beginning Invested Value	Purchase of Principal	Addition to Principal	Redemption of Principal	Change in Market Value	Ending Invested Value
FEDERALLY INSURED CASH ACCOUNT	Γ, POOLED, AND I	MONEY MARKET	FUND GROUPS						
TexPool - Commercial Paper Series A	RRP	10845	191	12,057.17	-	15,054,786.75	8,586,013.77	-	6,480,830.15
TexPool - Commercial Paper Series B	RRP	10846	192	374.44	-	4.99	-	-	379.43
TexPool - Impact Fees W	SYS10090	10090	184F	14,699,178.68	-	3,066,206.69	2,657,807.59	-	15,107,577.78
TexPool - Temp-Cash	SYS10149	10149	110T	10,077,842.37	-	31,068.52	10,000,000.00	-	108,910.89
TexPool - Impact Fees S	SYS10221	10221	185F	7,361,006.66	-	1,276,813.94	1,393,785.21	-	7,244,035.39
TexPool - Central Facilities-W	SYS10224	10224	182F	928.41	-	12.67	-	-	941.08
TexPool - Central Facilities-S	SYS10225	10225	183F	0.01	-	-	-	-	0.01
Texas Daily - Temp-Cash	SYS10244	10244	110D	20,380,333.36	-	184,597.33	10,000,000.00	-	10,564,930.69
Texas Daily - I&P 2004	SYS10543	10544	163	56,675.78	-	136,011.84	· · ·	-	192,687.62
TexPool - Contingency Systems	SYS10572	10573	114F	6,599,412.22	-	89,032.92	-	-	6,688,445.14
TexPool - Consumer Deposit	SYS10572	10572	119T	1,040,510.95	-	2,660,224.08	-	-	3,700,735.03
TexPool - Bond Reserve	SYS10701	10701	170	3,829,423.88	-	4,154,605.49	4,991,858.68	-	2,992,170.69
Texas Daily - I&P 2015	SYS10763	10763	167	167,882.74	-	432,336.75	-	-	600,219.49
StoneCastle - Community Assistance	SYS10779	10779	117SC	43,381.68	-	570.51	-	-	43,952.19
Texas Daily - I&P 2016	SYS10788	10788	168	276,603.14	-	726,425.84	-	-	1,003,028.98
Frost Bank - General Fund	SYS10809	10809	110FGF	13,428,373.14	-	61,363,061.61	51,134,595.15	-	23,656,839.60
Frost Bank - Payroll Fund	SYS10810	10810	110FPR	987,695.32	-	3,672,776.96	3,154,129.16	-	1,506,343.12
Texas Daily - I&P 2018	SYS10831	10831	169	267,356.19	-	732,118.63	-	-	999,474.82
TexPool - Power Stabilization Fund	SYS10849	10849	195	16,639,988.79	-	6,476,370.02	-	-	23,116,358.81
Texas Daily - I&P 2020	SYS10855	10855	196	501,948.01	-	1,305,214.28	-	-	1,807,162.29
TexPool - Taxable Note Payment Fund	SYS10863	10863	197	0.01	-	-	-	-	0.01
Texas Daily - I&P 2021	SYS10866	10866	198	352,273.91	-	928,783.44	-	-	1,281,057.35
StoneCastle - Contingency Systems	SYS10880	10880	114SC	10,415,185.01	-	136,969.32	-	-	10,552,154.33
Texas Daily - I&P 22	SYS10889	10889	199	448,962.06	-	1,180,562.62	-	-	1,629,524.68
Texas Daily - I&P 22A	SYS10894	10894	200	131,709.19	-	350,545.45	-	-	482,254.64
Bond Fund 22A	SYS10896	10896	201	37,511,260.73	-	159,302.48	-	-	37,670,563.21
Texas CLASS - Temp-Cash	SYS10904	10904	110TC	10,027,499.99	-	29,721.81	10,000,000.00	-	57,221.80
TexPool - One Water Fund	SYS10908	10908	202	-	50,000.00	50,132.32	-	-	100,132.32
			Total	155,257,863.84	50,000.00	104,198,257.26	101,918,189.56	-	157,587,931.54
			Portfolio Total	202,787,616.64	9.909.628.14	104,198,257.26	112,918,189.56	362.495.74	204,339,808.22
			FORLIONO FOTAL	202,707,010.64	ჟ,უსუ,ი∠ი.14	104, 190,237.26	112,310,103.56	302,495.74	204,339,008.22

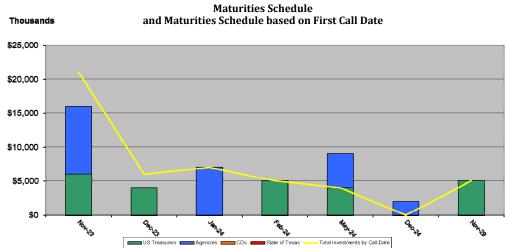
New Braunfels Utilities Investment Summary Quarter Ended October 31, 2023 (000's)



	Ending Invested Value		Percentage of Portfolio	Weighted Average Maturity (in days)	Weighted Average Days to Call
Daily Liquidity Funds					
Money Markets	\$	-	0.0%	1	1
Pooled Funds		84,158,079	41.2%	1	1
Total Money Markets & Pooled	\$	84,158,079	41.2%	1	1
Federally Insured Cash Account	\$	10,596,107	5.2%	1	1
Demand Deposits		25,163,183	12.3%	1	1
Daily Liquidity Funds Total	\$	119,917,368	58.7%	1	1
Escrow Funds Total	\$	37,670,563	18.4%	40	40
U.S. Agencies	\$	23,781,428	11.6%	105	38
U.S. Treasuries *		22,970,449	11.2%	68	68
Certificates of Deposit		-	0.0%	0	0
Obligations of The State of Texas, Agencies & Instrumentalities		-	0.0%	0	0
Total Invested Funds	\$	204,339,808	100.0%	30	16
				Max = 450	Max = 300

^{*} WAM and WAM to Call exclude a \$5 Million investment in the Community Assistance Fund having a remaining maturity of 6.0 years.

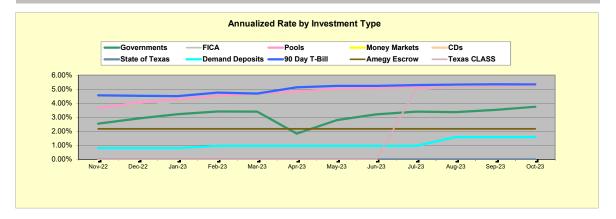
Liquidity Requirement	
Total Daily Liquid Funds	\$ 119,917,368
Average Monthly Operating Expense (FY 2024 Budgeted Operating Expenses ÷ 12)	\$ 15,943,333
Operating Expense Liquidity Coverage Ratio	\$ 7.52
Number of Days Coverage of Operating Expenses	226
	Min = 30

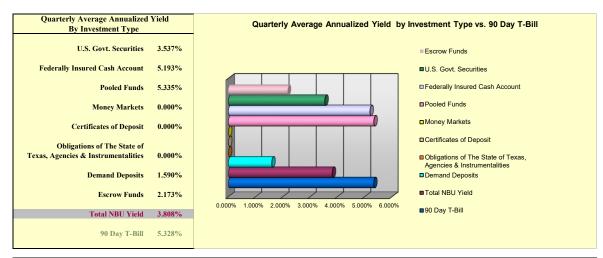


^{*} U.S Treasury Securities include a \$5 Million 10 year Community Assistance investment with a remaining maturity of 6.0 years as an approved exception to the investment policy.

New Braunfels Utilities Investment Comparison Quarter Ended October 31, 2023







Rolling Four Quarter Annualized Yield									
By Investment Type									
For The Fiscal Quarter Ended 1/31/2023									
U.S. Govt. Securities*	2.883%	2.874%	3.127%	3.537%	3.105%				
Federally Insured Cash Account	3.904%	4.527%	4.940%	5.193%	4.641%				
Pooled Funds	3.986%	4.679%	5.082%	5.335%	4.770%				
Money Markets	0.000%	0.000%	0.000%	0.000%	0.000%				
Certificates of Deposit	0.000%	0.000%	0.000%	0.000%	0.000%				
Obligations of The State of Texas, Agencies & Instrumentalities	0.000%	0.000%	0.000%	0.000%	0.000%				
Demand Deposits**	0.800%	0.950%	0.950%	1.590%	1.073%				
Escrow Funds	2.173%	2.173%	2.173%	2.173%	2.173%				
Total NBU Yield	2.787%	3.090%	3.290%	3.808%	3.244%				
90 Day T-Bill	4.523%	4.848%	5.243%	5.328%	4.986%				

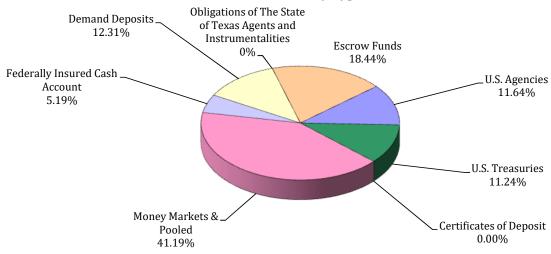
^{*} U.S. Govt. Securities includes a \$5 million 10 year Community Assistance maturity at 1.79%

^{**} The Demand Deposits interest rate reflects NBU's earnings credit rate with Frost Bank.
Earnings are solely used to offset Frost Bank fees for the month.

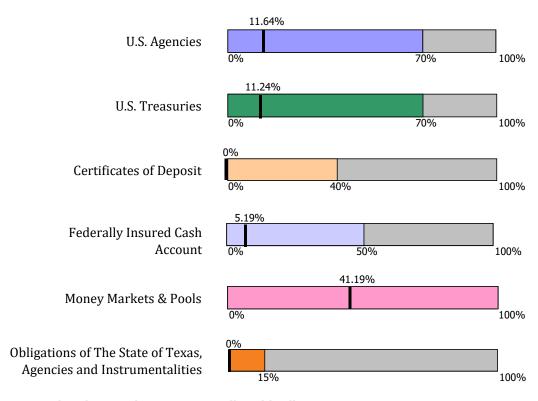
New Braunfels Utilities Investment Portfolio Mix vs. Allowable Allocations Quarter Ended October 31, 2023 (000's)



Investments by Type



Investment Allocations by Type vs. Allowable Allocation Range



Note: Colored area in bar represents allowable allocation range





Quarterly Investment Report As of October 31, 2023

John Warren Finance Manager Investment
Portfolio
Summary
as of
October 31, 2023

	Ending Invested Value		Percentage of Portfolio	Weighted Average Maturity (in days)	Weighted Average Days to Call
Daily Liquidity Funds					<i>y</i>
Money Markets	\$	-	0.0%	1	1
Pooled Funds		84,158,079	41.2%	1	1
Total Money Markets & Pooled	\$	84,158,079	41.2%	1	1
Federally Insured Cash Account	\$	10,596,107	5.2%	1	1
Demand Deposits		25,163,183	12.3%	1	1
Daily Liquidity Funds Total	\$	119,917,368	58.7%	1	1
Escrow Funds Total	\$	37,670,563	18.4%	40	40
U.S. Agencies	\$	23,781,428	11.6%	105	38
U.S. Treasuries *		22,970,449	11.2%	68	68
Certificates of Deposit		-	0.0%	0	0
Obligations of The State of Texas, Agencies & Instrumentalities		-	0.0%	0	0
Total Invested Funds	\$	204,339,808	100.0%	30	16
				Max = 450	Max = 300

^{*} WAM and WAM to Call exclude a \$5 Million investment in the Community Assistance Fund having a remaining maturity of 6.0 years.

Liquidity Requirement	
Total Daily Liquid Funds	\$ 119,917,368
Average Monthly Operating Expense (FY 2024 Budgeted Operating Expenses ÷ 12)	\$ 15,943,333
Operating Expense Liquidity Coverage Ratio	\$ 7.52
Number of Days Coverage of Operating Expenses	226
	Min = 30

Item 3.

Rolling Four Quarter Annualized Yield By Investment Type For the Fiscal Quarter Ended October 31, 2023

Rolling Four Quarter Annualized Yield By Investment Type For The Fiscal Quarter Ended

Tot The Lise	ai Quartei Enucu	
	10/31/2023	Rolling Four Quarter Average
U.S. Govt. Securities*	3.537%	3.105%
Federally Insured Cash Account	5.193%	4.641%
Pooled Funds	5.335%	4.770%
Money Markets	0.000%	0.000%
Certificates of Deposit	0.000%	0.000%
Obligations of The State of		
Texas, Agencies & Instrumentalities	0.000%	0.000%
Demand Deposits**	1.590%	1.073%
Escrow Funds	2.173%	2.173%
Total NBU Yield	3.808%	3.244%
90 Day T-Bill	5.328%	4.986%

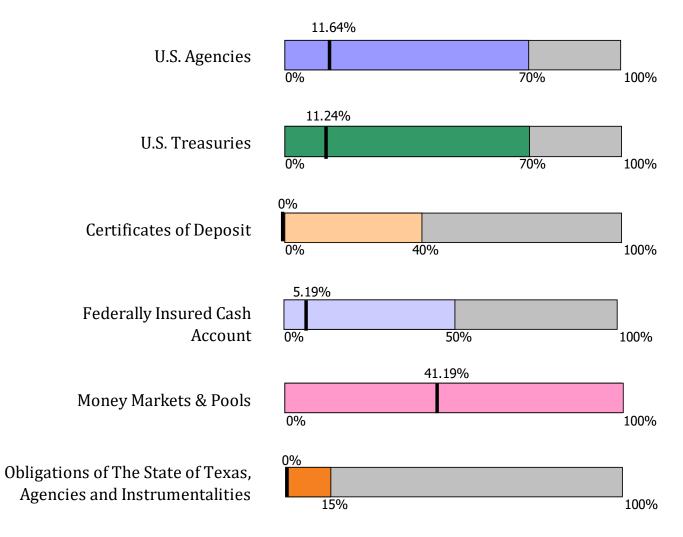
^{*} U.S. Govt. Securities includes a \$5 million 10 year Community Assistance maturity at 1.79%

^{**} The Demand Deposits interest rate reflects NBU's earnings credit rate with Frost Bank. Earnings are solely used to offset Frost Bank fees for the month.

Item 3.

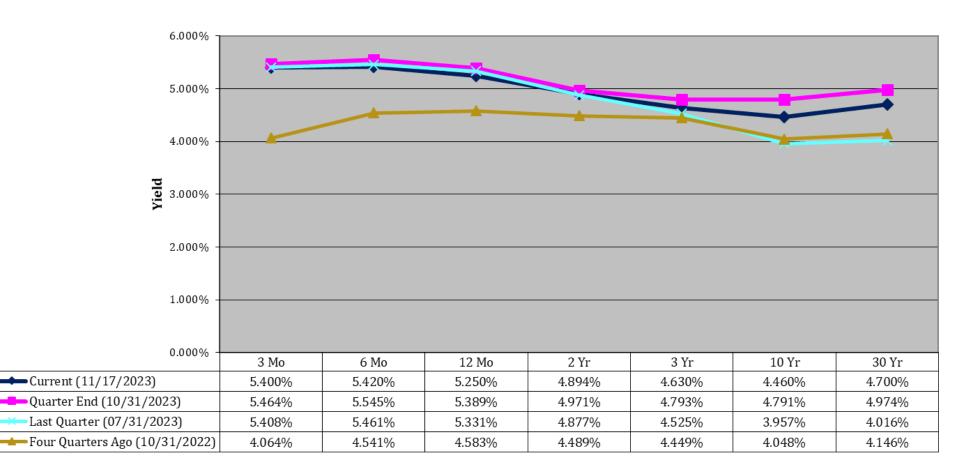
Investment Allocations by Type vs. Allowable Allocation Range

Investment
Allocations
vs.
Investment
Allowable Ranges
at
October 31, 2023



Note: Colored area in bar represents allowable allocation range

U. S. Treasury
Yield Curve
as of
November 17,
2023



Commercial Paper

	Par	Nominal	Issue	Maturity	Total	Total
CUSIP	Amount	Rate	Date	Date	Days	Interest
64257PBH2	50,000,000.00	3.65%	5/9/2023	8/8/2023	91	455,000.00
64257PBJ8	50,000,000.00	3.75%	8/8/2023	10/4/2023	57	292,808.22
64257PBK5	15,000,000.00	3.80%	9/12/2023	11/8/2023	57	89,013.70
64257PBL3	25,000,000.00	4.40%	10/4/2023	11/8/2023	35	105,479.45
64257PBM1	25,000,000.00	4.30%	10/4/2023	12/12/2023	69	203,219.18
64257PBN9	1,500,000.00	4.00%	11/8/2023	11/14/2023	6	986.30
64257PBP4	5,000,000.00	4.00%	11/8/2023	12/12/2023	34	18,630.14
64257PBQ2	33,500,000.00	3.85%	11/8/2023	2/6/2024	90	317,672.99
64257PBR0	1,500,000.00	3.95%	11/14/2023	12/12/2023	28	4,545.21

<u>Note</u>: The table above shows the commercial paper notes with an issue date and/or maturity date that occurred during the reporting period and any currently outstanding commercial paper notes.



tem 3.

Questions?

68

Interim Chief Executive Officer



Meeting Date: December 14, 2023 Agenda Type: Items from Staff

From: Nancy Pappas Reviewed by: Melissa Krause

Managing Director,

Chief Strategic Communications

Headwaters at the Comal and Security Officer

Submitted by: Melissa Krause Approved by: Ryan Kelso

Chief Strategic

Communications and Security

Officer

RECOMMENDED ACTION: Quarterly Update on the Headwaters at the Comal

Item 4.

Quarterly Update





2023 Funding Calendar year

Item 4.

Annual Campaign

\$130,560

Membership Income

\$ 11,625

Capital Campaign:

Grants

Business

Individual

\$360,000

\$ 11,940

43,283

Total year to date:

\$ 557,408

As of October 31, 2023









Development Update

- Runner-up: Impact San Antonio \$10,000 grant
- Submitted \$700,000 in grant requests since May
- NBEDC reimbursement funds remaining \$590,504
- Year-end campaign:
 - Brand awareness campaign continues "Every Drop Counts"
 - Direct mail campaign
 - "Campaign for the Comal" Dec. 4, 2023
 - Expand Business partnerships
 - Continue grant writing



Construction Update

- Structure begins
 - Foundation repair work completed.
 - Steel beams reinstalled.
 - Site and utility work underway.
- Archaeological monitoring will be required for site work and test investigations required for wastewater line.
 - Monitoring work ongoing.
 - Test excavations begin with approval of Antiquities permit # 2, submitted Nov. 6, 2023.







Construction Timeline

- Notice to Proceed issued June 2023:
 - Demolition began July 2023
 - Current 275-day contract (April 2024)
 - Includes site work and building envelope
 - Slight delay (28 days) due to unanticipated slab and steel conditions
 - Future unknowns:
 - Archaeology
 - Weather during site-work
 - Full completion will depend on funding for finish out
 - Have additional \$1,300,000 raised and ready to invest





Meeting Date: December 14, 2023 Agenda Type: Items from Staff

From: Robert Figuly Reviewed by: David Hubbard

Director of Power Supply Chief Administrative Officer

Submitted by: David Hubbard Approved by: Ryan Kelso

Chief Administrative Officer Interim Chief Executive Officer

RECOMMENDED ACTION: NBU Winter Weather Preparedness and Regulatory Update

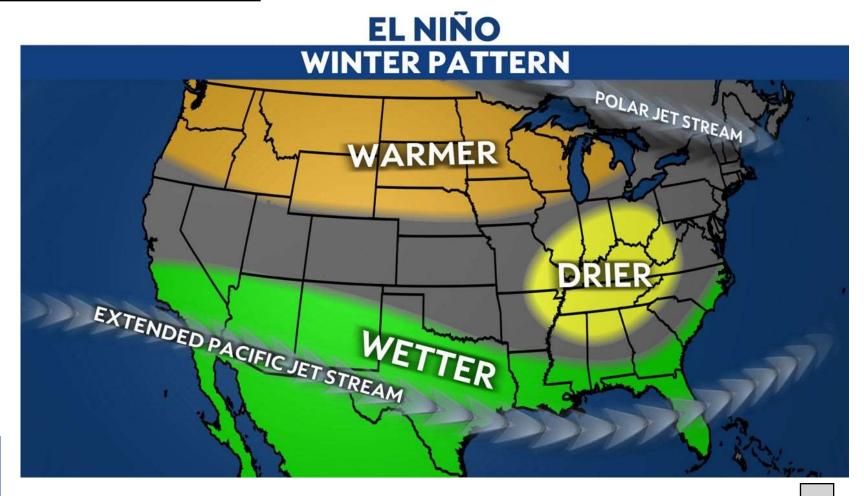


Weather Outlook Winter 2023/2024

Robert Figuly – Director of Power Supply

El Nino Outlook

With El Nino being present this winter for the first time in four years, outlooks are trending on the warmer side with higher chances of precipitation.





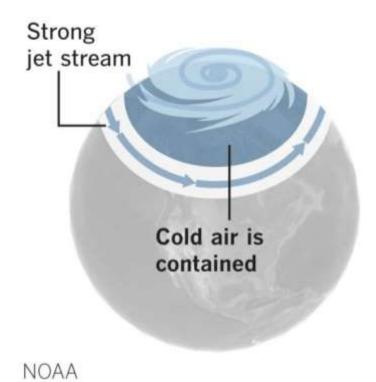
Polar Vortex

A new Polar Vortex is forming in the Stratosphere over the North Pole.

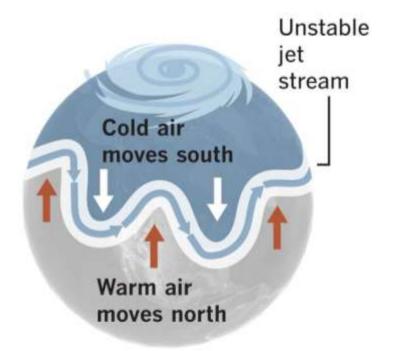
It is strengthening rapidly and will continue to strengthen towards the Winter of 2023/2024.

The Polar Vortex has a long and strong history of Winter weather impacts over the United States, Canada, and Europe, especially if it starts to collapse.

Stable polar vortex



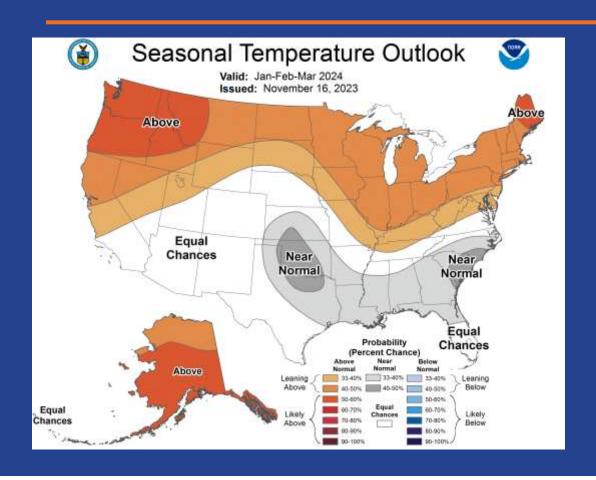
Wavy polar vortex

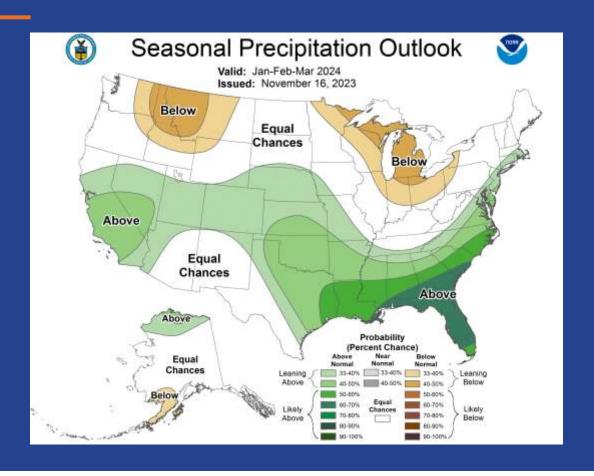




80

January to March Outlook



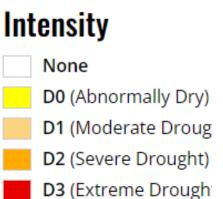


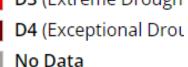


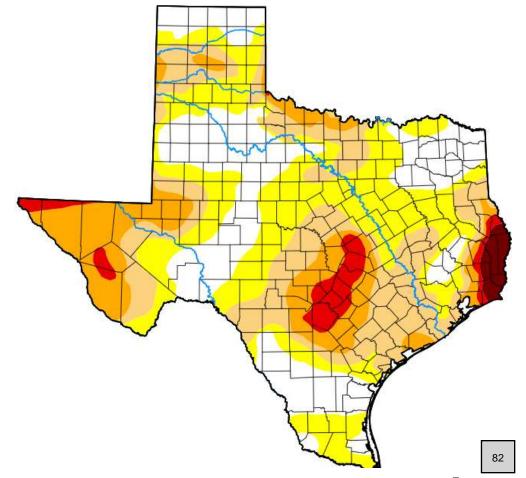


Drought Monitor as of 11/28

New Braunfels in Stage 2 Restrictions









Drought Outlook as of 11/16

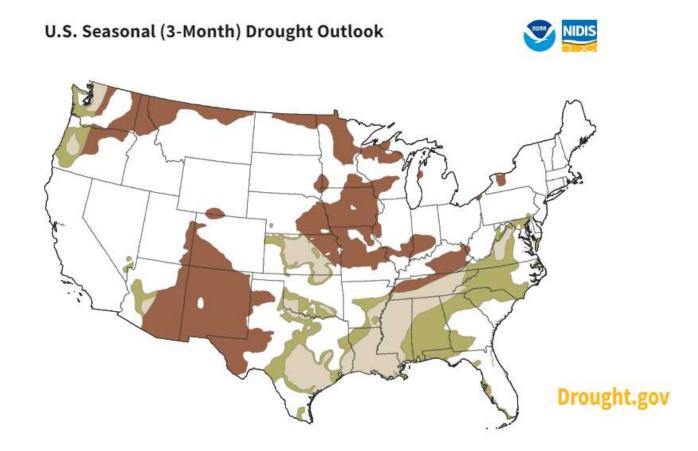
Drought persists

Drought remains but improves

Drought removal likely

Source(s): Climate Prediction Center Updates Monthly: 10/31/23 Drought development likely

No drought predicted



NERC Winter Assessment

Highlights

- Reserve shortages during high load hours
- ERCOT trying to procure more dispatchable generation to serve load
- Fuel supply issues still possible if the state experiences a winter storm

Risk Scenario Summary

 Expected resources meet operating reserve requirements under normal peak-demand scenarios. Above-normal winter peak load and outage conditions could result in EEAs. Load shedding is unlikely but may be needed under wide-area cold weather events.



Figure 1: Winter Reliability Risk Area Summary

Seasonal Risk Assessment Summary					
High Potential for insufficient operating reserves in normal peak conditi					
Elevated	Potential for insufficient operating reserves in above-normal conditions				
Low	Sufficient operating reserves expected				





Winter SARA

Awaiting Final Release

Item 5.

January Monthly Outlook for Resource Adequacy (MORA)

- Expected Peak Load for January is ~72,000MWs
- Total Available Resources is estimated ~ 87,200.
- ERCOT issued RFP for 3000MW from current mothballed dispatchable generation resources and recently decommissioned dispatchable resources since December 1, 2020

	EMERGENCY LEVEL						
	Chance of Normal System Conditions	Chance of an Energy Emergency Alert	Chance of Ordering Controlled Outages				
Hour Ending	Probability of CAFOR being above 3,000 MW	Probability of CAFOR being less than 2,500 MW	Probability of CAFOR being less than 1,500 MW				
1 a.m.	98.53%	1.23%	1.109				
2 a.m.	98.67%	1.12%	1.029				
3 a.m.	98.73%	1.03%	0.979				
4 a.m.	98.67%	1.05%	1.009				
5 a.m.	98.54%	1.15%	1.049				
6 a.m.	97.79%	1.59%	1.389				
7 a.m.	94.43%	3.95%	3.359				
8 a.m.	89.54%	7.55%	6.709				
9 a.m.	93.26%	4.97%	4.299				
10 a.m.	97.11%	2.00%	1.779				
11 a.m.	98.53%	1.02%	0.909				
12 p.m.	99.15%	0.58%	0.479				
1 p.m.	99.55%	0.26%	0.239				
2 p.m.	99.74%	0.16%	0.149				
3 p.m.	99.84%	0.08%	0.079				
4 p.m.	99.79%	0.11%	0.109				
5 p.m.	99.47%	0.27%	0.209				
6 p.m.	97.82%	1.43%	1.279				
7 p.m.	96.33%	2.52%	2.149				
8 p.m.	96.18%	2.62%	2.199				
9 p.m.	97.93%	1.47%	1.199				
10 p.m.	98.33%	1.15%	0.979				
11 p.m.	98.91%	0.74%	0.679				
12 a.m.	99.16%	0.59%	0.539				

Note: Probabilities are not additive

Storm Scenario	Based on	Winter	Storm Elliott
	EME	RGENCY	LEVEL

	EWIERGENCY LEVEL							
	Chance of Normal System Conditions	Chance of an Energy Emergency Alert	Chance of Ordering Controlled Outages					
Hour Ending	Probability of CAFOR being above 3,000 MW	Probability of CAFOR being less than 2,500 MW	Probability of CAFOR being less than 1,500 MW					
1 a.m.	99.59%	0.27%	0.23%					
2 a.m.	99.66%	0.20%	0.14%					
3 a.m.	99.67%	0.16%	0.13%					
4 a.m.	99.68%	0.22%	0.12%					
5 a.m.	99.67%	0.24%	0.16%					
6 a.m.	99.53%	0.26%	0.18%					
7 a.m.	87.64%	5.70%	3.36%					
8 a.m.	70.15%	20.56%	16.77%					
9 a.m.	84.25%	7.49%	4.93%					
10 a.m.	97.80%	0.65%	0.36%					
11 a.m.	99.81%	0.06%	0.03%					
12 p.m.	99.98%	0.00%	0.00%					
1 p.m.	100.00%	0.00%	0.00%					
2 p.m.	100.00%	0.00%	0.00%					
3 p.m.	100.00%	0.00%	0.00%					
4 p.m.	100.00%	0.00%	0.00%					
5 p.m.	100.00%	0.00%	0.00%					
6 p.m.	99,77%	0.09%	0.04%					
7 p.m.	96.97%	0.35%	0.21%					
8 p.m.	95.56%	0.94%	0.41%					
9 p.m.	99.77%							
10 p.m.	99.86%		0.02%					
11 p.m.	99.94%	0.01%	0.00%					
12 a.m.	99.98%	0.00%	0.00%					

Note: Probabilities are not additive



EEA Level Changes

Effective 11/1/2023 ERCOT updated the Grid Condition Levels

- **EEA 1** will occur if reserves reach 2,500 MW (*previously 2,300 MW*) and are not expected to recover within 30 minutes.
- EEA 2 will occur if reserves reach 2,000 MW (previously 1,750 MW) and are not expected to recover within 30 minutes, or if frequency has dropped below 59.91 Hz for 15 minutes (previously 30 minutes).
- **EEA 3** will occur if reserves drop below 1,500 MW (*previously 1,000 MW*) and are not expected to recover within 30 minutes, or if the frequency drops below 59.8 Hz for any period of time.
 - If either situation occurs, ERCOT would require Transmission and Distribution Service Providers (TDSPs) to implement controlled outages, which impact residential, commercial, and industrial users.

"Earlier and Faster"



Questions?





Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Laura Ayala Reviewed by: Laura Rivers

Board Relations Coordinator Chief of Staff

Submitted by: Laura Rivers Approved by: Ryan Kelso

Chief of Staff Interim Chief Executive Officer

RECOMMENDED ACTION: Approve Minutes of the NBU Special Board Meeting of October 19,

2023

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

1. October 19, 2023 Special Board Meeting Minutes

MINUTES NEW BRAUNFELS UTILITIES BOARD OF DIRECTORS STRATEGIC WORKSHOP MEETING

8:30 AM THURSDAY, OCTOBER 19, 2023 NEW BRAUNFELS UTILITIES – SERVICE CENTER 355 FM 306, NEW BRAUNFELS, TX 78130

Board President Judith Dykes-Hoffmann opened the meeting at 8:49 a.m. A quorum of the NBU Board was present.

PRESENT

Board President Judith Dykes-Hoffmann, Board Vice President Wayne Peters, Board Trustee John Harrell, Board Trustee Yvette Villanueva Barrera, and Mayor Neal Linnartz

ABSENT

None

NBU PERSONNEL

Ryan Kelso, Dawn Schriewer, Connie Lock, Melissa Krause, Greg Brown, David Hubbard, and Laura Rivers

PLEDGE OF ALLEGIANCE AND INVOCATION

Board Trustee John Harrell led the Pledge of Allegiance and provided the invocation.

PUBLIC COMMENT

Drake Thompson, 759 Timber Drive, applauded the Board on addressing the expansion of the CCN. This discussion provides a sustainable path for long term utility strength.

ITEMS FROM THE CHAIR

None

STRATEGIC PLANNING DISCUSSION

The NBU Board of Trustees and staff discussed matters related to planning for the future of NBU regarding its operations, management, and expansion of the electric, water and wastewater systems. In addition, the NBU Board of Trustees and NBU staff discussed Water and Wastewater Service Areas, Areas of Convenience and Necessity, and Possible Future Action.

*The Board recessed at 10:06am and reconvened at 10:20am.

The NBU Board of Trustees heard from Zonda Intelligence Corporation on the Future Population Growth and Economic Outlook in the Texas Area.

EXECUTIVE SESSION

Board President Judith Dykes-Hoffmann recessed the Open Session at 11:25 AM and announced that the Board would go into an Executive Session meeting. The Executive Session included Deliberation Regarding Security Devices or Security Audits, including Discussion Regarding Security Assessments or Deployments Relating to Information Resources Technology, Discussion Regarding Network Security Information, and Discussion Regarding the Deployment, or Specific Occasions for Implementation, of Security Personnel, Critical Infrastructure, or Security Devices. The Executive Session was opened at 11:31 AM and closed at 12:26PM.

RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE

The Regular Session resumed at 12:26 PM.

The Board recessed for lunch at 12:26 PM and reconvened at 1:07 PM.

The NBU Board of Trustees discussed the annual board self-evaluation.

ADJOURN

There was no further business and Board President Judith Dykes-Hoffmann adjourned the Board Strategic Workshop at 2:08pm.

Attest:	Judith Dykes-Hoffmann, President Approved
Ryan Kelso, Secretary of the Board Interim Chief Executive Officer	Date Approved:



Meeting Date:	December 14, 2023	Agenda Type:	Consent Items for Action
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From: Laura Ayala Reviewed by: Laura Rivers

Board Relations Coordinator Chief of Staff

Submitted by: Laura Rivers **Approved by:** Ryan Kelso

Chief of Staff Interim Chief Executive Officer

RECOMMENDED ACTION: Approve Minutes of the NBU Regular Board Meeting of October 26,

2023

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

1. October 26, 2023 Regular Board Meeting Minutes

MINUTES NEW BRAUNFELS UTILITIES BOARD OF DIRECTORS REGULAR BOARD MEETING

1:00 P.M. Thursday, October 26, 2023 NBU Board Room 263 MAIN PLAZA, NEW BRAUNFELS, TEXAS 78130

Board President Judith Dykes-Hoffmann opened the meeting at 1:03 p.m. A quorum of the NBU Board was present.

PRESENT

Board President Judith Dykes-Hoffmann, Board Vice President Wayne Peters, Board Trustee John Harrell, Board Trustee Yvette Villanueva Barrera, and Mayor Neal Linnartz

ABSENT

None

NBU PERSONNEL

Ryan Kelso, Dawn Schriewer, Connie Lock, Melissa Krause, David Hubbard, Greg Brown, and Laura Rivers

NBU CONSULTANTS

None

PLEDGE AND INVOCATION

Board Trustee John Harrell led the pledge of allegiance and offered the invocation.

PUBLIC COMMENT

None

ITEMS FROM THE CHAIR

1. Election of Officers for the NBU Board of Trustees for the Offices of President, Vice President, and Secretary

Board Trustee John Harrell made a motion and Board Trustee Yvette Villanueva Barrera seconded the motion to elect the following officers to the NBU Board of Trustees: Board President Wayne Peters for a term of 3-years, Board Vice President Judith Dykes-Hoffmann for a term of 1-year, and for the role of Secretary of the NBU Board of Trustees be held by the Interim CEO or CEO. The vote was unanimous.

2. Report Related to the NBU Board Annual Self-Evaluation

Board Vice President Wayne Peters reported that the Board held a strategic retreat and discussed the desire to complete an annual self-evaluation in connection with the requirements of the Board's Governance Policies. The Board reviewed the evaluation and provided feedback. NBU staff made the adjustments as requested. NBU staff will distribute the agreed-upon self-evaluation form to the Board on October 27, 2023 to complete by

November 17, 2023. Once completed and submitted, the Governance Committee will summarize and will provide the results to the Board on December 7, 2023 to review and determine a plan of action based on the summarized results at its December Board strategic meeting.

3. Report from the Community Advisory Panel Board Committee

Board Vice President Wayne Peters reported that the Community Advisory Panel Board Committee met on October 20, 2023. Laura Rivers reviewed the CAP roles and responsibilities of the board committee and panel. The applicants were reviewed and discussed. There are 11 members of the former Rate Advisory Committee that will transition to the CAP. Two of 26 applicants were selected to be nominated by the board committee for the at-large positions. The committee is recommending the appointment of thirteen (13) community members to the CAP. The proposed recommendations are as follows: Justin Meadows, Stuart Blythin, Mark Hampton, Dr. Michael Patrick Harrington, PhD, Bobby Avary, Dr. Les Shepard, Darren Hill, Jonathan Packer, Alice Jewell, Ian Perez, Chris Snider, Leticia Pena Martinez, and Amber Chanelle Brown. In addition, the Committee recommends Justin Meadow as Chair of the Community Advisory Panel.

ITEMS FROM THE STAFF

1. Interim CEO'S Update

Ryan Kelso shared information on the following programs and events. Interim CEO Road Show presentations were held at the Greater New Braunfels Home Builders Association and New Braunfels Downtown Association; NBU celebrated Public Power Week; FY2025 Strategic Planning Workshop and Timeline for executives and directors was held; Customer Service participated in a utility bill question and answer session for customers at the New Braunfels Food Bank; NBU celebrated Customer Service week; NBU also participated in the 4th Annual Texas Public Power Corridor Event celebration; NBU was out in larger neighborhoods participating in National Night Out; staff participated in the Texas Public Power Corridor Emergency Management Tabletop exercise; the NBU Leadership team volunteered at Habitat for Humanity; several NBU employees were invited to participate in the International Lineman's Rodeo; October 19th was National Day Without Water; NBU was a stop in the New Braunfels Spooktacular event; final numbers were presented for the United Way employee giving campaign; Headwaters at the Comal was named the runner-up for the Pollinator Electric Power-Up award; and New Hires and Leadership promotions were shared with the Board.

2. Financial Update and Report

Accounting Manager Kimberly Huffman provided an update on the financial status of NBU.

3. Personnel Staffing Level Update

Chief Administrative Officer David Hubbard updated the board on staffing positions.

CONSENT ITEMS FOR ACTION

Board Trustee John Harrell made a motion and Mayor Neal Linnartz seconded the motion to approve the Consent Items for Action as follows: #1, #2, #3, #4, #5, #6, #7, #8, #9, #10. The vote was unanimous.

- 1. Approve Minutes of the NBU Regular Board Meeting of September 28, 2023
- 2. Approve the Change Order Log from August 15, 2023, through September 15, 2023
- 3. Approve the Reports for Water and Electric Engineering Contracts from August 15, 2023, through September 15, 2023
- 4. Approve the Electric Line of Business Alternative Procurements from August 15, 2023, through September 15, 2023
- 5. Authorize Interim CEO or His Designee to Negotiate and Execute a Professional Services Agreement with Freese and Nichols, Inc. for the Design of the Loop 337 Ground Storage and County Line Road Standpipe Water Tank Rehabilitations, and an Additional Twelve Tank Sites Identified for Facility Improvements Phase 1 Project
- 6. Authorize Interim CEO or His Designee to Negotiate and Execute a Construction Contract with Hunter Demolition and Wrecking Corporation for the Construction of the Veramendi Elevated Storage, West Coll Street Standpipe, and Sunset Drive Standpipe Tank Decommission Project
- 7. Authorize Interim CEO or His Designee to Negotiate and Execute a First Amendment to the Professional Services Agreement with Residuals Transport Corporation to Provide Biosolids and Debris Disposal Services for the Surface Water Treatment Facility, North Kuehler Wastewater Treatment Facility, South Kuehler Wastewater Treatment Facility, Gruene Road Water Reclamation Facility, and McKenzie Water Reclamation Facility
- 8. Authorize Interim CEO or His Designee to Negotiate and Execute an AIA Amendment to the Professional Services Agreement with R.E. Lamb for Site Selection, Design, Engineering Services, and Construction Administration of the Proposed Backup Operations Center
- 9. Authorize Interim CEO or His Designee to Negotiate and Execute a Construction Contract with Power Standard, LLC for Construction of the Comal CO14 and Freiheit FR22 Breaker Additions Project
- 10. Approval and Adoption of Resolution #R2023-179 Authorizing the Interim Chief Executive Officer to Execute a Special Warranty Deed Selling a Certain Tract of Real Property Located at 1493 Gruene Road, New Braunfels, Comal County, Texas, 78130 Being Tract 2 of William E. Field Subdivision as Recorded in Volume 5, Page 39 of the Map and Plat Records of Comal County, Texas, and Other Matters in Connection Therewith

ACTION ITEMS

1. Discuss and Consider Authorizing the Bylaws for the Community Advisory Panel and Other Matters in Connection Therewith

Board Vice President Wayne Peters made a motion and Mayor Neal Linnartz seconded the motion to approve the bylaws for the Community Advisory Panel and Other Matters in Connection Therewith. The vote was unanimous.

2. Discuss and Consider Appointing Members to the Community Advisory Panel, Including Naming the Chair and Other Matters in Connection Therewith

Mayor Neal Linnartz made a motion and Board Trustee John Harrell seconded the motion to approve appointing members to the Community Advisory Panel, including naming the Chair and other matters in connection therewith. The vote was unanimous.

EXECUTIVE SESSION

Board President Judith Dykes-Hoffmann recessed the Open Session at 1:41 pm and announced that the Board would go into an Executive Session meeting. The Executive Session included Power Supply Resources – Competitive Matters; Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege; Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege, Personnel Matters; and Personnel Matters. The Executive Session was opened at 1:46 pm and closed at 4:06 pm.

RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE

ACTION ITEMS

1. Discuss and Consider Authorizing the Interim CEO or His Designee to Negotiate and Execute a Second Letter Agreement Extending Developer Payment Deadlines for Certain Improvements Outlined in the Utility Construction Cost Sharing Agreement Dated February 8, 2022, and the Related First Amendment all among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC

Mayor Neal Linnartz made a motion and Board Trustee Yvette Barrera-Villanueva seconded the motion to approve authorization to negotiate and execute Second Letter Agreement Extending Developer Payment Deadlines for Certain Improvements Outlined in the Utility Construction Cost Sharing Agreement Dated February 8, 2022, and the Related First Amendment all among New Braunfels Utilities, Southstar at Mayfair, LLC, MNB Real Estate Investments, LLC, Southstar at Mayfair Developer, LLC, and Beaverhead NB, LLC

ADJOURN

There was no further business and Board President Judith Dykes-Hoffmann adjourned the meeting at 4:11 pm.

Attest:	Judith Dykes-Hoffmann, President Approved
Ryan Kelso, Secretary of the Board Interim Chief Executive Officer	
	Date Approved:



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Laura Ayala Reviewed by: Laura Rivers

Board Relations Coordinator Chief of Staff

Submitted by: Laura Rivers **Approved by:** Ryan Kelso

Chief of Staff Interim Chief Executive Officer

RECOMMENDED ACTION: Approve Minutes of the NBU Special Board Meeting of November

29, 2023

BACKGROUND

None

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

EXHIBITS

1. November 29, 2023 Special Board Meeting Minutes

MINUTES NEW BRAUNFELS UTILITIES BOARD OF DIRECTORS SPECIAL MEETING

9:30 AM NOVEMBER 29, 2023 NBU BOARD ROOM 263 MAIN PLAZA, NEW BRAUNFELS, TX 78130

Board President Wayne Peters opened the meeting at 9:30 a.m. A quorum of the NBU Board was present.

PRESENT

Board President Wayne Peters, Board Vice President Judith Dykes-Hoffmann, Mayor Neal Linnartz, Trustee John Harrell, and Trustee Yvette Barrera-Villanueva

ABSENT

None

NBU PERSONNEL

Ryan Kelso, Dawn Schriewer, Connie Lock, Greg Brown, David Hubbard, and Laura Rivers

PUBLIC COMMENT

None

EXECUTIVE SESSION

Board President Wayne Peters recessed the Open Session at 9:33 a.m. and announced that the Board would go into an Executive Session meeting. The Executive Session included Consultation with Attorney Regarding Matters Protected by Attorney Client Privilege; Discussion regarding class action lawsuit and related settlement agreements with 3M and DuPont de Nemours relating to per- and polyfluoroalkyl substances; Personnel Matters – Deliberate the Appointment, Employment, Evaluation, and Duties of the Chief Executive Officer. The Executive Session was opened at 9:37 a.m. and closed at 12:15 p.m.

RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE

ADJOURN

There was no further business and Board President Wayne Peters adjourned the Board of Trustees Special Meeting at 12:15 p.m.

Attest:	Wayne Peters, President		
Ryan Kelso, Secretary of the Board Interim Chief Executive Officer	Date Approved: December 14, 2023		



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Jesse Luna Reviewed by: David Hubbard

Purchasing Manager Chief Administrative Officer

Submitted by: David Hubbard Approved by: Ryan Kelso

Chief Administrative Officer Interim Chief Executive Officer

RECOMMENDED ACTION: Approve the Change Order Log from September 15, 2023, through

November 15, 2023

BACKGROUND

The Board of Trustees approved the NBU Purchasing Policy on October 31, 2019. The Purchasing Policy defines the process for obtaining approval of change orders. In addition to the individual approval by the Board of Trustees for change orders greater than \$50,000, the policy further states, "Each department manager will keep a log of all change orders and forward that log on a monthly basis to the Purchasing Manager before each Board of Trustees' meeting. The Purchasing Manager will prepare a consent agenda item to request approval of those change orders at the next Board of Trustees' meeting."

Listed below are the change orders submitted to the Purchasing Manager for the period of September 15, 2023, through November 15, 2023.

FINANCIAL IMPACT

Change orders less than \$50,000:

- Goodwin Lane Water Main, Owner's contingency item: \$11,000, 10 tons black base, 24" butterfly valve (cost split 50/50), Cash Construction Company, Inc., Change order No. 2, No cost increase (deducted from contingency).
- Trinity Expansion Treatment Plant, Owner's contingency item: Finished water line reroute, wet well existing duct bank conflict \$80,737.53, PLW Waterworks, LLC, Change order No. 2, No cost increase (deducted from contingency).
- Trinity Expansion Treatment Plant, Feed tank foundation and duct bank conflict, PLW Waterworks, LLC, Change order No. 3, Cost increase of \$35,464.64
- Trinity Expansion Well Field, Owner's Contingency additional tree clearing, Pesado Construction Company, Change order No. 1, Cost increase of \$4,728.57
- Solms Lift Station Expansion, Owner's Contingency Canopy top replacement, Pesado Construction Company, Change order No. 1, No cost incerase (deducted from contingency).

- Garden Street Bridge Water Line (Aging), River signage, JM Pipeline, LLC, Change order No. 1, Cost increase of \$22,937.74.
- Garden Street Bridge Water Line (Aging), Electronic Message Boards, JM Pipeline, LLC, Change order No. 2, Cost increase of \$5,166.00.
- Reliability Planning and Standard, Schneider Engineering, TRE NERC Self Certification, Change order No.1, Cost increase of \$20,000.

Change orders more than \$50,000:

• None reported during this period.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None



Meeting Date: December 14, 2023

Agenda Type: Consent Items for Action

From: Jesse Luna Reviewed by: David Hubbard Chief Administrative Officer

Submitted by: David Hubbard Approved by: Ryan Kelso

Chief Administrative Officer Interim Chief Executive Officer

RECOMMENDED ACTION: Approve the Reports for Water and Electric Engineering Contracts

from August 1, 2023, through November 15, 2023

BACKGROUND

The Board of Trustees approved the NBU Purchasing Policy on October 31, 2019. The Purchasing Policy defines the process for obtaining approval of Professional Engineering Contracts. In addition to the individual approval by the Board of Trustees for Professional Engineering Contracts greater than \$500,000, the policy further states, "The limit for expenditures to be paid to a licensed professional engineer or a firm of licensed professional engineers as defined in Chapter 2254 of the Texas Government Code, as amended, performing engineering services without the prior approval of the Board of Trustees shall be \$500,000 per vendor per contract. Each department manager, who hires a licensed professional engineer or firm of licensed professional engineers, shall prepare a report specifying the following:

- 1. name of licensed professional engineer or firm of licensed professional engineers engaged to complete a project:
- 2. project name;
- 3. contract amount and amendments to original contract amount;
- 4. total cumulative number of contracts and contract amounts approved in a fiscal year to that licensed professional engineer/firm of licensed engineers; and
- 5. date presented to the Board of Trustees.

This report shall be prepared on a monthly basis and be delivered to the Purchasing Manager before each Board of Trustees' meeting. The Purchasing Manager will prepare a consent agenda item to request approval of the report at the next Board of Trustees' meeting."

Exhibits attached to this agenda item are the Professional Engineering report(s) submitted to the Purchasing Manager for the period of August 1, 2023, through November 15, 2023.

FINANCIAL IMPACT

The financial impact for Professional Engineering Water and Electric Contracts for the period of September 15^{th} through October 15^{th} is \$2,140,239.00.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

- 1. Exhibit A Report for Water Engineering Contracts
- 2. Exhibit B Report for Electric Engineering Contracts

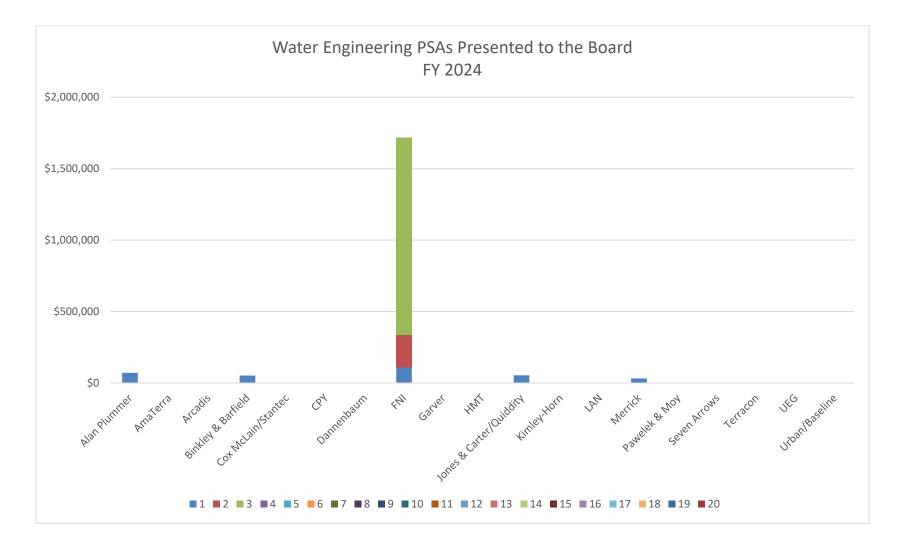
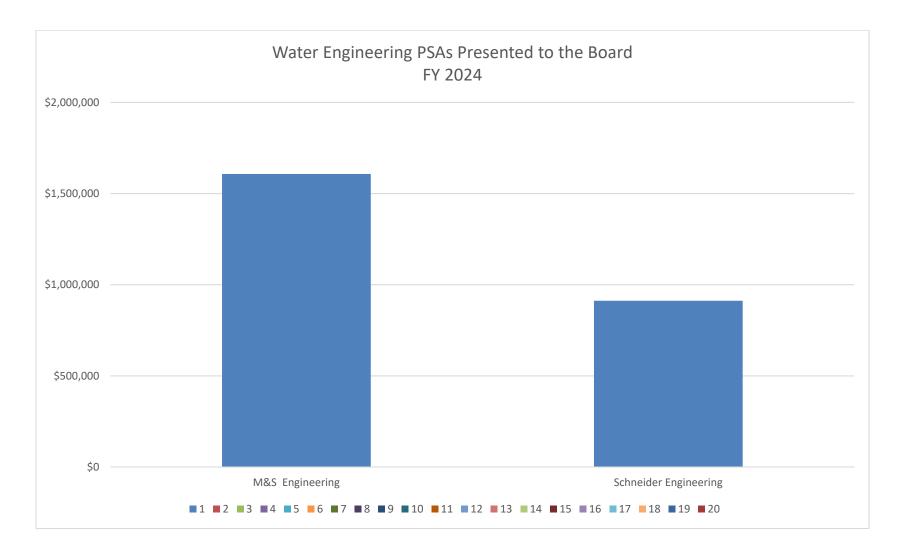


Exhibit A – Report for Water Engineering Contracts November 2023

Project	Vendor	Contract Amount	Board Date	Type of contract	Comment	Executed Date
Castell Ave Rehabilitation (CNB)	Binkley and Barfield Inc.	\$ 50,892.00	8/31/2023	Engineering	Amendment	9/1/2023
Solms Lift Station Expansion	Merrick & Company	\$ 30,988.00	8/31/2023	Engineering	Amendment	9/1/2023
Well 4 to Grandview Pump Station and Discharge Line Upgra	Freese and Nichols, Inc.	\$ 108,850.00	8/31/2023	Engineering	Amendment	9/7/2023
Kuehler WRF Access Road - Courtyard Drive	Quiddity Engineering, LLC	\$ 66,410.00		Engineering	Amendment	10/3/2023
South Kuehler Interceptor Phase 1	Quiddity Engineering, LLC	\$ 52,780.00	9/28/2023	Engineering	Amendment	10/3/2023
24-Inch McQueeney Road Parallel Water Line (Downtown)	Alan Plummer and Associates, Inc.	\$ 70,000.00	9/28/2023	Engineering	Amendment	10/3/2023
FM 306 Pump Station & Discharge Line	Freese and Nichols, Inc.	\$ 228,917.00	9/28/2023	Engineering	Amendment	10/3/2023
San Antonio St Rehabilitation Phase 3 (CNB)	Quiddity Engineering, LLC	\$ 341,540.00		Engineering	PSA	11/3/2023
Water Tank Rehabilitations	Freese and Nichols, Inc.	\$ 1,380,592.00	10/26/2023	Engineering	PSA	11/13/2023



Project	Vendor	Con	tract Amount	Board Date	Type of contract	Comm ent	Executed Date
Substation and transmission Design	Schneider			8/31/2023			9/1/2023
FY 2024	Engineering	\$	912,000.00	0/31/2023	Engineering		3/1/2023
Electric Distribution Projects	M&S Engineering	\$	1,607,590.00	8/31/2023	Engineering		9/1/2023



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Jesse Luna Reviewed by: David Hubbard

Purchasing Manager Chief Administrative Officer

Submitted by: David Hubbard **Approved by:** Ryan Kelso

Chief Administrative Officer Interim Chief Executive Officer

RECOMMENDED ACTION: Approve the Electric Line of Business Alternative Procurements

from September 15, 2023, through November 15, 2023

BACKGROUND

Section 252.022(c) of the Texas Local Government Code provides that a municipally owned electric utility may define, by resolution, an alternative procurement procedure for the purchase of goods and services related to the electric utility. On June 28, 2018, the Board of Trustees approved the NBU Purchasing Policy, by resolution, which defined a procedure for procurement of goods and services for NBU's electric line of business. The Purchasing Policy was later revised and approved on October 31, 2019. Among other conditions, the Purchasing Policy requires NBU staff to notify the Board of Trustees of any procurement over \$250,000 that uses the electric line of business procurement procedure.

Listed below are the procurements, in excess of \$250,000, submitted to the Purchasing Manager for the period of September 15, 2023, through November 15, 2023, using the electric line of business alternative procurement process.

FINANCIAL IMPACT

Electric Line of Business purchases more than \$250,000:

• Hydraulic Pressure Digger Truck procurement for Electrical Operations, fleet vehicle used to dig holes for the placement of poles needed to construct or replace overhead line infrastructure, Altec Inc., Cost of \$410,572.00.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Stewardship

EXHIBITS

None



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Jenna Mathis Reviewed by: Dawn Schriewer

Customer Service Assistant

Manager

Submitted by: Dawn Schriewer **Approved by:** Ryan Kelso

Chief Financial Officer Interim Chief Executive Officer

Chief Financial Officer

RECOMMENDED ACTION: Approve 2023 Second Quarter Charge-Off Accounts

BACKGROUND

Charge-offs for the second quarter of calendar year 2023 (April, May, and June) netted \$108,696.15 for NBU accounts that have unpaid balances. NBU applied \$49,020.57 in customer deposits to the delinquent account balance of \$157,716.72, which reduced the total unpaid balance by 31%. Residential customers accounted for 94% of the number of charge-off accounts.

The accounts that included insufficient funds, due to returned checks and failed auto-draft payments, totaled \$9.105.36.

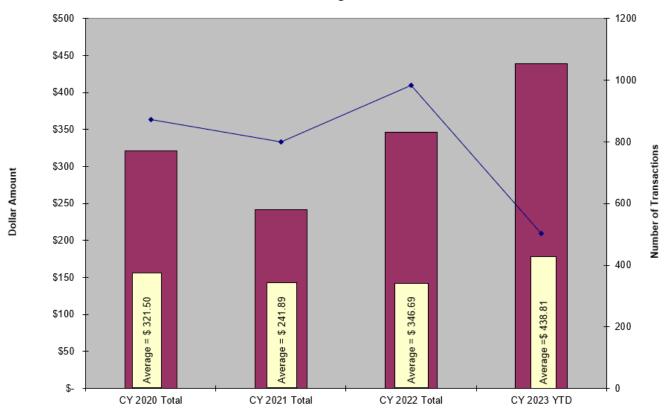
When compared to total revenue billings for the same quarter, the charge-off balance amounts to just over $1/10^{th}$ of one percent. For every \$100 billed to our customers, we received \$99.82.

The second quarter of 2023 was impacted by customers setting up a payment plan as a result of the suspension of late fees and disconnections from July to December 2022, and due to non-payment and /or the failure to comply with the payment arrangement. The increase in outstanding balances is due to overall higher utility bills and account deposits which were calculated on previous rates and not equaling a two-month annual average. The number of residential accounts included in the charge-offs increased by 46.05% compared to the previous 3 years' average for the same quarter, and the dollar amount increased by 4.87%.

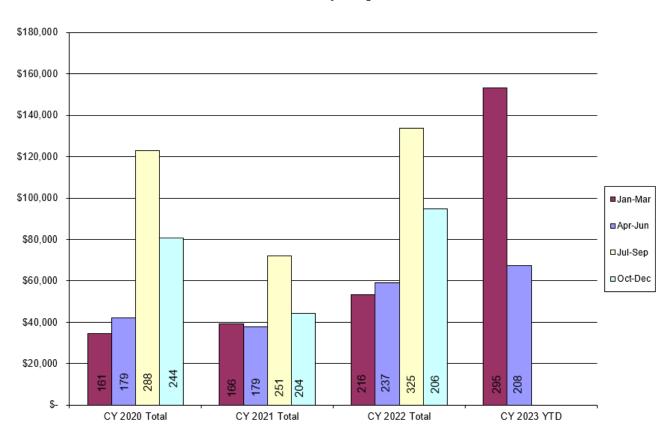
The NBU credit rating summary for this report is as follows:

Credit Rating*	Number of Active Customers	Number of Charge-off Customers	Percentage of Charge-off Customers
A	50,050	13	0.03%
В	7,167	61	0.85%
С	4,221	147	3.48%
D	4	0	0.00%
Auto-Draft	6,480	3	0.05%

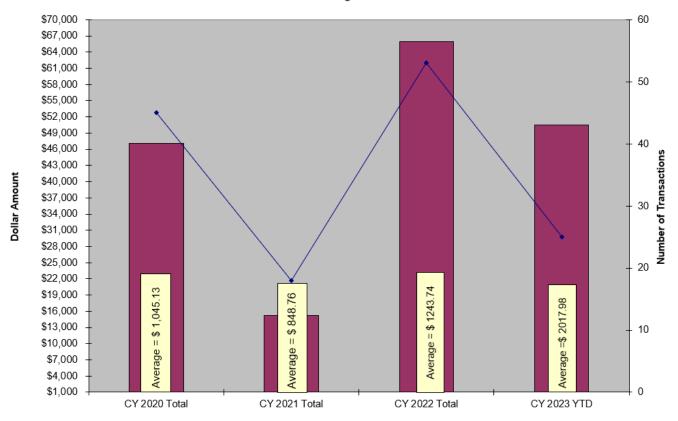
Annual Residential Charge-Off Amount & Count



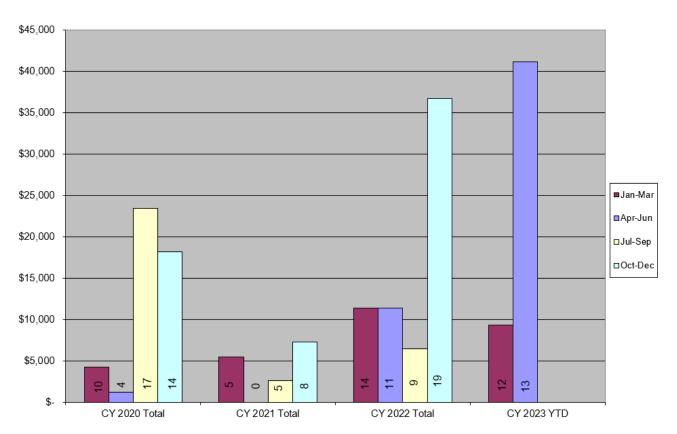
Residential - Quarterly Charge-Off Totals



Annual Commercial Charge-Off Amount & Count



Commercial - Quarterly Charge-Off Totals



FINANCIAL IMPACT

NBU has an estimate included in the Financial Operating Plan for charge off amounts and updates the estimate annually.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

1. Charge-off Summary

Charge Off Summary December 2023

TYPE OF CUSTOMER	AMOUNT BEFORE DEPOSIT/INTEREST APPLIED	DEPOSIT <u>APPLIED</u>	AMOUNT AFTER DEPOSIT/INTEREST APPLIED	AMOUNT OF CHARGE OFF PER \$100 BILLED
Residential	\$108,414.16	\$40,872.49	\$67,541.67	0.110%
Commercial	\$39,442.53	\$7,697.27	\$31,745.26	0.052%
Miscellaneous	\$0.00	\$0.00	\$0.00	0.000%
Bankruptcy	\$9,860.03	\$450.81	\$9,409.22	0.015%
Total	\$157,716.72	\$49,020.57	\$108,696.15	0.177%

Historical Charge-Off Information

2023				2022			2021		
	Charge-Off Amount	# of Charge-Offs	Average Amount	Charge-Off Amount	# of Charge-Offs	Average Amount	Charge-Off Amount	# of Charge-Offs	Average Amount
1st Qtr	\$166,886.39	309	\$540.09	\$64,808.78	230	\$281.78	\$44,693.78	172	\$259.85
2nd Qtr	\$108,696.15	221	\$491.84	\$70,413.13	248	\$283.92	\$37,659.80	179	\$210.39
3rd Qtr				\$140,408.89	334	\$420.39	\$74,861.77	256	\$292.43
4th Qtr				\$131,429.63	225	\$584.13	\$51,983.87	214	\$242.92



Meeting Date: December 14, 2023 Agenda Type: Consent Items For Action

From: Kimberly Huffman Reviewed by: Ashley Van Booven

Accounting Manager Director of Finance

Submitted by: Dawn Schriewer **Approved by:** Ryan Kelso

Chief Financial Officer Interim Chief Executive Officer

RECOMMENDED ACTION: Approve the Guadalupe-Blanco River Authority Canyon

Hydroelectric Cost Reconciliation for Fiscal Year 2023

BACKGROUND

Pursuant to Section X (C) (2) of the Amended Hydroelectric Supply Agreement (the "Agreement") dated December 21, 2012, between Guadalupe-Blanco River Authority ("GBRA") and New Braunfels Utilities ("NBU") relating to electrical generation produced from Canyon Hydroelectric facility, GBRA has submitted the fiscal year 2023 year-end budget to actual reconciliation. The Agreement stipulates that NBU will review the year-end adjustment of budget to actual energy sales versus operational expenses. Once the adjustment has been accepted by the NBU Board of Trustees, NBU will pay GBRA if costs are under-recovered and GBRA will pay NBU for amounts over-recovered. Cost recovery is based on kWh sales, and it is trued-up at the end of each GBRA fiscal year, which ends on August 31. As described below, and based on the report GBRA submitted, NBU owes \$237,882.50 to GBRA. NBU will be required to pay this amount in December 2023.

Production: Pursuant to the Agreement, NBU pays GBRA monthly the amount equal to the estimated debt service plus \$0.0133 per kWh purchased. The fiscal year 2023 budget contained annual operating and maintenance costs of \$307,813.

In fiscal year 2023, the Canyon Hydro Plant experienced no electrical generation, which was due to the lack of water released at a rate that would allow generation. In fiscal year 2023, Canyon Hydro generated zero kWh, which generated no sales revenue. This resulted in GBRA under-recovering operating revenue from NBU of \$307,813 for electricity purchases not made throughout the fiscal year.

Expenses: In fiscal year 2023, operating expenses were \$69,930 less than the budgeted amount. Operating expenses were budgeted at \$307,813, while actual expenses recorded were \$237,883. The primary reason for the decrease in expenses was lower electrical generation. Because the plant was not generating, maintenance costs were also lower.

Renewable Energy Credits (RECs): Texas (the "State") state law was changed in 2008, which allowed the Canyon Hydro Plant to participate in the State's Renewable Energy Credit program. NBU had no realized revenue from the sale of RECs from Canyon Hydro in fiscal year 2023.

Net Fund and Debt Service Requirement: The GBRA debt obligation was paid off in April 2014, and as a result there was no debt service reserve requirement in fiscal year 2023. The original cost of the hydroelectric plant was \$13,990,000.

FINANCIAL IMPACT

The amount owed GBRA for fiscal year 2023 is summarized as follows:

Revenue shortfall due to actual production vs. required production	\$307,813
Lower operating expenses than budget	(69,930)
Increase in miscellaneous income/Renewable Energy Credits	_
Net fund and debt service requirements less than budget	<u>-</u>
Net Amount Owed to GBRA	\$237,883

LINK TO STRATEGIC PLAN

People and Culture

Financial Excellence

EXHIBITS

None



Meeting Date:	December 14, 2023	Agenda Type:	Consent Items for Action
From:	John Warren	Reviewed by:	Ashley Van Booven
	Finance Manager	<u>.</u>	Director of Finance
Submitted by:	Dawn Schriewer	Approved by:	Ryan Kelso
	Chief Financial Officer	-	Interim Chief Executive Officer
RECOMMENT	OFD ACTION: Authorize Prot	posed Changes to	the NRII Financial Policy

BACKGROUND

After a review of NBU's current Financial Policy, NBU staff recommends that the policy be amended as described herein.

NBU Staff recommends that the Financial Policy be revised to: (i) update the language in Section II regarding the priority of funding to make the language consistent with the code of ordinances, state law, and the bond ordinances; (ii) update the language in section II to reference the City Transfer Policy located in Appendix B; (iii) update the language in Section IV to reference the System Contingency Fund and the Power Stabilization Fund; (iv) update the language in Section IV to reference the System Contingency Fund Policy located in Appendix A; and (v) insert Appendix B, to establish a City Transfer Policy.

NBU's Financial Policy was last reviewed and approved on March 30, 2023.

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

- 1. Redlined Financial Policy
- 2. Clean Financial Policy



	Policy Type			Approval Authority			Adopted	Effective
	Board Appro	oved		NBU Board	of Trustees			
	Responsible Exe	cutive		Responsible Depa	rtment		Contact	
	Dawn S	Schriewer		Finance			John Warren	
	Executive Director Ger		Gen	wed/Approved by neral Counsel & <u>Interim</u> CEO ef Ethics Officer		Approved by NBU Board President		
	Name	Date Signed	Name	Date Signed	Name	Date Signed	Name	Date Signed
	Dawn Schriewer		Connie Lock	;	Ian Taylor <u>Ryan</u> <u>Kelso</u>		Judith Dykes- Hoffmann	
Signature			Signature Signature		Signature			

I. General Policy Statement

New Braunfels Utilities (NBU) recognizes the importance of having a sound financial condition in order to meet its customer and public service responsibilities. It is NBU's financial policy to strive to provide its electric, water and wastewater services at the lowest possible costs, consistent with high standards of reliability and innovative essential service. This financial policy is intended to form the framework within which NBU will preserve its financial integrity in order to meet its long-term goals. This policy has been developed in consideration of short- and long-term plans for construction and system additions. A periodic review of this financial policy with necessary revisions may be required to ensure that NBU maintains a high level of financial integrity in order to accomplish these plans. Since NBU's Investment Policy also addresses NBU's financial objectives, NBU's Investment Policy should be used in concert with the Financial Policy.

The objectives of the financial policy are as follows:

- 1. <u>Financial Stability</u>: In seeking to fulfill its customer and public service objectives, NBU will maintain a high level of financial stability and will not compromise its long-term financial integrity to achieve short-term benefits.
- 2. <u>Funds from Operations</u>: NBU will establish rates and charges for services that are sufficient to support the conduct of its activities in an efficient and reliable manner. Funds from operations should provide the necessary funds to support its capital improvements program and maintain a debt service coverage ratio sufficiently in excess of the 1.40x Bond Indenture requirement for the issuance of additional indebtedness. By providing an ample cushion in its debt service coverage ratio, NBU should be in a position to issue additional indebtedness in the market at favorable terms and conditions.



II. Funds from Operations

Each year, NBU staff will develop projected revenue levels and the projected reserve requirements for the upcoming fiscal year and estimate its projected impact on the financial condition of the utility. These projections will be developed after consideration for bond ratings, construction requirements, current business conditions, economic projections, load growth assumptions, and the projected size and frequency of rate adjustments. Specifically, the electric, water, and wastewater systems shall be managed individually to allow for financial self-sufficiency to the extent practicable with regard to their respective cash inflows and outflows, including, but not limited to revenue, general operating expenses, and capital expenditures.

General Fund expenditures will have the following priorities of obligation:

- A. Payment of all <u>necessary and reasonable expenses for the operation and</u> maintenance <u>and operation expenses</u> of the electric, water, and wastewater systems.
- B. Payments Payment of the amounts required to meet all debt service requirements of outstanding bond indebtedness including all be deposited in the Interest and Sinking Funds and Bond Reserve Funds for the payment and security of the priority lien bonds.
- C. Payments to any and all Restricted Funds including the System Contingency Fund, Power Stabilization Fund, and other specific funds as directed Payment of other obligations or indebtedness payable from and secured by a lien that is junior and subordinate to the priority lien bonds.
- D. Any net revenues remaining after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used by the Board of Trustees. See for any purpose now or hereafter permitted by law, including a transfer to the City's general fund as permitted by Texas Government Code, Section 1502.058, as amended.

The City transfer is described in more detail in Appendix A for the System Contingency Fund Policy. B attached hereto.

- C. Payment to the City of New Braunfels of an amount based upon a formula approved by a Board of Trustees Resolution or other directive.
- D. All net surplus after payment of A through D above may be used to fund necessary capital equipment purchases, system expansion and renovations. All remaining funds will be applied toward targeting a budgeted ending cash balance of 1/4th or more of the upcoming fiscal year's budgeted operating costs (including purchased power cost and purchased water cost).



III. Revenue

In general, NBU shall rely on individual electric, water, and wastewater service rates for all revenue, however, other sources of revenue will be developed within each of the respective lines of businesses' operation and connection policies. Specific policies regarding Water and Wastewater Capital Recovery Fees (e.g., impact fees) will be maintained with receipts separately accounted for and applied to capital system expansions or extensions.

NBU will develop and design rates to recover its costs of specific services and provide a predictable flow of revenues.

IV. Pricing, Rates, and Reserves

NBU will determine revenue requirements for its electric, water, and wastewater services based upon an equitable allocation of costs. All rates will be cost and/or market based with specific cost-of-service allocations to all necessary areas of required revenues. Cost-of-service updates will be prepared on a periodic basis for comparisons to actual and projected revenue and expenses. Proper and accurate coordination of budget requirements, unusual revenue requirements, and changes in capital requirements will be addressed in each cost- of-service update. NBU will evaluate the proper reserve fund requirements annually to mitigate NBU's risk. Such funds include the System Contingency Fund, Power Stabilization Fund, and any other specific funds as directed by the Board of Trustees.

Please see Appendix A, attached hereto, for the System Contingency Fund Policy.

V. Financing

Since its founding in 1942, NBU has utilized a combination of equity, or revenue surplus, and long-term revenue bonds to finance additions to its electric, water, and wastewater systems infrastructure. Long-term revenue bonds are particularly appropriate in situations where it is desirable to spread the financing cost of the capital assets over their useful lives. Using this approach results in both current and future ratepayers being allocated an equitable portion of the cost of the facilities used to provide their service. In order to have an effective financing source of funds, NBU's capital structure must be such that it has a sufficient equity capital base (i.e., a low to moderate debt leverage in NBU's capitalization) to support long- term debt financing.

NBU will selectively utilize sourcing of funds through long-term debt financing by maximizing the use of funds from operations in order to protect NBU's financial soundness and to preserve NBU's access to the long-term debt market. This market access should provide NBU with adequate sources of capital for the growing needs of its customers at a reasonable overall cost of capital.

It is important to generally establish appropriate levels of debt and equity financing. However, substantial changes in the financial markets may arise due to changing political, economic, global, or other significant factors. As a result, it may be necessary at times to



alter NBU's guidelines which could impact NBU's interest rates on new issuances of debt and its overall capital structure. Under current conditions, the following financial policy is adopted:

- A. NBU will use long-term debt financing for capital assets having long useful lives and will attempt to establish amortization and debt service payment schedules which coincide with the lives of the related assets.
- B. NBU will establish rates and debt financing structures, terms, and repayment schedules sufficient to generally maintain a system wide debt to capitalization ratio of 55% or less and a debt service coverage ratio of at least 2.4x.
- C. NBU will maintain a minimum of unrestricted days cash on hand of at least 140 days.
- D. For establishing cost of service and for rate setting purposes, NBU will target a debt service coverage ratio of at least 2.4x however, under extraordinary circumstances (unusual and infrequent) the debt service requirement, for the fiscal year the impact of the event occurs, must at least meet the minimum requirements for the additional bonds test.
- E. NBU has established and maintains a Board-approved Investment Policy which establishes permitted investments and allowable allocation parameters for the various approved investment vehicles. The primary driver is focused on preservation of principal.
- F. In conjunction with the overall financial policy, NBU has established and maintains an Energy Risk Management Policy, a Credit Risk Management Policy, and a Power Stabilization Fund Policy.
 - 1. The Energy Risk Management Policy has been approved by the NBU Board of Trustees and provides the framework for the Power Supply Team to identify and measure risk exposure to the wholesale energy markets and to develop and implement strategies to manage, monitor, measure and report on those risks.
 - 2. The Credit Risk Management Policy has been approved by the NBU Board of Trustees and provides the framework for the Energy Risk Team to monitor and report on the management of energy credit risk, primarily in the areas of reviewing and approving counterparties, monitoring their creditworthiness, and establishing credit limits based on guidelines approved by NBU's Board of Trustees.
 - 3. The Power Stabilization Fund Policy has been approved by the NBU Board of Trustees and provides the framework for the administration of a Power Stabilization Fund, which is utilized to protect customers from higher than



anticipated power costs.

VI. Capitalized Interest

In order to partially defer the rate impact of debt service requirements until the asset being financed is placed in service, NBU may opt to capitalize interest proceeds from bonds for an appropriate period (generally, not to exceed 3 years). Accountability of capital associated interest shall be kept separate with capital fund requirements recognizing anticipated interest proceeds.

VII. Alternative Financing

As market conditions evolve, NBU will evaluate alternatives to conventional long-term revenue bond financing to determine the feasibility of such financings based on their terms and conditions and their impact on NBU's overall cost of capital.

A. Commercial Paper – If market conditions are favorable, the use of commercial paper as a short-term financing vehicle can help offset some of the interest rate risk. NBU may use tax-exempt and/or taxable commercial paper as needed to meet business requirements.

The parameters of the program are as follows:

- 1. 10% of assets program limit
- 2. At least \$50 million in size
- 3. Roll program into long-term debt if:
 - a. authorized amount is fully utilized
 - b. determined that market conditions are no longer favorable or
 - c. the program is at the end of the program term
- B. Short-Term Financing If market or business conditions exist that require an additional infusion of cash for NBU to meet its stated financial objectives and continue to meet its customer and public service responsibilities, NBU may secure other short-term tax-exempt and/or taxable financing alternatives.

VIII. Documentation and Reports

NBU will comply with all statutory and bond and debt reporting requirements on a timely basis. In this regard, NBU will provide the following:

A. A monthly operating and financial report, requiring review by the Board of Trustees, in such detail as the Board deems necessary.



- B. An annual budget and financial operating plan detailing revenues, expenses, and capital expenditures presented to the Board of Trustees for approval prior to the start of the new fiscal year. In the event a midyear revision to the fiscal year budget is requested, then an analysis and update shall be presented to the Board of Trustees for approval.
- C. An annual audit by an outside professional auditing firm will include necessary details in reconciling all of the year's financial operation. The audit will be submitted for review and approval to the Board of Trustees shortly after the end of the NBU's fiscal year.

Copies of the approved audit will be provided to the City Council of New Braunfels and arrangements made for the presentation and discussion of the audit to City Council, if requested. Compliance with internal audit procedures will be reviewed with the Audit Committee of the Board of Trustees in conjunction with the external auditor's report.

IX. Summary

This policy establishes management guidelines for NBU's financial accountability in order to provide a financial structure conducive to controlling service rates and optimizing service reliability to NBU's customers. It is understood that this policy is a guide and that financial objectives may change over time. This financial policy is intended to be used as a vehicle to preserve NBU's financial integrity in order to meet NBU's long-term goals.



Appendix A – System Contingency Fund Policy

I. Purpose

- This policy is designed to serve as a guideline for the administration of a System Contingency Fund (SCF) for New Braunfels Utilities (NBU) by the individuals designated by the Chief Executive Officer (CEO) as having the authority and responsibility for making such decisions.
- The SCF is utilized according to guidelines, set forth herein, for emergencies and/or disaster declarations that reduce revenue or increase obligations.
- The management of collected monies in the SCF will be governed by NBU's Investment Policy and can only be used to cover funding shortfalls encountered by NBU as in the case of a disaster or catastrophe.
- In the event of conflict between the SCF Policy and the NBU Investment Policy, the provisions of the Investment Policy shall govern. In the event of an inconsistency between SCF Policy and the NBU Investment Policy, the terms and provisions of the Investment Policy shall govern.

II. Roles, Responsibilities, & Policy Review

Chief Financial Officer (CFO)

- The CFO is responsible for overseeing the SCF and how it is invested.
- Once an emergency or local disaster declaration has been issued, the CFO is responsible for determining the length of time for which the SCF can be used to transfer monies to the NBU General Fund in order to meet liquidity needs under these criteria.
- Once a transfer from the SCF has been initiated under emergency or disaster criteria, the CFO is responsible for monitoring all SCF activity on at least a monthly basis until the situation returns to normal or is otherwise resolved.
- The CFO has the right to revoke authority for use of the SCF monies for emergency or disaster declaration purposes at any time.

III. Funding Requirements & Evaluation

Calculation of Funding Requirements

• The SCF amount is calculated based on projected gross annual Operating and Maintenance (O&M) expenses in the range of 90-120 days.

Targets and Limits

- Target: 90 days of budgeted O&M expenses
- Limit: 120 days of budgeted O&M expenses



Evaluation

- The SCF funding requirements will be reviewed on an annual basis during the budget process to determine if the balance is sufficient.
- If changes are needed for the SCF funding requirement throughout the year, the NBU Investment Officers will meet on an ad-hoc basis.

IV. Authorized Collection & Use of Funds

Collection from General Fund

- The recommended time horizon to replenish the SCF will be determined by the CFO as part of the monthly monitoring process. The time horizon will be unique to each instance in which the fund needs replenishment but generally should not exceed two (2) years.
- The replenishment horizon will depend on how much of the SCF was depleted and is outlined as follows:
 - \circ 30% or less of fund = 1 year to fill
 - \circ 30% to 60% of fund = 1.5 years to fill
 - \circ 60% to 100% of fund = 2 years to fill
- The number of years to fill begins on the date of the physical cash drawdown in the SCF account.

Transfer to/from General Fund

- All transfers to the SCF will be transferred from the General Fund.
- All transfers from the SCF will be transferred to the General Fund.
- Each transfer will be recorded with an accounting entry.

Use of Funds

• The SCF should be used to offset a reduction to revenue or increase in obligations due to unanticipated and/or unforeseen events such as emergencies or disasters.

V. Investments

Permitted Investments, Maturity Limits, & Targets

- The maximum notional value of the fund that can be invested longer than on a daily basis, shall not exceed thirty (30%) percent of the fund balance.
- As the SCF is not anticipated to be utilized except in the case of extreme situations, maturities in these funds are generally expected to range from short-term to five years.
- Seventy (70%) percent of the fund shall remain liquid and shall only be invested in cash or cash securities.
- Should the cash portion of the fund fall below 35% of the targeted SCF funding



amount (90-120 days of budgeted O&M expenses), an ad-hoc review by the NBU Investment Officers will occur to determine whether any adjustments to the fund shall be made.

VI. Emergencies and Disaster Declarations

Definitions

- A local disaster declaration is typically issued by an official representative of the City of New Braunfels and/or Comal County.
- An emergency is an unforeseen event, such as a natural disaster, that has indeterminable impacts on NBU's operations as determined by the Chief Financial Officer.

Use of Funds

• Should an emergency or declaration of disaster be issued for the City of New Braunfels and/or Comal County, the SCF can be utilized to cover any liquidity needs of NBU during an emergency or disaster.

Permitted Investments, Maturity Limits, & Targets

• Once an emergency or local disaster declaration has been issued, no additional investment of SCF monies will be permitted to ensure adequate liquidity to respond to emergency situations.



Appendix B – City Transfer Policy

I Purpose

- This policy is designed to serve as a guideline for the administration of an annual transfer made to the City of New Braunfels (City) by New Braunfels Utilities (NBU).
- Pursuant to Section 1502.059 of the Texas Government Code and Section 130-33 of the New Braunfels City Code of Ordinances, the NBU Board of Trustees has the discretion to make a payment to the City after meeting all former priorities of obligations as stated in Section II of the Financial Policy.

II Calculation

- The calculation of the transfer is based on a percentage of a rolling three-year average of electric, water, and sewer operating revenues, and will be divided into 12 monthly payments. Transfer percentage amounts for each line of business are as follows:
 - o Electric − 7.45%
 - Water 4.35%
 - \circ Sewer 4.35%
- For purposes of estimating the General Fund transfer for the budget year, the three-year average of revenues included in the calculation is based on two previous actual fiscal year revenues and an estimate of revenues for the immediately preceding fiscal year.
- Electric revenues included in the calculation are limited to base rate revenues collected from electric customers and will exclude power cost recovery factor (PCRF) revenues and direct charges (pass-through) for transmission revenues.
- Purchased water costs are capped at \$2.5M per year so any purchased water costs above \$2.5M, in any fiscal year, will be excluded from total water operating revenues in the calculation.
- Operating revenues from sewer customers are not limited.

III Timeline

- A preliminary calculation will be made at the beginning of the fiscal year and will be taken to the Board of Trustees for approval. The first payment will be made after Board approval, with monthly payments thereafter.
- The total City General Fund transfer will be "trued up" after the immediately preceding fiscal year financial statements are audited and approved. As a result, the remaining monthly transfers in the current fiscal year would be adjusted to reflect the average of the actual revenues for the most recent three years.



Policy Type		Approval Authorit		ty		Adopted	Effective
Board Appro	oved		NBU Board of Trustee		S		
Responsible Exe	cutive]	Responsible Department		Contact		
Dawn	Schriewer			Finance		John Warren	
Executive Director Ger		Gener	ewed/Approved by neral Counsel & Interim CEO ef Ethics Officer		Approved by NBU Board President		
Name	Date Signed	Name	Date Signed	Name	Date Signed	Name	Date Signed
Dawn		Connie		Ryan		Judith Dykes-	
Schriewer		Lock		Kelso		Hoffmann	
Signatu	ıre	\$	Signature Signature		Signature		

I. General Policy Statement

New Braunfels Utilities (NBU) recognizes the importance of having a sound financial condition in order to meet its customer and public service responsibilities. It is NBU's financial policy to strive to provide its electric, water and wastewater services at the lowest possible costs, consistent with high standards of reliability and innovative essential service. This financial policy is intended to form the framework within which NBU will preserve its financial integrity in order to meet its long-term goals. This policy has been developed in consideration of short- and long-term plans for construction and system additions. A periodic review of this financial policy with necessary revisions may be required to ensure that NBU maintains a high level of financial integrity in order to accomplish these plans. Since NBU's Investment Policy also addresses NBU's financial objectives, NBU's Investment Policy should be used in concert with the Financial Policy.

The objectives of the financial policy are as follows:

- 1. <u>Financial Stability</u>: In seeking to fulfill its customer and public service objectives, NBU will maintain a high level of financial stability and will not compromise its long-term financial integrity to achieve short-term benefits.
- 2. <u>Funds from Operations</u>: NBU will establish rates and charges for services that are sufficient to support the conduct of its activities in an efficient and reliable manner. Funds from operations should provide the necessary funds to support its capital improvements program and maintain a debt service coverage ratio sufficiently in excess of the 1.40x Bond Indenture requirement for the issuance of additional indebtedness. By providing an ample cushion in its debt service coverage ratio, NBU should be in a position to issue additional indebtedness in the market at favorable terms and conditions.

II. Funds from Operations

Each year, NBU staff will develop projected revenue levels and the projected reserve requirements for the upcoming fiscal year and estimate its projected impact on the financial condition of the utility. These projections will be developed after consideration



for bond ratings, construction requirements, current business conditions, economic projections, load growth assumptions, and the projected size and frequency of rate adjustments. Specifically, the electric, water, and wastewater systems shall be managed individually to allow for financial self-sufficiency to the extent practicable with regard to their respective cash inflows and outflows, including, but not limited to revenue, general operating expenses, and capital expenditures.

General Fund expenditures will have the following priorities of obligation:

- A. Payment of all necessary and reasonable maintenance and operation expenses of the electric, water, and wastewater systems.
- B. Payment of the amounts required to be deposited in the Interest and Sinking Funds and Bond Reserve Funds for the payment and security of the priority lien bonds.
- C. Payment of other obligations or indebtedness payable from and secured by a lien that is junior and subordinate to the priority lien bonds.
- D. Any net revenues remaining after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used by the Board of Trustees for any purpose now or hereafter permitted by law, including a transfer to the City's general fund as permitted by Texas Government Code, Section 1502.058, as amended.

The City transfer is described in more detail in Appendix B attached hereto.

III. Revenue

In general, NBU shall rely on individual electric, water, and wastewater service rates for all revenue, however, other sources of revenue will be developed within each of the respective lines of businesses' operation and connection policies. Specific policies regarding Water and Wastewater Capital Recovery Fees (e.g., impact fees) will be maintained with receipts separately accounted for and applied to capital system expansions or extensions.

NBU will develop and design rates to recover its costs of specific services and provide a predictable flow of revenues.

IV. Pricing, Rates, and Reserves

NBU will determine revenue requirements for its electric, water, and wastewater services based upon an equitable allocation of costs. All rates will be cost and/or market based with specific cost-of-service allocations to all necessary areas of required revenues. Cost-of-service updates will be prepared on a periodic basis for comparisons to actual and projected revenue and expenses. Proper and accurate coordination of budget requirements, unusual revenue requirements, and changes in capital requirements will be



addressed in each cost- of-service update. NBU will evaluate the proper reserve fund requirements annually to mitigate NBU's risk. Such funds include the System Contingency Fund, Power Stabilization Fund, and any other specific funds as directed by the Board of Trustees.

Please see Appendix A, attached hereto, for the System Contingency Fund Policy.

V. Financing

Since its founding in 1942, NBU has utilized a combination of equity, or revenue surplus, and long-term revenue bonds to finance additions to its electric, water, and wastewater systems infrastructure. Long-term revenue bonds are particularly appropriate in situations where it is desirable to spread the financing cost of the capital assets over their useful lives. Using this approach results in both current and future ratepayers being allocated an equitable portion of the cost of the facilities used to provide their service. In order to have an effective financing source of funds, NBU's capital structure must be such that it has a sufficient equity capital base (i.e., a low to moderate debt leverage in NBU's capitalization) to support long- term debt financing.

NBU will selectively utilize sourcing of funds through long-term debt financing by maximizing the use of funds from operations in order to protect NBU's financial soundness and to preserve NBU's access to the long-term debt market. This market access should provide NBU with adequate sources of capital for the growing needs of its customers at a reasonable overall cost of capital.

It is important to generally establish appropriate levels of debt and equity financing. However, substantial changes in the financial markets may arise due to changing political, economic, global, or other significant factors. As a result, it may be necessary at times to alter NBU's guidelines which could impact NBU's interest rates on new issuances of debt and its overall capital structure. Under current conditions, the following financial policy is adopted:

- A. NBU will use long-term debt financing for capital assets having long useful lives and will attempt to establish amortization and debt service payment schedules which coincide with the lives of the related assets.
- B. NBU will establish rates and debt financing structures, terms, and repayment schedules sufficient to generally maintain a system wide debt to capitalization ratio of 55% or less and a debt service coverage ratio of at least 2.4x.
- C. NBU will maintain a minimum of unrestricted days cash on hand of at least 140 days.
- D. For establishing cost of service and for rate setting purposes, NBU will target a debt service coverage ratio of at least 2.4x however, under extraordinary circumstances (unusual and infrequent) the debt service requirement, for the



fiscal year the impact of the event occurs, must at least meet the minimum requirements for the additional bonds test.

- E. NBU has established and maintains a Board-approved Investment Policy which establishes permitted investments and allowable allocation parameters for the various approved investment vehicles. The primary driver is focused on preservation of principal.
- F. In conjunction with the overall financial policy, NBU has established and maintains an Energy Risk Management Policy, a Credit Risk Management Policy, and a Power Stabilization Fund Policy.
 - 1. The Energy Risk Management Policy has been approved by the NBU Board of Trustees and provides the framework for the Power Supply Team to identify and measure risk exposure to the wholesale energy markets and to develop and implement strategies to manage, monitor, measure and report on those risks.
 - 2. The Credit Risk Management Policy has been approved by the NBU Board of Trustees and provides the framework for the Energy Risk Team to monitor and report on the management of energy credit risk, primarily in the areas of reviewing and approving counterparties, monitoring their creditworthiness, and establishing credit limits based on guidelines approved by NBU's Board of Trustees.
 - 3. The Power Stabilization Fund Policy has been approved by the NBU Board of Trustees and provides the framework for the administration of a Power Stabilization Fund, which is utilized to protect customers from higher than anticipated power costs.

VI. Capitalized Interest

In order to partially defer the rate impact of debt service requirements until the asset being financed is placed in service, NBU may opt to capitalize interest proceeds from bonds for an appropriate period (generally, not to exceed 3 years). Accountability of capital associated interest shall be kept separate with capital fund requirements recognizing anticipated interest proceeds.

VII. Alternative Financing

As market conditions evolve, NBU will evaluate alternatives to conventional long-term revenue bond financing to determine the feasibility of such financings based on their terms and conditions and their impact on NBU's overall cost of capital.

A. Commercial Paper – If market conditions are favorable, the use of commercial paper as a short-term financing vehicle can help offset some of the interest rate risk. NBU may use tax-exempt and/or taxable commercial paper as needed to meet business requirements.



The parameters of the program are as follows:

- 1. 10% of assets program limit
- 2. At least \$50 million in size
- 3. Roll program into long-term debt if:
 - a. authorized amount is fully utilized
 - b. determined that market conditions are no longer favorable or
 - c. the program is at the end of the program term
- B. Short-Term Financing If market or business conditions exist that require an additional infusion of cash for NBU to meet its stated financial objectives and continue to meet its customer and public service responsibilities, NBU may secure other short-term tax-exempt and/or taxable financing alternatives.

VIII. Documentation and Reports

NBU will comply with all statutory and bond and debt reporting requirements on a timely basis. In this regard, NBU will provide the following:

- A. A monthly operating and financial report, requiring review by the Board of Trustees, in such detail as the Board deems necessary.
- B. An annual budget and financial operating plan detailing revenues, expenses, and capital expenditures presented to the Board of Trustees for approval prior to the start of the new fiscal year. In the event a midyear revision to the fiscal year budget is requested, then an analysis and update shall be presented to the Board of Trustees for approval.
- C. An annual audit by an outside professional auditing firm will include necessary details in reconciling all of the year's financial operation. The audit will be submitted for review and approval to the Board of Trustees shortly after the end of the NBU's fiscal year.

Copies of the approved audit will be provided to the City Council of New Braunfels and arrangements made for the presentation and discussion of the audit to City Council, if requested. Compliance with internal audit procedures will be reviewed with the Audit Committee of the Board of Trustees in conjunction with the external auditor's report.

Financial Policy

Item 9.



IX. Summary

This policy establishes management guidelines for NBU's financial accountability in order to provide a financial structure conducive to controlling service rates and optimizing service reliability to NBU's customers. It is understood that this policy is a guide and that financial objectives may change over time. This financial policy is intended to be used as a vehicle to preserve NBU's financial integrity in order to meet NBU's long-term goals.



Appendix A – System Contingency Fund Policy

I. Purpose

- This policy is designed to serve as a guideline for the administration of a System Contingency Fund (SCF) for New Braunfels Utilities (NBU) by the individuals designated by the Chief Executive Officer (CEO) as having the authority and responsibility for making such decisions.
- The SCF is utilized according to guidelines, set forth herein, for emergencies and/or disaster declarations that reduce revenue or increase obligations.
- The management of collected monies in the SCF will be governed by NBU's Investment Policy and can only be used to cover funding shortfalls encountered by NBU as in the case of a disaster or catastrophe.
- In the event of conflict between the SCF Policy and the NBU Investment Policy, the provisions of the Investment Policy shall govern. In the event of an inconsistency between SCF Policy and the NBU Investment Policy, the terms and provisions of the Investment Policy shall govern.

II. Roles, Responsibilities, & Policy Review

Chief Financial Officer (CFO)

- The CFO is responsible for overseeing the SCF and how it is invested.
- Once an emergency or local disaster declaration has been issued, the CFO is responsible for determining the length of time for which the SCF can be used to transfer monies to the NBU General Fund in order to meet liquidity needs under these criteria.
- Once a transfer from the SCF has been initiated under emergency or disaster criteria, the CFO is responsible for monitoring all SCF activity on at least a monthly basis until the situation returns to normal or is otherwise resolved.
- The CFO has the right to revoke authority for use of the SCF monies for emergency or disaster declaration purposes at any time.

III. Funding Requirements & Evaluation

Calculation of Funding Requirements

• The SCF amount is calculated based on projected gross annual Operating and Maintenance (O&M) expenses in the range of 90-120 days.

Targets and Limits

- Target: 90 days of budgeted O&M expenses
- Limit: 120 days of budgeted O&M expenses



Evaluation

- The SCF funding requirements will be reviewed on an annual basis during the budget process to determine if the balance is sufficient.
- If changes are needed for the SCF funding requirement throughout the year, the NBU Investment Officers will meet on an ad-hoc basis.

IV. Authorized Collection & Use of Funds

Collection from General Fund

- The recommended time horizon to replenish the SCF will be determined by the CFO as part of the monthly monitoring process. The time horizon will be unique to each instance in which the fund needs replenishment but generally should not exceed two (2) years.
- The replenishment horizon will depend on how much of the SCF was depleted and is outlined as follows:
 - o 30% or less of fund = 1 year to fill
 - \circ 30% to 60% of fund = 1.5 years to fill
 - \circ 60% to 100% of fund = 2 years to fill
- The number of years to fill begins on the date of the physical cash drawdown in the SCF account.

Transfer to/from General Fund

- All transfers to the SCF will be transferred from the General Fund.
- All transfers from the SCF will be transferred to the General Fund.
- Each transfer will be recorded with an accounting entry.

Use of Funds

• The SCF should be used to offset a reduction to revenue or increase in obligations due to unanticipated and/or unforeseen events such as emergencies or disasters.

V. Investments

Permitted Investments, Maturity Limits, & Targets

- The maximum notional value of the fund that can be invested longer than on a daily basis, shall not exceed thirty (30%) percent of the fund balance.
- As the SCF is not anticipated to be utilized except in the case of extreme situations, maturities in these funds are generally expected to range from short-term to five years.
- Seventy (70%) percent of the fund shall remain liquid and shall only be invested in cash or cash securities.
- Should the cash portion of the fund fall below 35% of the targeted SCF funding amount (90-120 days of budgeted O&M expenses), an ad-hoc review by the NBU



Investment Officers will occur to determine whether any adjustments to the fund shall be made.

VI. Emergencies and Disaster Declarations

Definitions

- A local disaster declaration is typically issued by an official representative of the City of New Braunfels and/or Comal County.
- An emergency is an unforeseen event, such as a natural disaster, that has indeterminable impacts on NBU's operations as determined by the Chief Financial Officer.

Use of Funds

• Should an emergency or declaration of disaster be issued for the City of New Braunfels and/or Comal County, the SCF can be utilized to cover any liquidity needs of NBU during an emergency or disaster.

Permitted Investments, Maturity Limits, & Targets

 Once an emergency or local disaster declaration has been issued, no additional investment of SCF monies will be permitted to ensure adequate liquidity to respond to emergency situations.



Appendix B – City Transfer Policy

I Purpose

- This policy is designed to serve as a guideline for the administration of an annual transfer made to the City of New Braunfels (City) by New Braunfels Utilities (NBU).
- Pursuant to Section 1502.059 of the Texas Government Code and Section 130-33 of the New Braunfels City Code of Ordinances, the NBU Board of Trustees has the discretion to make a payment to the City <u>after</u> meeting all former priorities of obligations as stated in Section II of the Financial Policy.

II Calculation

- The calculation of the transfer is based on a percentage of a rolling three-year average of electric, water, and sewer operating revenues, and will be divided into 12 monthly payments. Transfer percentage amounts for each line of business are as follows:
 - Electric 7.45%
 - \circ Water 4.35%
 - \circ Sewer 4.35%
- For purposes of estimating the General Fund transfer for the budget year, the threeyear average of revenues included in the calculation is based on two previous actual fiscal year revenues and an estimate of revenues for the immediately preceding fiscal year.
- Electric revenues included in the calculation are limited to base rate revenues collected from electric customers and will exclude power cost recovery factor (PCRF) revenues and direct charges (pass-through) for transmission revenues.
- Purchased water costs are capped at \$2.5M per year so any purchased water costs above \$2.5M, in any fiscal year, will be excluded from total water operating revenues in the calculation.
- Operating revenues from sewer customers are not limited.

III Timeline

- A preliminary calculation will be made at the beginning of the fiscal year and will be taken to the Board of Trustees for approval. The first payment will be made after Board approval, with monthly payments thereafter.
- The total City General Fund transfer will be "trued up" after the immediately preceding fiscal year financial statements are audited and approved. As a result, the remaining monthly transfers in the current fiscal year would be adjusted to reflect the average of the actual revenues for the most recent three years.



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Adam Willard, P.E. Reviewed by: Michael Short, P.E.

Chief Engineer of Water Director of Water Services and

Systems Compliance

Submitted by: Michael Short, P.E. **Approved by:** Ryan Kelso

Director of Water Services Interim Chief Executive Officer

and Compliance

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Second Amendment to the Professional Services Agreement with

Arcadis U.S., Inc. for the Water Resource Planning Project

BACKGROUND

On February 25, 2021, the New Braunfels Utilities ("NBU") Board of Trustees approved a Professional Services Agreement (the "Agreement") with Arcadis U.S., Inc. ("Arcadis") for professional engineering services for the Water Resource Planning Project (the "Project"). On September 30, 2021, the Board approved a Professional Services Contract Amendment (the "First Amendment") for additional general water resource support services.

Due to budgetary changes in fiscal year 2023, the Water Resource Plan Update services were delayed until fiscal year 2024. As a result, NBU staff requests that the Board approve the Second Amendment to the Agreement (the "Second Amendment"), which includes the reallocation of unused funds intended for fiscal year 2023 of the contract to fiscal year 2024 of the contract.

This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved.

FINANCIAL IMPACT

The total financial impact for the Second Amendment is \$0. The total contract amount for the Agreement and the First and Second Amendment with Arcadis for the Project is \$2,818,834. The Project is budgeted within the fiscal year 2024 through fiscal year 2025 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Customers and Community

Infrastructure and Technology

Financial Excellence

Stewardship

EXHIBITS

1. Second Amendment to the Professional Services Agreement with Arcadis

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (WATER RESOURCE PLAN PROJECT)

This SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the "Second Amendment") is made and entered into by and between NEW BRAUNFELS UTILITIES, a Texas municipal owned utility ("NBU"), and ARCADIS, U.S., INC., a Delaware corporation authorized to transact business in the State of Texas (the "Professional") (collectively, "the Parties").

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated March 8, 2021 (the "Original Agreement"), to provide general water resources support, water quality and blending support, peer review services, data management support, a Water Resources Plan ("WRP") update based on 2020 and 2021 data, a water/wastewater easement and maintenance plan and update, operation and maintenance ("O&M") manuals, Trinity Membrane Water Treatment Plant ("WTP") backwash/recycle pump support, aging infrastructure plan, and nonrevenue water support (collectively the "Services");

WHEREAS, NBU and the Professional entered into a First Amendment to the Original Agreement dated October 1, 2021, to (i) add additional general water resources support services and (ii) increase the compensation related to the additional services (the "First Amendment" and, together with the Original Agreement, the "Agreement");

WHEREAS, NBU and the Professional desire to amend the compensation structure of the Agreement to reallocate unused funds intended for fiscal year 2023 of the contract to fiscal year 2024 of the contract;

WHEREAS, the reallocation of funds from fiscal year 2023 to fiscal year 2024 will not change the total not to exceed amount of the contract;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to amend or modify the Agreement; and

WHEREAS, NBU and the Professional agree to amend the Agreement to reallocate unused funds intended for the third year of the contract to subsequent years of the contract.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, as follows:

AGREEMENT

- Section 1. <u>Amendment to Exhibit B</u>. Exhibit B of the Agreement is hereby deleted and replaced in its entirety by Exhibit 1 to this Second Amendment as of the effective date of this Second Amendment.
- Section 2. <u>Remaining Terms</u>. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.

- Section 3. <u>Entire Agreement</u>. This Second Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.
- Section 4. <u>Binding Effect</u>. This Second Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.
- Section 5. <u>Severability</u>. If any term or provision of this Second Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Second Amendment shall not be affected thereby, and this Second Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- Section 6. <u>Governing Law</u>. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

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	NESS WHEREOF, the Partie ond Amendment on this the	 	rity, have executed
NBU:			
	RAUNFELS UTILITIES, municipal owned utility		
By:			
	Ryan Kelso Interim CEO		

THE PROFESSIONAL:

ARCADIS U.S., INC.,

a Delaware corporation authorized to transact business in the State of Texas

By: Charles Schoening

Title: Vice President, Principal-in-Charge

Exhibit 1

Exhibit B

Compensation

NBU shall pay the Professional to perform the Services described in Exhibit A in an amount not to exceed the amounts listed in the table below by fiscal year. NBU shall pay the Professional for the Services rendered under this Agreement in an amount not to exceed \$2,818,834 for the duration of the Agreement.

Fiscal Year	Original	First	Second	Total Not-To-Exceed
	Contract	Amendment	Amendment	Amount
FY 2021	\$ 233,984	\$ 0	\$ 0	\$ 233,984
FY 2022	\$ 483,950	\$100,000	\$ 0	\$ 583,950
FY 2023	\$ 712,800	\$ 100,000	\$ (352,857)	\$ 459,943
FY 2024	\$ 482,400	\$ 100,000	\$ 352,857	\$ 935,257
FY 2025	\$ 505,700	\$ 100,000	\$ 0	\$ 605,700
TOTAL	\$ 2,418,834	\$ 400,000	\$ 0	\$ 2,818,834



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Adam Willard, P.E. Reviewed by: Michael Short, P.E.

Chief Engineer of Water Director of Water Services and

Systems Compliance

Submitted by: Michael Short, P.E. **Approved by:** Ryan Kelso

Director of Water Services Interim Chief Executive Officer

and Compliance

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Third Amendment to the Professional Services Agreement with Arcadis U.S., Inc for the Design of Phase 4 - Aquifer Storage and

Recovery Support Project

BACKGROUND

On December 16, 2020, the New Braunfels Utilities ("NBU") Board of Trustees approved a Professional Services Agreement (the "Agreement") with Arcadis U.S., Inc. ("Arcadis") for professional engineering services for the Design of Phase 4 - Aquifer Storage and Recovery ("ASR") Project (the "Project"). On January 28, 2022, the Board approved a First Amendment to the Agreement (the "First Amendment") for general aquifer storage and recovery support, NBU/ Edwards Aquifer Authority ("EAA") Interlocal Agreement ("ILA") work group support, analytical modeling of ASR formations, and Phase 4 ASR cycle testing. On October 31, 2022, the Board approved a Second Amendment to the Agreement (the "Second Amendment") for the Texas Commission on Environmental Quality ("TCEQ") operating permit support, and wellfield modeling and conceptual design support services.

Upon further evaluation of the project, NBU and the Professional have identified the need for (i) improvements to the ASR D1 Well to extend the depth of the well for better water quality to include design, bid and construction phase services, and (ii) design and bid phase services for an additional ASR. In order to extend the depth of D1, design, bid, and construction phase services (the "New Services") for an additional ASR monitoring well, are needed.

As a result, NBU staff requests that the Board approve the Third Amendment to the Agreement (the "Third Amendment"), which includes (i) adding the New Services; and (ii) authorizing the related compensation for the New Services.

This item is being presented to the Board because it modifies the Agreement beyond the parameters the Board previously approved.

FINANCIAL IMPACT

The total financial impact of the Third Amendment is \$744,898. The total contract amount for the Agreement, First Amendment, Second Amendment, and Third Amendment with Arcadis for the Project is \$2,852,817. The Project is budgeted within the fiscal year 2024 through fiscal year 2025 NBU Board approved Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Stewardship

EXHIBITS

1. Third Amendment to the Professional Services Agreement with Arcadis

THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (AQUIFER STORAGE AND RECOVERY SUPPORT)

This THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the "Third Amendment") is made and entered into by and between NEW BRAUNFELS UTILITIES, a Texas municipal owned utility ("NBU"), and ARCADIS U.S., INC., a Delaware corporation authorized to transact business in the State of Texas (the "Professional") (collectively, "the Parties").

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated December 16, 2020 (the "Original Agreement"), for (i) general aquifer storage and recovery ("ASR") support, (ii) NBU/Edwards Aquifer Authority ("EAA") Interlocal Agreement ("ILA") work group support, (iii) analytical modeling of ASR formations, and (iv) Phase 4 ASR cycle testing (collectively the "Services") for the ASR project (the "Project");

WHEREAS, NBU and the Professional entered into a First Amendment to the Original Agreement dated January 28, 2022, to (i) delete the Original Supplemental Services and replace with the New Supplemental Services; (ii) reallocate the funds to distribute the money more evenly between all of the fiscal years; (iii) engage the New Supplemental Services; and (iv) define a time of completion for the New Supplemental Services (the "First Amendment");

WHEREAS, NBU and the Professional entered into a Second Amendment to the Original Agreement dated October 31, 2022, to provide support to NBU in securing a TCEQ ASR Wellfield Operating Permit (the "Second Amendment" and, together with the First Amendment and the Original Agreement, the "Agreement");

WHEREAS, NBU and the Professional have identified the need for (i) improvements to the ASR D1 Well to extend the depth of the well for better water quality, to include design, bid, and construction phase services, and (ii) design and bid phase services for an additional ASR monitoring well ("New Services");

WHEREAS, the New Services require an increase in the compensation to the Professional;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to amend or modify the Agreement; and

Whereas, NBU and the Professional agree to amend the Agreement to (i) add the New Services; and (ii) authorize the related compensation for the New Services.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, as follows:

AGREEMENT

- Section 1. <u>Amendment to Exhibit A.</u> Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this Third Amendment as of the effective date of this Third Amendment.
- Section 2. <u>Amendment to Exhibit B</u>. Exhibit B to the Agreement is hereby replaced in its entirety by Exhibit B to this Third Amendment as of the effective date of this Third Amendment.
- Section 3. <u>Remaining Terms</u>. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.
- Section 4. <u>Entire Agreement</u>. This Third Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.
- Section 5. <u>Binding Effect</u>. This Third Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.
- Section 6. <u>Severability</u>. If any term or provision of this Third Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Third Amendment shall not be affected thereby, and this Third Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- Section 7. <u>Governing Law</u>. This Third Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

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IN WITNESS WHEREOF, the Parties hereto, this Third Amendment on this the day of	upon lawful approval and authority, have executed, 2023.
NBU:	
New Braunfels Utilities,	
a Texas municipal owned utility	
By:	
Name: Ryan Kelso	
Title: Interim Chief Executive Officer	
THE PROFESSIONAL:	
ARCADIS U.S., INC.,	
a Delaware corporation	

By: Name: Charles Schoening

Title: Principal-in-Charge

Exhibit A

Services

NO CHANGE

Task 1. General ASR Support

NO CHANGE

Task 2. ILA Work Group Support.

NO CHANGE

Task 3. Prepare Analytical Models

NO CHANGE

Task 4. Phase 4 Cycle Testing

- 4.1 NO CHANGE
- 4.2 NO CHANGE
- 4.3 NO CHANGE
- 4.4 NO CHANGE
- 4.5 NO CHANGE
- 4.6 NO CHANGE
- 4.7 NO CHANGE
- 4.8 NO CHANGE
- 4.9 ASR D1 Well Deepening. The Professional shall assist NBU by providing design, bid, and construction phase services for construction of improvements to the ASR D1 Well to extend the depth of the well. The professional shall:
 - 4.9.1 prepare the design drawings and specifications;
 - 4.9.2 acquire necessary TCEQ and City of New Braunfels permits;
 - 4.9.3 provide support to NBU for the bidding and award of a construction contract;
 - 4.9.4 provide onsite observation of the well driller during construction;
 - 4.9.5 review and respond to contractor submittals, requests for information, and pay requests during construction;
 - 4.9.6 oversee well completion and testing for the ASR D1 Well;
 - 4.9.7 conduct periodic progress meetings with contractor;
 - 4.9.8 provide updates to NBU on status of construction;

- 4.9.9 coordinate all Project closeout documentation; and
- 4.9.10 conduct a disinfection assessment to mitigate future water quality issues.
- 4.10 New ASR Monitoring Well. The Professional shall provide design and bid phase services for a New ASR monitoring well. The Professional shall:
 - 4.10.1 perform a site investigation to confirm the viability of the selected site;
 - 4.10.2 perform necessary field investigations, surveys, and database research to validate conditions at the selected site;
 - 4.10.3 prepare the design drawings and specifications;
 - 4.10.4 acquire necessary TCEQ and City New Braunfels permits; and
 - 4.10.5 provide support to NBU for the bidding and award of a construction contract.

Task 5. Supplemental Services

- 5.1 NO CHANGE
- 5.2 NO CHANGE
- 5.3 NO CHANGE
- 5.4 NO CHANGE
- 5.5 NO CHANGE

Schedule

Milestone	Due Date
Task 1 – General ASR Support	NO CHANGE
Task 2 – ILA Support	NO CHANGE
Task 3 – Analytical Modeling	NO CHANGE
Task 4 – Phase 4 Cycle Testing	NO CHANGE
Task 5 – Supplemental Services	NO CHANGE

Exhibit B

Compensation

NBU shall pay the Professional for the Services rendered under this Agreement in accordance with the table below. NBU shall pay the Professional for the Services performed throughout the term of this Agreement in an amount not to exceed \$2,717,817 for the duration of the Agreement.

Fiscal	Original	First	Second	Third	Revised Contract
Year	Contract	Amendment	Amendment	Amendment	Amount
FY 2021	\$550,000	\$0	\$0	\$0	\$550,000
FY 2022	\$365,000	\$0	\$0	\$0	\$365,000
FY 2023	\$210,000	\$0	\$432,919	\$0	\$642,919
FY 2024	\$215,000	\$0	\$0	\$744,898	\$959,898
FY 2025	\$200,000	\$0	\$0	\$0	\$200,000
TOTAL	\$1,540,000	\$0	\$432,919	\$744,898	\$2,717,817

Supplemental Services:

NBU shall pay the Professional for the Supplemental Services performed throughout the term of this Agreement in an amount not to exceed \$135,000; provided, however, that NBU shall provide written approval in the form of a supplemental agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.

Fiscal	Original	First	Second	Third	Revised
Year	Contract	Amendment	Amendment	Amendment	Contract
					Amount
FY 2021	\$50,000	(\$15,000)	\$0	\$0	\$35,000
FY 2022	\$35,000	(\$10,000)	\$0	\$0	\$25,000
FY 2023	\$15,000	\$10,000	\$0	\$0	\$25,000
FY 2024	\$10,000	\$15,000	\$0	\$0	\$25,000
FY 2025	\$25,000	\$0	\$0	\$0	\$25,000
Total	\$135,000	\$0	\$0	\$0	\$135,000



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Kenneth Allen Reviewed by: Shawn Schorn

Fleet and Facilities Manager Director of Business Planning

Submitted by: Shawn Schorn Approved by: Ryan Kelso

Director of Business Planning Interim Chief Executive Officer

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Cooperative Contract with Holt Texas, Ltd., to Purchase One (1) Skid Steer Loader; One (1) Excavator; Three (3) Backhoe Loaders;

and Two (2) Backhoe Loaders with Extended Boom

BACKGROUND

In order to modernize the fleet's heavy construction equipment, New Braunfels Utilities ("NBU") identified the need to purchase one (1) skid steer loader, one (1) excavator, three (3) backhoe loaders, and two (2) backhoe loaders with extended booms, for NBU's Water Department.

As a result, NBU has selected to purchase the equipment from Holt Texas, Ltd. through the Sourcewell contract number 032119-CAT (the "Contract"). NBU's use of the Sourcewell contract satisfies the competitive bidding requirements under Texas law.

NBU staff requests that the Board of Trustees approve the Contract with Holt Texas, Ltd. for the construction equipment.

This item is being presented to the Board because the total amount of the contract exceeds \$250,000.

FINANCIAL IMPACT

The total financial impact of the Contract for the equipment is \$1,025,545.00. The purchase of the equipment is budgeted in the fiscal year 2024 Capital Equipment Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

- 1. Sourcewell Contract Number 032119
- 2. Holt Quote



Sourcewellsm

Formerly the National Joint Powers Alliance (NJPA)

REQUEST FOR PROPOSAL

for the procurement of

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

RFP Opening

March 22, 2019 | 8:30 a.m. Central Time At the offices of Sourcewell 202 12th Street Northeast, Staples, MN 56479

RFP #032119

Sourcewell, formerly the National Joint Powers Alliance® (NJPA), on behalf of Sourcewell and its current and potential member agencies, which includes all governmental, higher education, K-12 education, not-for-profit, tribal government, and all other public agencies located in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of #032119 HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES. Details of this RFP are available beginning January 31, 2019. Details may be obtained by letter of request to James Voelker, Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at RFP@sourcewell-mn.gov. Proposals will be received until March 21, 2019 at 4:30 p.m. Central Time at the above address and opened March 22, 2019 at 8:30 a.m. Central Time.

RFP Timeline

January 31, 2019	Publication of RFP in the print and online version of USA Today, in the print and online version of the Salt Lake News within the State of Utah, in the print and online version of the Daily Journal of Commerce within the State of Oregon (note: OR entities this pertains to: www.sourcewell-mn.gov/compliance-legal/oregon-advertising and also RFP Appendix B), in the print and online version of The State within the State of South Carolina, the Sourcewell website, MERX, PublicPurchase.com, Biddingo, and Onvia.
March 5, 2019 10:00 a.m. CT	Pre-Proposal Conference (the webcast/conference call). The connection information will be sent to all inquirers two business days before the conference.
March 14, 2019	Deadline for RFP questions.
March 21, 2019 4:30 p.m. CT	Deadline for Submission of Proposals. Late responses will be returned unopened.
March 22, 2019 8:30 a.m. CT	Public Opening of Proposals.

Direct questions regarding this RFP to: James Voelker at james.voelker@sourcewell-mn.gov or 218-895-4191.

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1 **DEFINITIONS**

A. CONTRACT

Contract means this RFP, current pricing information, fully executed Forms C, D, F, & P from the Proposer's response pursuant to this RFP, and a fully executed Form E ("Acceptance and Award") with final terms and conditions. Form E will be executed after a formal award and will provide final clarification of terms and conditions of the award.

B. PROPOSER

A Proposer is a company, person, or entity delivering a timely response to this RFP. This RFP may also use the terms "respondent" or "proposed Vendor," which is interchangeable with Proposer as the context allows.

C. SOURCED GOOD or OPEN MARKET ITEM

A Sourced Good or Open Market Item is a product within the RFP's scope 1) that is not currently available under the Vendor's Sourcewell contract, 2) that a member wants to buy under contract from an awarded Vendor, and 3) that is generally deemed incidental to the total transaction or purchase of contract items.

D. VENDOR

A Proposer whose response has been awarded a contract pursuant to this RFP.

2 ADVERTISEMENT OF RFP

- <u>2.1</u> Sourcewell advertises this solicitation: 1) in the hard copy print and online editions of the <u>USA Today</u>; 2) once each in Oregon's <u>Daily Journal of Commerce</u>, South Carolina's <u>The State</u> and Utah's <u>Salt Lake Tribune</u>; 3) on Sourcewell's website; and 4) on other third-party websites deemed appropriate by Sourcewell. Other third-party advertisers may include Onvia, PublicPurchase.com, MERX, and Biddingo.
- <u>2.2</u> Sourcewell also notifies and provides solicitation documentation to each state-level procurement departments for possible re-posting of the solicitation within their systems and at their option for future use and to meet specific state requirements.

3 INTRODUCTION

A. ABOUT SOURCEWELL

- <u>3.1</u> Sourcewell, formerly the National Joint Powers Alliance[®] (NJPA) is a public agency serving as a national municipal contracting agency established under the Service Cooperative statute by Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations.
- <u>3.2</u> Under the authority of Minnesota state laws and enabling legislation, Sourcewell facilitates a competitive solicitation and contracting process on behalf of the needs of itself and the needs of current and potential member agencies nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which Sourcewell Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of Sourcewell cooperative procurement contracts can be found at www.sourcewell-mn.gov.
- <u>3.3</u> Sourcewell is a public agency governed by publicly elected officials that serve as the Sourcewell Board of Directors. Sourcewell's Board of Directors oversees and authorizes the calls for all new proposals and holds those resulting Contracts for the benefit of its own and its Members use.
- <u>3.4</u> Sourcewell currently serves over 50,000 member agencies nationally. Both membership and utilization of Sourcewell contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

B. JOINT EXERCISE OF POWERS LAWS

- 3.5 Sourcewell cooperatively shares those contracts with its Members nationwide through various Joint Exercise of Powers Laws or Cooperative Purchasing Statutes established in Minnesota, other states and Canadian provinces. The Minnesota Joint Exercise of Powers Law is Minnesota Statute §471.59 which states "Two or more governmental units...may jointly or cooperatively exercise any power common to the contracting parties..." This Minnesota Statute allows Sourcewell to serve Member agencies located in all other states. Municipal agencies nationally can participate in cooperative purchasing activities under their own state law. These laws can be found on our website at www.sourcewell-mn.gov/compliance-legal.
 - 3.5.1 For Members within the Commonwealth of Virginia, this RFP is intended to be a "joint procurement agreement" as described in Vir. Code § 2.2-4304(A), and those Virginia Members identified in Appendix C may agree to be a Joint Purchaser under this RFP.
 - 3.5.2 For Members within Canada, this RFP is intended to include municipalities and publicly-funded academic institutions, schools boards, health authorities, and social services (MASH

sectors). In addition this RFP is intended to include current and potential Members of the Rural Municipalities of Alberta (RMA), and their represented Associations (SARM, SUMA and AMM).

C. WHY RESPOND TO A NATIONAL COOPERATIVE PROCUREMENT CONTRACT

- <u>3.6</u> National Cooperative Procurement Contracts create value for Municipal and Public Agencies, as well as for Vendors of products/equipment and services in a variety of ways:
 - <u>3.6.1</u> National cooperative contracts potentially save time and effort for municipal and public agencies, who otherwise would have to solicit vendor responses to individual RFPs, resulting in individual contracts, to meet the procurement needs of their respective agencies. Considerable time and effort is also potentially saved by the Vendors who would have had to otherwise respond to each of those individual RFPs. A single, nationally advertised RFP, resulting in a single, national cooperative contract can potentially replace thousands of individual RFPs for the same equipment/products/services that might have been otherwise advertised by individual Sourcewell member agencies.
 - <u>3.6.2</u> Sourcewell contracts offer our Members nationally leveraged volume purchasing discounts. Our contract terms and conditions offer the opportunity for Vendors to recognize individual member procurement volume commitment through additional volume based contract discounts.
- <u>3.7</u> State laws that permit or encourage cooperative purchasing contracts do so with the belief that cooperative efficiencies will result in lower prices, better overall value, and considerable time savings.
- <u>3.8</u> The collective purchasing power of thousands of Sourcewell Member agencies nationwide offers the opportunity for volume pricing discounts. Although no sales or sales volume is guaranteed by a Sourcewell Contract resulting from this RFP, substantial volume is anticipated and volume pricing is requested and justified.
- <u>3.9</u> Sourcewell and its Members desire the best value for their procurement dollar as well as a competitive price. Vendors have the opportunity to display and highlight value-added attributes of their company, equipment/products and services without constraints of a typical individual proposal process.

D. THE INTENT OF THIS RFP

- 3.10. National contract awarded by Sourcewell: Sourcewell seeks the most responsive and responsible Vendor relationship(s) to reflect the best interests of Sourcewell and its Member agencies. Through a competitive proposal and evaluation process, the Sourcewell Proposal Evaluation Committee recommends vendors for a national contract awarded by the action of the Sourcewell Chief Procurement Officer. Sourcewell's primary intent is to establish and provide a national cooperative procurement contract that offer opportunities for Sourcewell and our current and potential Member agencies throughout the United States and Canada to procure quality product/equipment and services as desired and needed. The contracts will be marketed nationally through a cooperative effort between the awarded vendor(s) and Sourcewell. Contracts are expected to offer price levels reflective of the potential and collective volume of Sourcewell and the nationally established Sourcewell membership base.
- **3.11** Beyond our primary intent, Sourcewell further desires to:
 - 3.11.1 Award a four-year contract with a fifth-year contract option resulting from this RFP. Any fifth-year extension is exercised at Sourcewell's discretion and results from Sourcewell's contracting needs or from Member requests; this extension is not intended merely to accommodate an awarded Vendor's request. If Sourcewell grants a fifth-year extension, it may also terminate the contract (or cause it to expire) within the fifth year if the extended

contract is replaced by a resolicited or newly solicited contract. In exigent circumstances, Sourcewell may petition Sourcewell's Board of Directors to extend the contract term beyond five years. This rarely used procedure should be employed only to avoid a gap in contract coverage while a replacement contract is being solicited;

- <u>3.11.2</u> Offer and apply any applicable technological advances throughout the term of a contract resulting from this RFP;
- <u>3.11.3</u> Deliver "Value Added" aspects of the company, equipment/products and services as defined in the "Proposer's Response";
- <u>3.11.4</u> Deliver a wide spectrum of solutions to meet the needs and requirements of Sourcewell and Sourcewell Member agencies; and
- 3.11.5 Award an exclusive contract to the most responsive and responsible vendor when it is deemed to be in the best interest of Sourcewell and the Sourcewell Member agencies.
- 3.12 Exclusive or Multiple Awards: Based on the scope of this RFP and on the responses received, Sourcewell may award either an exclusive contract or multiple contracts. In some circumstances, a single national supplier may best meet the needs of Sourcewell Members; in other situations, multiple vendors may be in the best interests of Sourcewell and the Sourcewell Members and preferred by Sourcewell to provide the widest array of solutions to meet the member agency's needs. Sourcewell retains sole discretion to determine which approach is in the best interests of Sourcewell Member agencies.
- <u>3.13</u> **Non-Manufacturer Awards:** Sourcewell reserves the right to make an award under this RFP to a non-manufacturer or dealer/distributor if such action is in the best interests of Sourcewell and its Members.
- 3.14 Manufacturer as a Proposer: If the Proposer is a manufacturer or wholesale distributor, the response received will be evaluated on the basis of a response made in conjunction with that manufacturer's authorized dealer network. Unless stated otherwise, a manufacturer or wholesale distributor Proposer is assumed to have a documented relationship with their dealer network where that dealer network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this RFP on behalf of the manufacturer or wholesale distributor Proposer. Any such dealer will be considered a sub-contractor of the Proposer/Vendor. The relationship between the manufacturer and wholesale distributor Proposer and its dealer network may be proposed at the time of the submission if that fact is properly identified.
- <u>3.15</u> Dealer/Reseller as a Proposer: If the Proposer is a dealer or reseller of the products and/or services being proposed, the response will be evaluated based on the Proposer's authorization to provide those products and services from their manufacturer. When requested by Sourcewell, Proposers must document their authority to offer those products and/or services.

E. SCOPE OF THIS RFP

- <u>3.16</u> Scope: The scope of this RFP is to award a contract to a qualifying vendor defined as a manufacturer, provider, or dealer/distributor, established as a Proposer, and deemed responsive and responsible through our open and competitive proposal process. Vendors will be awarded contracts based on the proposal and responders demonstrated ability to meet the expectations of the RFP and demonstrate the overall highest valued solutions which meet and/or exceed the current and future needs and requirements of Sourcewell and its Member agencies nationally within the scope of HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES.
- 3.17 Additional Scope Definitions: In addition to HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES, this solicitation should be read to include, but not to be limited to:

- <u>3.17.1</u> Subject to section 3.17.2 below, the following types of heavy construction equipment: wheeled, tracked, and backhoe loaders, motor graders, wheeled and tracked excavators, bulldozers, compactors, scrapers, articulated and rigid haulers, cranes, highway-class asphalt pavers, screeds, pavement milling machines, and rollers.
- <u>3.17.2</u> A Proposer must meet <u>at least one</u> of the following four requirements to be considered within scope of this solicitation. For purposes of Section 3.17.2 and it's subsections, the term "published" means that the information is readily available through the proposer's printed literature or website and that the proposer has verified the accuracy of the information:
 - <u>3.17.2.1</u> At least one wheel loader with published net horsepower (HP) of at least 330 HP, and a crawler excavator with published net HP of at least 500 HP and maximum operating weight of at least 150,000 lbs.
 - <u>3.17.2.2</u> At least one motor grader with a published maximum operating weight of at least 30,000 lbs.
 - <u>3.17.2.3</u> At least one crane with a published maximum lifting capacity of at least 300 tons and a published maximum boom length of at least 150 feet.
 - <u>3.17.2.4</u> At least one highway-class asphalt paver with a published maximum operating weight of at least 19,000 lbs.
- <u>3.17.3</u> Sourcewell reserves the right to limit the scope of this solicitation for Sourcewell and current and potential Sourcewell member agencies.
 - <u>3.17.3.1</u> This solicitation should **NOT** be construed to include any of the following:
 - a. Construction services
 - b. Equipment accessory, attachment and supply only solutions, or
 - c. Vendors whose primary business is covered under categories included in the following Sourcewell RFPs:
 - i. Medium Construction Equipment with Related Accessories, Attachments, and Supplies (See Sourcewell RFP #042815)
 - ii. Portable Construction and Maintenance Equipment and Trailers with Related Accessories, Attachments, and Supplies (See Sourcewell RFP #052015)
 - iii. Grounds Maintenance Equipment, Attachments, Accessories, and Related Services (See Sourcewell RFP #062117)
 - iv. Forklifts, Lift Trucks, and Related Material Handling Equipment, Attachments, Accessories, and Services (See Sourcewell RFP #101816)
 - v. Roadway Maintenance Equipment with Related Accessories, Attachments, Materials, and Supplies (See Sourcewell RFP #052417)
 - vi. Public Utility Equipment with Related Accessories and Supplies (See Sourcewell #012418)
- <u>3.18</u> Overlap of Scope: When considering equipment/products/services, or groups of equipment/products/services submitted as a part of your response, and whether inclusion of such will fall within a "Scope of Proposal," please consider the validity of an inverse statement.
 - <u>3.18.1</u> For example, pencils and post-it-notes can generally be classified as office supplies and office supplies generally include pencils and post-it-notes.

- 3.18.2 In contrast, computers (PCs and peripherals) can generally be considered office supplies; however, the scope of office supplies does not generally include computer servers and infrastructure.
- 3.18.3 In conclusion: With this in mind, individual products and services must be examined individually by Sourcewell, from time to time and in its sole discretion, to determine their compliance and fall within the original "Scope" as intended by Sourcewell.
- 3.19 Best and Most Responsive Responsible Proposer: It is the intent of Sourcewell to award a Contract to the best and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services meeting the commonly requested specifications of Sourcewell and Sourcewell Members, provided the Proposer's Response has been submitted in accordance with the requirements of this RFP. Qualifying Proposers who are able to anticipate the current and future needs and requirements of Sourcewell and Sourcewell member agencies; demonstrate the knowledge of any and all applicable industry standards, laws and regulations; and possess the willingness and ability to distribute, market to and service Sourcewell Members in all 50 states are preferred. Sourcewell requests proposers submit their entire line of products and services as it applies and relates to the scope of this RFP.
- <u>3.20</u> Sealed Proposals: Sourcewell will receive sealed proposal responses to this RFP in accordance with accepted standards set forth in the Minnesota Procurement Code and Uniform Municipal Contracting Law. Awards may be made to responsible and responsive Proposers whose proposals are determined in writing to be the most advantageous to Sourcewell and its current or qualifying future Sourcewell Member agencies.
- <u>3.21</u> Use of Contract: Any Contract resulting from this solicitation shall be awarded with the understanding that it is for the sole convenience of Sourcewell and its Members. Sourcewell and/or its members reserve the right to obtain like equipment/products and services solely from this contract or from another contract source of their choice or from a contract resulting from their own procurement process.
- 3.22 Awarded Vendor's interest in a contract resulting from this RFP: Awarded Vendors will be able to offer to Sourcewell, and current and potential Sourcewell Members, only those products/equipment and services specifically awarded on their Sourcewell Awarded Contract(s). Awarded Vendors may not offer as "contract compliant," products/equipment and services which are not specifically identified and priced in their Sourcewell Awarded Contract.
- <u>3.23</u> Sole Source of Responsibility- Sourcewell desires a "Sole Source of Responsibility" Vendor. This means that the Vendor will take sole responsibility for the performance of delivered equipment/products/ services. Sourcewell also desires sole responsibility with regard to:
 - <u>3.23.1</u> Scope of Equipment/Products/Services: Sourcewell desires a provider for the broadest possible scope of products/equipment and services being proposed over the largest possible geographic area and to the largest possible cross-section of Sourcewell current and potential Members.
 - 3.23.2 Vendor use of sub-contractors in sourcing or delivering equipment/product/services: Sourcewell desires a single source of responsibility for equipment/products and services proposed. Proposers are assumed to have sub-contractor relationships with all organizations and individuals whom are external to the Proposer and are involved in providing or delivering the equipment/products/services being proposed. Vendor assumes all responsibility for the equipment/products/services and actions of any such Sub-Contractor. Suggested Solutions Options include:
 - <u>**3.23.3**</u> Multiple solutions to the needs of Sourcewell and Sourcewell Members are possible. Examples could include:

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- <u>3.23.3.1</u> Equipment/Products Only Solution: Equipment/Products Only Solution may be appropriate for situations where Sourcewell or Sourcewell Members possess the ability, either in-house or through local third party contractors, to properly install and bring to operation those equipment/products being proposed.
- <u>3.23.3.2</u> Turn-Key Solutions: A Turn-Key Solution is a combination of equipment/products and services that provides a single price for equipment/products, delivery, and installation to a properly operating status. Generally this is the most desirable solution because Sourcewell and Sourcewell Members may not possess, or desire to engage, personnel with the necessary expertise to complete these tasks internally or through other independent contractors.
- <u>3.23.3.3</u> Good, Better, Best: Where appropriate and properly identified, Proposers may offer the choice "of good, better, best" multiple-grade solutions to meet Sourcewell Members' needs.
- <u>3.23.3.4</u> Proven Accepted Leading-Edge Technology: Where appropriate and properly identified, Proposers may provide a spectrum of technology solutions to complement or enhance the proposed solutions to meet Sourcewell Members' needs.
- <u>3.23.4</u> If applicable, Contracts will be awarded to Proposer(s) able to deliver a proposal meeting the entire needs of Sourcewell and its Members within the scope of this RFP. Sourcewell prefers Proposers submit their complete product line of products and services described in the scope of this RFP. Sourcewell reserves the right to reject individual, or groupings of specific equipment/products and services proposals as a part of the award.
- 3.24 Geographic Area to be Proposed: This RFP invites proposals to provide HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES to Sourcewell and Sourcewell Members throughout the entire United States and possibly internationally. Proposers will be expected to express willingness to explore service to Sourcewell Members located abroad; however the lack of ability to serve Members outside of the United States will not be cause for non-award. The ability and willingness to serve Canada, for instance, will be viewed as a value-added attribute.
- <u>3.25</u> Contract Term: At Sourcewell's option, a Contract resulting from this RFP will become effective either on the date awarded by the Sourcewell Executive Director and Chief Procurement Officer or on the day following the expiration date of an existing Sourcewell procurement contract for the same or similar product/equipment and services.
 - <u>3.25.1</u> Sourcewell is seeking a Contract base term of four years as allowed by Minnesota Contracting Law. Full term is expected. However, one additional one-year renewal/extension may be offered by Sourcewell to Vendor beyond the original four year term if Sourcewell deems such action to be in the best interests of Sourcewell and its Members. Sourcewell reserves the right to conduct periodic business reviews throughout the term of the contract.
- <u>3.26</u> Minimum Contract Value: Sourcewell anticipates considerable activity resulting from this RFP and subsequent award; however, no commitment of any kind is made concerning actual quantities to be acquired. Sourcewell does not guarantee usage. Usage will depend on the actual needs of the Sourcewell Members and the value of the awarded contract.

3.27 [This section is intentionally blank.]

<u>3.28</u> Contract Availability: This Contract must be available to all current and potential Sourcewell Members who choose to utilize this Sourcewell Contract to include all governmental and public agencies, public and private primary and secondary education agencies, and all non-profit organizations nationally

- <u>3.28.1</u> With respect to Members within the Commonwealth of Virginia, this RFP is intended to be a "joint procurement agreement" as described in Vir. Code § 2.2-4304(A), and those Virginia Members identified in Appendix C must be allowed to use this Contract as a Joint Purchaser.
- <u>3.28.2</u> For Members within Canada, this RFP is intended to include municipalities and publicly-funded academic institutions, schools boards, health authorities, and social services (MASH sectors). In addition this RFP is intended to include current and potential Members of the Rural Municipalities of Alberta (RMA), and their represented Associations (SARM, SUMA and AMM).
- <u>3.29</u> Proposer's Commitment Period: In order to allow Sourcewell the opportunity to evaluate each proposal thoroughly, Sourcewell requires any response to this solicitation be valid and irrevocable for ninety (90) days after the date proposals are opened.

F. EXPECTATIONS FOR EQUIPMENT/PRODUCTS AND SERVICES BEING PROPOSED

- 3.30 Industry Standards: Except as contained herein, the specifications or solutions for this RFP shall be those accepted guidelines set forth by the HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES industry, as they are generally understood and accepted within that industry across the nation. Submitted products/equipment, related services and accessories, and their warranties and assurances are required to meet and/or exceed all current, traditional and anticipated standards, needs, expectations, and requirements of Sourcewell and its Members.
 - <u>3.30.1</u> **Deviations from industry standards** must be identified by the Proposer and explained how, in their opinion, the equipment/products and services they propose will render equivalent functionality, coverage, performance, and/or related services. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire proposal.
 - <u>3.30.2</u> Technical Descriptions/Specifications. Excessive technical descriptions and specifications that unduly enlarge the proposal response may cause Sourcewell to reduce the evaluation points awarded on Form G. Proposers must supply sufficient information to:
 - <u>3.30.2.1</u> demonstrate the Proposer's knowledge of industry standards and Member agency needs and expectations;
 - <u>3.30.2.2</u> Identify the equipment/products and services being proposed as applicable to the needs and expectations of Sourcewell Member agencies; and
 - <u>**3.30.2.3**</u> differentiate equipment/products and services from other industry manufacturers and providers.
- <u>3.31</u> New Current Model Equipment/Products: Proposals submitted shall be for new, current model equipment/products and services with the exception of certain close-out products allowed to be offered on the Proposer's "Hot List" described herein.
- <u>3.32</u> Compliance with laws and standards: All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes.
- <u>3.33</u> **Delivered and operational:** Products/equipment offered herein are to be proposed based upon being delivered and operational at the Sourcewell Member's site. Exceptions to "delivered and operational" must be clearly disclosed in the "Total Cost of Acquisition" section of the proposal.
- <u>3.34</u> Warranty: The Proposer warrants that all products, equipment, supplies, and services delivered under this Contract shall be covered by the industry standard or better warranty. All products and equipment should carry a minimum industry standard manufacturer's warranty that includes materials and labor. The Proposer has the primary responsibility to submit product specific warranty as required and accepted by

industry standards. Dealer/Distributors agree to assist the purchaser in reaching a solution in a dispute over warranty's terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the warranty will be passed on to the Sourcewell member. Failure to submit a minimum warranty may result in non-award.

<u>3.35</u> Additional Warrants: The Proposer warrants that all products/equipment and related services furnished hereunder will be free from liens and encumbrances; defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards. In addition, Proposer/Vendor warrants the products/equipment and related services are suitable for and will perform in accordance with the ordinary use for which they are intended.

G. SOLUTIONS-BASED SOLICITATION

- <u>3.36</u> The Sourcewell solicitation and contract award process is not based on detailed specifications. Instead, this RFP is a "Solutions-Based Solicitation." Sourcewell expects respondents to understand and anticipate the current and future needs of Sourcewell and its members—within the scope of this RFP—and to propose solutions that are commonly desired or required by law or industry standards. Proposal will be evaluated in part on your demonstrated ability to meet or exceed the needs and requirements of Sourcewell and our member agencies within the defined scope of this RFP.
- 3.37 While Sourcewell does not typically provide product and service specifications, the RFP may contain scope refinements and industry-specific questions. Where specific items are specified, those items should be considered the minimum required, which the proposal can exceed in order to meet Members' needs. Sourcewell may award all of the respondent's proposal or may limit the award to a subset of the proposal.

3 INSTRUCTIONS FOR PREPARING YOUR PROPOSAL

A. INQUIRY PERIOD

<u>4.1</u> The inquiry period begins on the date of first advertisement and continues until to the Deadline for Submission." RFP packages will be distributed to potential Vendors during the inquiry period.

B. PRE-PROPOSAL CONFERENCE

4.2 A pre-proposal conference will be held at the date and time specified in the timeline on page one of this RFP. Conference information will be sent to all potential Proposers, and attendance is optional. The purpose of this conference is to allow potential Proposers to ask questions regarding this RFP and Sourcewell's competitive contracting process. Only answers issued by written addendum by Sourcewell to questions asked before the deadline for questions are binding on the parties to an awarded contract.

C. IDENTIFICATION OF KEY PERSONNEL

- <u>4.3</u> Awarded Vendors will designate one senior staff member to represent the Vendor to Sourcewell. This contact person will correspond with members for technical assistance, questions, or concerns that may arise, including instructions regarding different contacts for different geographical areas or product lines.
- <u>4.4</u> These designated individuals should also act as the primary contact for marketing, sales, and any other area deemed essential by the Proposer and Sourcewell.

D. PROPOSER'S EXCEPTIONS TO TERMS AND CONDITIONS

<u>4.5</u> Any exceptions, deviations, or contingencies regarding this RFP that a Proposer requests must be documented on Form C, Exceptions To Proposal, Terms, Conditions And Solutions Request.

<u>4.6</u> Exceptions, deviations or contingencies requested in the Proposer's response, while possibly necessary in the view of the Proposer, may result in lower scoring or disqualification of a proposal.

E. PROPOSAL FORMAT

- 4.7 All Proposers must examine the entire RFP package to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a proposal.
- **4.8** All proposals must be properly labeled and sent to "Sourcewell, 202 12th Street NE Staples, MN 56479."
- **4.9** All proposals must be physically delivered to Sourcewell at the above address with all required hard copy documents and signature forms/pages inserted as loose pages at the front of the Vendor's response. The proposal must include these items.
 - <u>4.9.1</u> Hard copy original of completed, signed, and dated Forms C, D, F; hard copy of the signed signature-page only from Forms A and P from this RFP;
 - 4.9.2 Signed hard copies of all addenda issued for the RFP;
 - 4.9.3 Hard copy of Certificate of Insurance verifying the coverage identified in this RFP; and
 - 4.9.4 A complete copy of your response on a flash drive (or other approved electronic means). The electronic copy must contain completed Forms A, B, C, D, F, and P, your statement of products and pricing (including apparent discount), and all appropriate attachments. In order to ensure that your full response is evaluated, you must provide an electronic version of any material that you provide in a hard copy format.

As a public agency, Sourcewell's proposals, responses, and awarded contracts are a matter of public record, except for such data that is classified as nonpublic. Accordingly, public data is available for review through a properly submitted public records request. To redact nonpublic information from your proposal (under Minnesota Statute §13.37), you must make your request within thirty (30) days of the contract award or non-award date.

- **4.10** All Proposal forms must be submitted in English and must be legible. All appropriate forms must be executed by an authorized signatory of the Proposer. Blue ink is preferred for signatures.
- **4.11** Proposal submissions should be submitted using the electronic forms provided. Proposers that use alternative documents are responsible for ensuring that the content is substantially similar to the Sourcewell form and that the document is readable by Sourcewell.
- <u>4.12</u> The Proposer must ensure that the proposal is in the physical possession of Sourcewell before the submission deadline.
 - <u>4.12.1</u> Proposals must be submitted in a sealed envelope or box properly addressed to Sourcewell and prominently identifying the proposal number, proposal category name, the message "Hold for Proposal Opening," and the deadline for proposal submission. Sourcewell is not responsible for untimely proposals. Proposals received by the deadline for proposal submission will be opened and the name of each Proposer and other appropriate information will be publicly read.
- **4.13** Proposers are responsible for checking directly on the Sourcewell website for any addendums to this RFP. Addendums to this RFP can change the terms and conditions of the RFP, including the proposal submission deadline.

- **4.14** Upon examination of this RFP document, Proposers should promptly notify Sourcewell of any ambiguity, inconsistency, or error they may discover. Interpretations, corrections, and changes to this RFP will be considered by Sourcewell through a written addendum. Interpretations, corrections, or changes that are made in any other manner are not binding, and Proposers must not rely on them.
- 4.15 Submit all questions about this RFP, in writing, referencing HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES to James Voelker at Sourcewell, 202 12th Street NE, Staples, MN 56479 or to RFP@sourcewell-mn.gov. You may also call James Voelker at 218-895-4191. Sourcewell urges potential Proposers to communicate all concerns well in advance of the submission deadline to avoid misunderstandings. Questions received within seven (7) days before the submission deadline generally cannot be answered. Sourcewell may, however, field purely procedural questions, questions about Sourcewell-issued addenda, or questions involving a Proposer withdrawing its response before the RFP submission deadline.
- **4.16** If Sourcewell deems that its answer to a question has a material impact on other potential Proposers or on the RFP itself, Sourcewell will create an addendum to this RFP.
- **4.17** If Sourcewell deems that its answer to a question merely clarifies the existing terms and conditions and does not have a material impact on other potential Proposers or the RFP itself, no further documentation of that question is required.
- <u>4.18</u> Addenda are written instruments issued by Sourcewell that modify or interpret the RFP. All addenda issued by Sourcewell become a part of the RFP. Addenda will be delivered to all Potential Proposers using the same method of delivery of the original RFP material. Sourcewell accepts no liability in connection with the delivery of any addenda. Copies of addenda will also be made available on the Sourcewell website at www.sourcewell-mn.gov (under "Solicitations") and from the Sourcewell offices. All Proposers must acknowledge their receipt of all addenda in their proposal response.
- **4.19** Any amendment to a submitted proposal must be in writing and must be delivered to Sourcewell by the RFP submission deadline.

4.20 through 4.21 [These sections are intentionally blank.]

G. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

4.22 A submitted proposal must not be modified, withdrawn, or cancelled by the Proposer for a period of ninety (90) days following the date proposals were opened. Before the deadline for submission of proposals, any proposal submitted may be modified or withdrawn by notice to the Sourcewell Procurement Manager. Such notice must be submitted in writing and must include the signature of the Proposer. The notice must be delivered to Sourcewell before the deadline for submission of proposals and must be so worded as not to reveal the content of the original proposal. The original proposal will not be physically returned to the potential Proposer until after the official proposal opening. Withdrawn proposals may be resubmitted up to the time designated for the receipt of the proposals if they fully conform with the proposal instructions.

H. PROPOSAL OPENING PROCEDURE

4.23 Sealed and properly identified responses for this RFP entitled HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES will be received by Chris Robinson, Procurement Manager, at Sourcewell Offices, 202 12th Street NE, Staples, MN 56479 until the deadline identified on page one of this RFP. All Proposal responses must be submitted in a sealed package. The outside of the package must plainly identify HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES and the RFP number. To avoid premature opening, the Proposer must label the Proposal response properly. Sourcewell documents the receipt of proposals by immediately time- and date-stamping them. At the time of the public opening.

the Sourcewell Director of Procurement or a representative from the Sourcewell Proposal Evaluation Committee will read the Proposer's names aloud and will determine whether each submission has met Level-1 responsiveness.

I. SOURCEWELL'S RIGHTS RESERVED

- **4.24** Sourcewell may exercise the following rights with regard to the RFP.
 - **4.24.1** Reject any and all proposals received in response to this RFP;
 - **4.24.2** Disqualify any Proposer whose conduct or proposal fails to conform to the requirements of this RFP;
 - <u>4.24.3</u> Duplicate without limitation all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the proposal;
 - <u>4.24.4</u> Consider and accept for evaluation a late modification of a proposal if 1) the proposal itself was submitted on time, 2) the modifications were requested by Sourcewell, and 3) the modifications make the terms of the proposal more favorable to Sourcewell or its members;
 - **4.24.5** Waive any non-material deviations from the requirements and procedures of this RFP;
 - <u>4.24.6</u> Extend the Contract, in increments determined by Sourcewell, not to exceed a total Contract term of five years;
 - <u>4.24.7</u> Cancel the Request for Proposal at any time and for any reason with no cost or penalty to Sourcewell;
 - <u>4.24.8</u> Correct or amend the RFP at any time with no cost or penalty to Sourcewell. If Sourcewell corrects or amends any segment of the RFP after submission of proposals and before the announcement of the awarded Vendor, all proposers will be afforded a reasonable opportunity to revise their proposals in order to accommodate the RFP amendment and the new submission dates. Sourcewell will not be liable for any errors in the RFP or other responses related to the RFP; and
 - 4.24.9 Extend proposal due dates.

<u>5</u> <u>PRICING</u>

- <u>5.1</u> Sourcewell requests that potential Proposers respond to this RFP only if they are able to offer a wide array of products and services at lower prices and with better value than what they would ordinarily offer to a single government agency, a school district, or a regional cooperative.
- <u>5.2</u> This RFP requests pricing for an indefinite quantity of products or related services with potential national sales distribution and service. While most RFP categories represent significant sales opportunities, Sourcewell makes no guarantees about the quantity of products or services that members will purchase. The estimated annual value of this contract is \$200 Million.

Vendors are expected to anticipate additional volume through potential government, educational, and not-for-profit agencies that would find value in a national contract awarded by Sourcewell.

<u>5.3</u> Regardless of the payment method selected by Sourcewell or an Sourcewell member, the total cost associated with any purchase option of the products and services must always be disclosed in the proposal and at the time of purchase.

<u>5.4</u> All proposers must submit "Primary Pricing" in the form of either "Line-Item Pricing," or "Percentage Discount from Catalog Pricing," or a combination of these pricing strategies. Proposers are also encouraged to offer optional pricing strategies such as "Hot List," "Sourced Products," and "Volume Discounts," as well as financing options such as leasing. All pricing documents should include a clear effective date.

A. LINE-ITEM PRICING

- <u>5.5</u> Line-item pricing is a pricing format in which individual products or services are offered at specific Contract prices. Products or services are individually priced and described by characteristics such as manufacture name, stock or part number, size, or functionality. This method of pricing may offer the least amount of confusion, but Proposers with a large number of items may find this method cumbersome. In these situations, a percentage discount from catalog or category pricing model may make more sense and may increase the clarity of the contract pricing format.
- <u>5.6</u> All line-item pricing items must be numbered, organized, sectioned (including SKUs, when applicable), and prepared to be easily understood by the Evaluation Committee and members.
- <u>5.7</u> Submit Line-Item Pricing items in an Excel spreadsheet format and include all appropriate identification information necessary to discern the line item from other line items in each Responder's proposal.
- <u>5.8</u> Line-item pricing must be submitted to Sourcewell in a searchable spreadsheet format (e.g., Microsoft[®] Excel[®]) in order to facilitate quickly finding any particular item of interest. For that reason, Proposers are responsible for providing the appropriate product and service identification information along with the pricing information that is typically found on an invoice or price quote for such product or services.
- <u>5.9</u> All products or services typically appearing on an invoice or price quote must be individually priced and identified on the line-item price sheet, including any and all ancillary costs.
- <u>5.10</u> Proposers should provide both a published "List Price" as well as a "Proposed Contract Price" in their pricing matrix. Published List Price will be the standard "quantity of one" price currently available to government and educational customers, excluding cooperative and volume discounts.

B. PERCENTAGE DISCOUNT FROM CATALOG OR CATEGORY

- <u>5.11</u> This pricing model involves a specific percentage discount from a catalog or list price, defined as a published Manufacturer's Suggested Retail Price (MSRP) for the products or services being proposed.
- **5.12** Individualized percentage discounts can be applied to any number of defined product groupings.
- <u>5.13</u> A percentage discount from MSRP may be applied to all elements identified in MSRP, including all manufacturer options applicable to the products or services.
- <u>5.14</u> When a Proposer elects to use "Percentage Discount from Catalog or Category," Proposer will be responsible for providing and maintaining current published MSRP with Sourcewell, and this pricing must be included in its proposal and provided throughout the term of any Contract resulting from this RFP.

C. COST PLUS A PERCENTAGE OF COST

<u>5.15</u> "Cost plus a percentage of cost" as a primary pricing mechanism is not desirable. It is, however, acceptable for pricing sourced goods or services.

D. HOT LIST PRICING

<u>5.16</u> Where applicable, a Vendor may opt to offer a specific selection of products or services, defined as "Hot List" pricing, at greater discounts than those listed in the standard Contract pricing. All product and

service pricing, including the Hot List Pricing, must be submitted electronically in a format that is acceptable to Sourcewell. Hot List pricing must be submitted in a line-item format. Products and services may be added or removed from the Hot List at any time through an Sourcewell Price and Product Change Form.

<u>5.17</u> Hot List program and pricing may also be used to discount and liquidate close-out and discontinued products and services as long as those close-out and discontinued items are clearly labeled as such. Current ordering process and administrative fees apply. This option must be published and made available to all Sourcewell Members.

E. CEILING PRICE

<u>5.18</u> Proposal pricing is to be established as a ceiling price. At no time may the proposed products or services be offered under this Contract at prices above this ceiling price without a specific request and approval by Sourcewell. Contract prices may be reduced at any time, for example, to reflect volume discounts or to meet the needs of an Sourcewell Member.

5.19 [This section is intentionally blank.]

F. VOLUME PRICE DISCOUNTS / ADDITIONAL QUANTITIES

5.20 through 5.23 [These sections are intentionally blank.]

G. TOTAL COST OF ACQUISITION

<u>5.24</u> The Total Cost of Acquisition for the equipment/products and related services being proposed, including those payable by Sourcewell Members to either the Proposer or a third party, is the cost of the proposed equipment/products product/equipment and related services delivered and operational for its intended purpose in the end-user's location. For example, if you are proposing equipment/products FOB Proposer's dock, your proposal should reflect that the contract pricing does not provide for delivery beyond Proposer's dock, nor any set-up activities or costs associated with those delivery or set-up activities. Any additional costs for delivery and set-up should be clearly disclosed. In contrast, a proposal could state that there are no additional costs of acquisition if the product is delivered to and operational at the end-user's location.

H. SOURCED GOOD or OPEN MARKET ITEM

- <u>5.25</u> A Sourced Good or an Open Market Item is a product that a member wants to buy under contract that is not currently available under the Vendor's Sourcewell contract. This method of procurement can be satisfied through a contract sourcing process. Sourcing options serve to provide a more complete contract solution to meet our members' needs. Sourced items are generally deemed incidental to the total transaction or purchase of contract items.
- <u>5.26</u> Sourcewell or Sourcewell Members may request products, equipment, and related services that are within the related scope of this RFP, even if they are not included in an awarded Vendor's line-item price list or catalog. These items are known as Sourced Goods or Open Market Items.
- 5.27 An awarded Vendor may source such items to the extent that the items are identified as "Sourced Products/Equipment" or "Open Market Items" on any quotation issued in reference to an Sourcewell awarded contract, and that this information is provided to either Sourcewell or an Sourcewell Member. Sourcewell is not responsible for determining whether a Sourced Good is an incidental portion of the overall purchase or whether a Member is able to consider a Sourced Good a purchase under a Sourcewell contract.
- 5.28 "Cost plus a percentage" pricing is an acceptable option in pricing of Sourced Goods.

I. PRODUCT & PRICE CHANGES

- <u>5.29</u> Awarded Vendors may request product or service changes, additions, or deletions at any time throughout the contract term. All requests must be made in written format by completing the Sourcewell Price and Product Change Request Form (located at the end of this RFP and on the Sourcewell website), signed by an authorized Vendor representative. All changes are subject to review and approval by Sourcewell. Submit your requests through email to your assigned Contract Manager and to PandP@sourcewell-mn.gov.
- <u>5.30</u> Sourcewell will determine whether the request is both within the scope of the original RFP and in the best interests of Sourcewell and Sourcewell Members. Approved Price and Product Change Request Forms will be returned to the Vendor contact through email.
- <u>5.31</u> The Vendor must 1) complete this change request form and individually list or attach all items subject to change, 2) provide a sufficiently detailed explanation and documentation for the change, and 3) include a compete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all products and services being offered and must conform to the following Sourcewell product and price change naming convention: (Vendor Name) (Sourcewell Contract #) (effective pricing date); for example, "COMPANY 012411-CPY effective 02-12-2016."
- 5.32 The new pricing restatement must include all products and services offered, even for those items whose pricing remains unchanged, and must include a new effective date on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.
- <u>5.33</u> ADDITIONS. New products and related services may be added to a Contract resulting from this RFP at any time during that Contract term to the extent that those products and related services are within the scope of this RFP. Allowable new products and related services generally include updated models of products and enhanced services that reflect new technology and improved functionality.
- <u>5.34</u> DELETIONS. New products and related services may be deleted from a contract if an item is no longer available.
- <u>5.35</u> PRICE CHANGES. A Vendor may request pricing changes by providing reasonable justification for the change. For example, a request for a 3% increase in a product line that relies heavily on petroleum products may be reasonable if the raw cost of required petroleum products has increased substantially. Conversely, a request for a 3% increase in prices based only on a 3% increase in a cost-of-living index may be considered unreasonable. Although Sourcewell is sensitive to the possibility of fluctuations in raw material costs, prospective Vendors should make every reasonable attempt to account for normal cost changes by proposing pricing that will be effective throughout the duration of the four-year Contract.
 - <u>5.35.1</u> *Price decreases:* Sourcewell expects Vendors to propose their very best prices and anticipates price reductions that are due to advancement in technology and marketplace efficiencies.
 - <u>5.35.2</u> *Price increases:* A Vendor must include reasonable documentation for price-increase requests, along with both current and proposed pricing. Appropriate documentation should be attached to the Price and Product Change Request Form, including letters from suppliers announcing price increases. Price increases must not exceed the industry standard.

5.36 through 5.37 [These sections are intentionally blank.]

<u>5.38</u> Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

5.39 through 5.43 [These sections are intentionally blank.]

K. SALES TAX

<u>5.44</u> Sales and other taxes should not be included in the prices quoted. The Vendor will charge state and local sales and other applicable taxes on items for which a valid tax-exemption certification has not been provided. Each Sourcewell Member is responsible for providing verification of tax-exempt status to the Vendor. When ordering, Sourcewell Members must indicate that they are tax-exempt entities. Except as set forth herein, no party is responsible for taxes imposed on another party as a result of or arising from the transactions under a Contract resulting from this RFP.

L. SHIPPING

<u>5.45</u> Shipping costs can constitute a significant portion of the overall cost of procurement. Consequently, significant weight will be given to the quality of a prospective Vendor's shipping program. Shipping charges should reasonably reflect the actual cost of shipping. Sourcewell understands that Vendors may use other shipping cost methods for simplicity or for transparency. But to the extent that shipping costs are determined to disproportionately increase a Vendor's profit, Sourcewell may reduce the points awarded in the "Pricing" criteria.

5.46 through 5.47 [These sections are intentionally blank.]

<u>5.48</u> All shipping and restocking fees must be identified in the price program. Certain industries providing made-to-order products may not allow returns. Proposals will be evaluated not only on the actual costs of shipping, but on the relative flexibility extended to Sourcewell Members relating to restocking fees, shipping errors, customized shipping requirements, the process for rejecting damaged or delayed shipments, and similar subjects.

5.49 through 5.50 [These sections are intentionally blank.]

- <u>5.51</u> Delivered products must be properly packaged. Damaged products may be rejected. If the damage is not readily apparent at the time of delivery, the Vendor must permit the products to be returned within a reasonable time at no cost to Sourcewell or Sourcewell Members. Sourcewell and Sourcewell Members reserve the right to inspect the products at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the products at the time of delivery.
- <u>5.52</u> The Vendor must deliver Contract-conforming products in each shipment and may not substitute products without the express approval from Sourcewell or the Sourcewell Member.
- <u>5.53</u> Sourcewell reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior products that are not under Contract and described in its paper or electronic price lists or sourced upon request of any Member under this Contract. In the event of the delivery of nonconforming products, the Sourcewell Member will notify the Vendor as soon as possible and the Vendor will replace nonconforming products with conforming products that are acceptable to the Sourcewell member.
- <u>5.54</u> Throughout the term of the Contract, Proposer agrees to pay for return shipment on products that arrive in a defective or inoperable condition. Proposer must arrange for the return shipment of the damaged products.

<u>6</u> EVALUATION OF PROPOSALS

A. PROPOSAL EVALUATION PROCESS

- <u>6.1</u> The Sourcewell proposal evaluation committee will evaluate proposals received based on a 1,000 point evaluation system. The committee establishes both the evaluation criteria and designates the relative weight of each criterion by assigning possible scores for each category on Form G of this RFP. The committee may adjust the relative weight of the criteria for each RFP. (For example, if the "Warranty" criterion does not apply to a particular RFP, the points normally awarded under "Warranty" may be used to increase the number of potential points in another evaluation category or categories.) The "Pricing" criterion will contain at least a plurality of points for every RFP.
- <u>6.2</u> Sourcewell uses a scoring system that gives primary importance to "Pricing." But pricing includes more than just the absolute lowest initial cost of purchasing, for example, a particular product. Other considerations include the total cost of the acquisition and whether the Proposer's offering represents the best value. The evaluation committee may consider such factors as life-cycle costs, total cost of ownership, quality, and the suitability of an offering in meeting Sourcewell Members' needs. Pricing points may be awarded based on pricing clarity and ease of use. Sourcewell may also award points based on whether a response contains exceptions, exclusions, or limitations of liabilities.
- <u>6.3</u> The Sourcewell Executive Director and Chief Procurement Officer will consider making awards to the selected Proposer(s) based on the recommendations of the proposal evaluation committee. To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under "Proposer Responsiveness," found just below.

B. PROPOSER RESPONSIVENESS

- <u>6.4</u> All responses are evaluated for Level-One and Level-Two Responsiveness. If a response does not substantially conform to substantially all of the terms and conditions in the solicitation, or if it requires unreasonable exceptions, it may be considered nonresponsive.
- <u>6.5</u> All proposals must contain suitable responses to the questions in the proposal forms. The following requirements must be satisfied in order to meet Level-One Responsiveness, which is typically ascertained on the proposal opening date. If these standards are not met, your response may be disqualified as nonresponsive.
- **6.6** Level-One Responsiveness means that the response
 - **6.6.1** is received before the deadline for submission or it will be returned unopened;
 - <u>6.6.2</u> is properly addressed and identified as a sealed proposal with a specific RFP number and an opening date and time;
 - <u>6.6.3</u> contains a pricing document (with apparent discounts) and all other forms fully completed, even if "not applicable" is the answer;
 - 6.6.4 includes the original (hard copy) completed, dated, and signed RFP forms C, D, and F. In addition, the response must include the hard-copy signed signature page only from RFP Forms A and P and, if applicable, all signed addenda that have been issued in relation to this RFP;
 - 6.6.5 contains an electronic (CD, flash drive, or other suitable) copy of the entire response; and
- <u>6.7</u> Level-Two Responsiveness (including whether the response is within the RFP's scope) is determined while evaluating the remaining items listed under Proposal Evaluation Criteria below. These items are not arranged in order of importance. Each item draws from multiple questions, and a Proposer's responses may affect scoring in multiple evaluation criteria. For example, the answers to Industry-Specific Questions <u>may</u>

help determine scoring relative to a Proposer's marketplace success, ability to sell and service nationwide, and financial strength. Any questions not answered without an explanation will likely result in a loss of points and may lead to a nonaward if the proposal evaluation committee cannot effectively review your response.

C. PROPOSAL EVALUATION CRITERIA

6.8 Forms A and P include a series of questions that address the following categories:

- **<u>6.8.1</u>** Company Information and Financial Strength
- <u>6.8.2</u> Industry Requirements and Marketplace Success
- <u>6.8.3</u> Ability to Sell and Deliver Service Nationwide
- **6.8.4** Marketing Plan
- **6.8.5** Other Cooperative Procurement Contracts
- **6.8.6** Value-Added Attributes
- <u>6.8.7</u> Payment Terms and Financing Options
- 6.8.8 Warranty
- **<u>6.8.9</u>** Equipment/Products/Services
- **<u>6.8.10</u>** Pricing and Delivery
- **<u>6.8.11</u>** Industry-Specific Questions

6.9 [This section is intentionally blank.]

D. OTHER CONSIDERATIONS

<u>6.10</u> In evaluating RFP responses, Sourcewell has no obligation to consider information that is not provided in the Proposer's response. Sourcewell may, however, consider additional information outside the Proposer's response. This research may include such sources as the Proposer's website, industry publications, listed references, and user interviews.

6.11 Sourcewell may organize RFP responses into separate classes or subcategories, depending on the range of responses. For example, Sourcewell might receive numerous submissions for "Widgets and Related Products and Services." Sourcewell may organize these responses into subcategories, such as manufacturers of fully operational Widgets, manufacturers of component parts for Widgets, and providers of parts and service for Widgets. Sourcewell reserves the right to award Proposers in some or all of such subcategories without regard to the evaluation score given to Proposers in another subcategory. This specifically allows Sourcewell to award Vendors that might not have, for instance, the breadth of products of Proposers in another subcategory, but that nonetheless meet a substantial and articulated need of Sourcewell Members.

6.12 [This section is intentionally blank.]

<u>6.13</u> Sourcewell reserves the right to request and test equipment/products and related services and to seek clarification from Proposers. Before the Contract award, the Proposer must furnish the requested information within three (3) days (or within another agreed-to time frame) or provide an explanation for the delay along with a requested time frame for providing the requested information. Proposers must make reasonable efforts to supply test products promptly. All Proposer products remain the property of the Proposer, and Sourcewell will return such products after the evaluation process. Sourcewell may make provisional contract awards, subject to a Proposer's proper response to a request for information or products.

6.14 A Proposer's past performance under previously awarded contracts to schools, governmental agencies, and not-for-profit entities is relevant in evaluating a Proposer's current response. Past performance includes the Proposer's record of conforming to published specifications and to standards of good workmanship, as well as the Proposer's history for reasonable and cooperative behavior and for commitment to Member satisfaction. Incumbency as an awarded Vendor does not, by itself, merit positive consideration for a future Contract award.

<u>**6.15**</u> Sourcewell reserves the right to reject any or all proposals.

E. COST COMPARISON

<u>6.16</u> Sourcewell may use a variety of evaluation methods, including cost comparisons of specific products. Sourcewell reserves the right to use this process when the proposal evaluation committee determines that this will help to make a final determination.

<u>6.17</u> This direct cost comparison process will award points for being low to high Proposer for each cost evaluation item selected. A "Market Basket" of identical (or substantially similar) equipment/products and related services may be selected by the proposal evaluation committee, and the unit cost will be used as a basis for determining the point value. Sourcewell will select the "Market Basket" from all appropriate product categories as determined by Sourcewell.

F. MARKETING PLAN

<u>6.18</u> A Proposer's marketing plan is a critical component of the RFP response. An awarded Vendor's sales force will likely be the primary source of communication with Sourcewell Members and will directly affect the contract's success. Marketing success depends on communicating the contract's value, knowing the contract thoroughly, and communicating the proper use of contracted products and services to the end user. Much of the success and sales reward is a direct result of the commitment to the contract by the awarded Vendor's sales teams. Sourcewell reserves the right to deem a Proposer Level-Two nonresponsive or not to award a contract based on an unacceptable or incomplete marketing plan.

6.19 Sourcewell marketing expectations include the following components.

6.19.1 An awarded Vendor must demonstrate the ability to deploy a national sales force or dealer network. The best RFP responses demonstrate the ability to sell, deliver, and service products through acceptable distribution channels to Sourcewell members in all 50 states. Proposers' responses should fully demonstrate their sales and service capabilities, should outline their national sales force network (both numerically geographically), and should describe their method of distribution of the offered products and related services. Service may be independent of the product sales pricing, but Sourcewell encourages related services to be a part of Proposers' response. Despite its preference for awarding contracts to Vendors that demonstrate nationwide sales and service, Sourcewell reserves the right to award contracts that meet specific Member needs locally or regionally.

<u>6.19.2</u> Proposers are invited to demonstrate their ability to successfully market, promote, and communicate the benefits of an Sourcewell contract to current and potential Members nationwide. Sourcewell desires a marketing plan that communicates the value of the contract to as many Members as possible.

<u>6.19.3</u> Proposers are expected to be receptive to Sourcewell trainings. Awarded Vendors must provide an appropriate training venue for both management and the sales force. Sourcewell commits to providing training on all aspects of communicating the value of the awarded contract, including the authority of Sourcewell to offer the contract to its Members, the value and utility the contract delivers to Sourcewell Members, the scope of Sourcewell Membership, the authority of

Members to use Sourcewell procurement contracts, the preferred marketing and sales methods, and the successful use of specific business sector strategies.

- <u>6.19.4</u> Awarded Vendors are expected to demonstrate a commitment to fully embrace the Sourcewell contract. Proposers should identify both the appropriate levels of sales management and sales force that will need to understand the value of the Sourcewell contract, as well as the internal procedures needed to deliver the appropriate messaging to Sourcewell Members. Sourcewell will provide a general schedule and a variety of methods describing when and how those individuals should be trained.
- <u>6.19.5</u> Proposers should outline their proposed involvement in promoting a Sourcewell contract through applicable industry trade show exhibits and related customer meetings. Proposers are encouraged to consider participation with Sourcewell at Sourcewell-endorsed national trade shows.
- <u>6.19.6</u> Proposers must exhibit the willingness and ability to actively market and develop contract-specific marketing materials including the following items.
 - <u>6.19.6.1</u> Complete Marketing Plan. Proposers must submit a marketing plan outlining how they will launch the Sourcewell contract to current and potential Sourcewell Members. Sourcewell requires awarded Vendors to embrace and actively promote the contract in cooperation with Sourcewell.
 - <u>6.19.6.2</u> Printed Marketing Materials. Awarded Vendors will produce and maintain full color print advertisements in camera-ready electronic format, including company logos and contact information to be used in the Sourcewell directory and other approved marketing publications.
 - <u>6.19.6.3</u> Contract announcements and advertisements. Proposers should outline in the marketing plan their anticipated contract announcements, advertisements in industry periodicals, and other direct or indirect marketing activities promoting the awarded Sourcewell contract.
 - <u>6.19.6.4</u> Proposer's Website. Proposers should identify how an awarded Contract will be displayed and linked on the Proposer's website. An online shopping experience for Sourcewell Members is desired whenever possible.
- <u>6.19.7</u> A Sourcewell Vendor contract launch will be scheduled during a reasonable time frame after the award and held at the Sourcewell office in Staples, MN unless the Vendor and Sourcewell agree to a different location.
- <u>6.20</u> Proposer shall identify their commitment to develop a sales/communication process to facilitate Sourcewell membership and establish status of current and potential agencies/members. Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by Sourcewell.

G. CERTIFICATE OF INSURANCE

<u>6.21</u> Proposers must provide evidence of liability insurance coverage identified below in the form of a Certificate of Insurance (COI) or an ACORD binder form with their proposal. Upon an award issued under this RFP and before the execution of any commerce relating to such award, the awarded Vendor must provide verification, in the form of a Certificate of Insurance, identifying the coverage required below and identifying Sourcewell as a "Certificate Holder." The Vendor must maintain such insurance coverage at its own expense throughout the term of any contract resulting from this solicitation.

6.22 Any exceptions or assumptions to the insurance requirements must be identified on Form C of this RFP. Exceptions and assumptions will be considered as part of the evaluation process. Any exceptions or assumptions that Proposers submit must be specific. If a Proposer does not include specific exceptions or assumptions when submitting the proposal, Sourcewell will typically not consider any additional exceptions or assumptions during the evaluation process. Upon contract award, the awarded Vendor must provide the Certificate of Insurance identifying the coverage as specified.

<u>6.23</u> Insurance Liability Limits. The awarded Vendor must maintain, for the duration of its contract, \$1.5 million in general liability insurance coverage or general liability insurance in conjunction with an umbrella for a total combined coverage of \$1.5 million. Work on the Contract will not begin until after the awarded Vendor has submitted acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or an acceptable alternative method of insurance will be deemed a breach of contract.

<u>6.23.1</u> Minimum Scope and Limits of Insurance. An awarded Vendor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

6.23.1.1 Commercial General Liability—Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

6.23.1.2 Each Occurrence

\$1,500,000

<u>6.24</u> Insurance Requirements: The limits listed in this RFP are minimum requirements for this Contract and in no way limit any indemnity covenants contained in this Contract. Sourcewell does not warrant that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this Contract by the Vendor, its agents, representatives, employees, or subcontractors, and the Vendor is free to purchase additional insurance as may be determined necessary.

<u>6.25</u> Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Minnesota and with an "A.M. Best" rating of not less than A- VII. Sourcewell does not warrant that the above required minimum insurer rating is sufficient to protect the Vendor from potential insurer solvency.

<u>6.26</u> Subcontractors: Vendors' certificate(s) must include all subcontractors as additional insureds under its policies, or the Vendor must furnish to Sourcewell separate certificates for each subcontractor. All coverage for subcontractors are be subject to the minimum requirements identified above.

H. ORDER PROCESS AND/OR FUNDS FLOW

<u>6.27</u> Sourcewell Members typically issue a purchase order directly to a Vendor under a Contract resulting from this RFP. Alternatively, a separate contract may be created to facilitate acquiring products or services offered in response to this RFP. Nothing in this Contract restricts the Member and Vendor from agreeing to add terms or conditions to a purchase order or a separate contract provided that such terms or conditions must not be less favorable to Sourcewell's Members.

6.28 [This section is intentionally blank.]

I. ADMINISTRATIVE FEES

<u>6.29</u> Vendors will pay to Sourcewell an administrative fee in exchange for Sourcewell facilitating this Contract with its current and potential Members. Sourcewell may grant a conditional contract award to a

Proposer if the proposed administrative fee is unclear, inadequate, or unduly burdensome for Sourcewell to administer. Sales under this Contract should not be processed until the parties resolve the administrative fee issue.

- <u>6.29.1</u> The administrative fee is typically calculated as a percentage of the dollar volume of all products and services by Sourcewell Members under this Contract, including anything represented to Sourcewell Members as falling under this Contract.
- <u>6.29.2</u> The administrative fee is included in, and not added to, the pricing included in Proposer's response to the RFP. Awarded Vendors must not charge Sourcewell Members more that permitted in the then current price list in order to offset the administrative fee.
- <u>6.29.3</u> The administrative fee is designed to cover the costs of Sourcewell's involvement in contract management, facilitating marketing efforts, Vendor training, and any order processing tasks relating to the Contract. Administrative fees may also be used for other purposes as allowed by Minnesota law.
- <u>6.29.4</u> The typical administrative fee under this Contract is two percent (2%). While Sourcewell does not dictate the particular fee percentage, we require that the Proposer articulate a specific fee in its response. For example, merely stating that "we agree to pay an administrative fee" is considered nonresponsive. Sourcewell acknowledges that the administrative fee percentage may differ between vendors, industries, and responses.
- <u>6.29.5</u> Sourcewell awarded Vendors are responsible for paying the administrative fee at least quarterly and for generating all related reporting. Vendors agree to cooperate with Sourcewell in auditing these reports to ensure that the administrative fee is paid on all items purchased under the Contract.
- 6.29.6 [This section is intentionally blank.]

6.30 through 6.32 [This section is intentionally blank.]

J. VALUE-ADDED ATTRIBUTES

- <u>6.33</u> **Desirability of Value-Added Attributes:** Value-added attributes in an RFP response will be given positive consideration in Sourcewell's evaluation process. Such attributes may increase the benefit of a product or service by improving functionality, performance, maintenance, manufacturing, delivery, energy efficiency, ordering, or other items while remaining within the scope of this RFP.
- <u>6.34</u> Women and Minority Business Enterprise (WMBE), Small Business, and Other Favored Businesses: Some Sourcewell Members give formal preference to certain types of vendors or contractors. Proposers should document WMBE (or other) status for both their organization and for any affiliates (e.g., supplier networks) involved in fulfilling the terms of this RFP. The ability of a Proposer to provide preferred business entity "credits" to Sourcewell and Sourcewell Members under a Contract will be evaluated positively by Sourcewell and reflected in the "value added" area of the evaluation.
- <u>6.35</u> Environmentally Preferred Purchasing Opportunities: Many Sourcewell Members consider the environmental impact of the products and services they purchase. "Green" characteristics demonstrated by Proposers will be evaluated positively by Sourcewell and reflected in the "value added" area of the evaluation. Please identify any green characteristics of any offering in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as green and by which certifying agency.
- <u>6.36</u> Online Requisitioning Systems: When applicable, online requisitioning systems will be viewed as a value-added characteristic. Proposers should demonstrate how their system makes online ordering easier

for Sourcewell Members, including how Members could integrate their current e-Procurement or enterprise resource planning (ERP) systems into the Proposer's ordering process.

- <u>6.37</u> **Financing:** The ability of the Proposer to provide financing solutions to Members for the products and services being proposed will be viewed as a value-added attribute.
- <u>6.38</u> **Technology**: Technological advances that appreciably improve the proposed products or services will be considered value-added attributes.

K. WAIVER OF FORMALITIES

<u>6.39</u> Sourcewell reserves the right to waive minor formalities (or to accept minor irregularities) in any proposal, when it determines that considering the proposal may be in the best interest of its Members.

7 POST-AWARD OPERATING ISSUES

A. SUBSEQUENT AGREEMENTS

- <u>7.1</u> **Purchase Order.** Purchase orders for products and services may be executed between Sourcewell Members and the awarded Vendor (or Vendor's sub-contractors) under this Contract. Sourcewell Members and Vendors must indicate on the face of such purchase orders that "This purchase order is issued under Sourcewell contract #XXXXXX" (insert the relevant contract number). Purchase order flow and procedure will be developed jointly between Sourcewell and an awarded Vendor after an award is made.
- <u>7.2</u> Governing Law. Purchase orders must be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the Member. (See also Section 8.5 of this RFP.) All provisions required by law to be included in the purchase order should be read and enforced as if they were included. If through mistake or otherwise any such provision is not included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to purchase order will be a court of competent jurisdiction with respect to the Member.
- 7.3 Additional Terms and Conditions. Additional terms and conditions to a purchase order may be proposed by Sourcewell, Sourcewell Members, or Vendors. Acceptance of these additional terms and conditions is optional to all parties to the purchase order. One purpose of these additional terms and conditions is to address job- or industry-specific requirements of law such as prevailing wage legislation. Additional terms and conditions may also include specific local policy requirements and standard business practices of the issuing Member or the Vendor. Such additional terms and conditions are not considered valid to the extent that they interfere with the general purpose, intent, or currently established terms and conditions contain in this RFP document. For example, a Vendor and Member may agree to add a "net 30" payment requirement to the purchase order instead of applying a "net 10" requirement. But the added terms and conditions must not be less favorable to the Member unless Sourcewell, the Member, and the Vendor agree to a Contract amendment or similar modification.
- 7.4 Specialized Service Requirements. In the event that the Sourcewell Member desires service requirements or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in the Contract resulting from this RFP, the Sourcewell Member and the Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by the Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the Sourcewell Member and Vendor. Sourcewell, its agents, and employees shall not be made a party to any claim for breach of such agreement. Product sourcing is not considered a service. Sourcewell Members will need to conduct procurements for any specialized services not identified as a part of or within the scope of the awarded Contract.

7.5 Performance Bond. At the request of the Member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of purchase orders for products and services. If a purchase order is cancelled for lack of a required performance bond by the member agency, Sourcewell recommends that the current pending purchase order be canceled. Each Member has the final decision on purchase order continuation. Any performance bonding required by the Member, the Member's state laws, or by local policy is to be mutually agreed upon and secured between the Vendor and the Member.

7.6 Asset Management Contracts: Asset Management-type Contracts can be initiated under a Contract resulting from this RFP at any time during the term of this Contract. Such a contract could involve, for example, picking up, storing, repairing, inventorying, salvaging, and delivery products falling within the scope of this Contract. The intention in using Asset Management Contracts is to promote the long-term efficiency of Sourcewell's contracts by (among other things) extending the use and re-use of products. Asset Management Contracts cannot be created under this Contract unless they are executed within the authorized term of a Contract resulting from this RFP. The actual term of the Asset Management Contract may, however, extend beyond the expiration date of this Contract.

B. SOURCEWELL MEMBER SIGN-UP PROCEDURE

<u>7.7</u> Awarded Vendors are responsible for familiarizing their sales and service forces with the various forms of Sourcewell membership documentation and will encourage and assist potential Members in establishing membership with Sourcewell. Sourcewell membership is available at no cost, obligation, or liability to the Member or the Vendor.

C. REPORTING OF SALES ACTIVITY

<u>7.8</u> Awarded Vendors must report at least quarterly the total gross dollar volume of all products and services purchased by Sourcewell Members as it applies to this RFP and Contract. This report must include the name and address of the purchasing agency, Member number, amount of purchase, and a description of the items purchased.

<u>7.8.1</u> **Zero sales reports**: Awarded Vendors must provide a quarterly Contract sales report regardless of the amount of sales.

D. AUDITS

7.9 Sourcewell relies substantially on the reasonable auditing efforts of both Members and awarded Vendors to ensure that Members are obtaining the products, services, pricing, and other benefits under all Sourcewell contracts. Nonetheless, the Vendor must retain and make available to Sourcewell all order and invoicing documentation related to purchases that Members make from the Vendor under the awarded Contract. Sourcewell must not request such information more than once per calendar year, and Sourcewell must make such requests in writing with at least fourteen (14) days' notice. Sourcewell may employ an independent auditor at its own expense or conduct an audit on its own. In either event, the Vendor agrees to cooperate fully with Sourcewell or its agents in order to ensure compliance with this Contract.

E. HUB PARTNER

<u>7.10</u> **Hub Partner:** Sourcewell Members may request special services through a "Hub Partner" for the purpose of complying with a law, regulation, or rule that an Sourcewell Member deems to apply in its jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, through qualifying for disadvantaged business entity credits, or through other means.

<u>7.11</u> **Hub Partner Fees:** Sourcewell Members are responsible for any transaction fees, costs, or expenses that arise under this Contract for special service provided by the Hub Partner. The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction documentation. To the extent that the

Vendor stands in the chain of title during a transaction resulting from this RFP, the documentation must clearly indicate that the transaction is "Executed for the Benefit of [Sourcewell Member name]."

F. TRADE-INS

7.12 The value in US Dollars for Trade-ins will be negotiated between Sourcewell or an Sourcewell Member, and an Awarded Vendor. That identified "Trade-In" value shall be viewed as a down payment and credited in full against the Sourcewell purchase price identified in a purchase order issued pursuant to any Awarded Sourcewell procurement contract. The full value of the trade-in will be consideration.

G. OUT OF STOCK NOTIFICATION

<u>7.13</u> The Vendor must immediately notify Sourcewell Members when they order an out-of-stock item. The Vendor must also tell the Member when the item will be available and whether there are equivalent substitutes. The Member must have the option of accepting the suggested substitute or canceling the item from the order. Under no circumstance may the Vendor make unauthorized substitutions. Unfilled or substituted items must be indicated on the packing list.

H. CONTRACT TERMINATION FOR CAUSE AND WITHOUT CAUSE

- <u>7.14</u> Sourcewell reserves the right to cancel all or any part of this Contract if the Vendor fails to fulfill any material obligation, term, or condition as described in the following procedure. Before any such termination for cause, Sourcewell will provide written notice to the Vendor, an opportunity to respond, and a reasonable opportunity to cure the breach. The following are some examples of material breaches.
 - <u>7.14.1</u> The Vendor provides products or services that do not meet reasonable quality standards and that are not remedied under the warranty;
 - <u>7.14.2</u> The Vendor fails to ship the products or to provide the services within a reasonable amount of time;
 - <u>7.14.3</u> Sourcewell reasonably believes that the Vendor will not or cannot perform to the requirements or expectations of the Contract, Sourcewell issues a request for assurance, and the Vendor fails to respond;
 - **7.14.4** The Vendor fails to fulfill any of the material terms and conditions of the Contract;
 - <u>7.14.5</u> The Vendor fails to follow the established procedure for purchase orders, invoices, or receipt of funds as established by Sourcewell and the Vendor;
 - <u>7.14.6</u> The Vendor fails to properly report quarterly sales;
 - <u>7.14.7</u> The Vendor fails to actively market this Contract within the guidelines provided in this RFP and defined in the Sourcewell contract launch.
- 7.15 Upon receipt of the written notice of breach, the Vendor will have ten (10) business days to provide a satisfactory response to Sourcewell. If the Vendor fails to reasonably address all issues in the written notice, Sourcewell may terminate the Contract immediately. If Sourcewell allows the Vendor more time to remedy the breach, such forbearance does not limit Sourcewell's authority to immediately terminate the Contract for continued breaches for which notice was given to the Vendor. Termination of the Contract for cause does not relieve either party of the financial, product, or service obligations incurred before the termination.
- 7.16 Sourcewell may terminate the Contract if the Vendor files for bankruptcy protection or is acquired by an independent third party. The Vendor must disclose to Sourcewell any litigation, bankruptcy, or

suspensions/disbarments that occur during the Contract period. Failure to disclose such information authorizes Sourcewell to immediately terminate the Contract.

- <u>7.17</u> Sourcewell may terminate the Contract without cause by giving the Vendor sixty (60) days' written notice of termination. Termination of the Contract without cause does not relieve either party of the financial, product, or service obligations incurred before the termination.
- <u>7.18</u> Sourcewell may immediately terminate any Contract without further obligation if any Sourcewell employee significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of Sourcewell has colluded with any Proposer for personal gain. Sourcewell may also immediately cancel a Contract if it finds that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor, to any employee of Sourcewell. Such terminations are effective upon written notice from Sourcewell or at a later date designated in the notice. Termination of the Contract does not relieve either party of the financial, product, or service obligations incurred before the termination.

8 GENERAL TERMS AND CONDITIONS

8. ADVERTISING A CONTRACT RESULTING FROM THIS RFP

8.1 Proposer/Vendor must not advertise or publish information concerning this Contract before the award is announced by Sourcewell. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential Sourcewell Members.

B. APPLICABLE LAW

8.2 [This section is intentionally blank.]

- **8.3** Sourcewell Compliance with Minnesota Procurement Law: Sourcewell has designed its procurement process to comply with best practices in the State of Minnesota. Sourcewell's solicitation methods are also created to comply with many of the various requirements that our Members must satisfy in their own procurement processes. But these requirements may differ considerably and may change from time to time. So each Sourcewell Member must make its own determination whether Sourcewell's solicitation process satisfies the procurement rules in the Member's jurisdiction.
- <u>8.4</u> Governing law with respect to delivery and acceptance: All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws will govern Sourcewell contracts resulting from this solicitation.
- **8.5 Jurisdiction:** Any claims that arise against Sourcewell pertaining to this RFP, and any resulting contract that develops between Sourcewell and any other party, must be brought only in courts in Todd County in the State of Minnesota unless otherwise agreed to.
 - **8.5.1** Purchase orders or other agreements created pursuant to a contract resulting from this solicitation must be construed in accordance with, and governed by, the laws of the issuing Member. Any claim arising from such a purchase order or agreement must be filed and venued in a court of competent jurisdiction of the Member unless otherwise agreed to.

8.6 through 8.7 [This section is intentionally blank.]

8.8 Indemnification: Each party is responsible for its own acts and is not responsible for the acts of the other party and the results thereof. Sourcewell's liability is governed by the Minnesota Tort Claims Act (Minn. Stat. §3.736) and other applicable law.

- **8.9 Prevailing wage:** The Vendor must comply with applicable prevailing wage legislation in effect in the jurisdiction of the Sourcewell Member. The Vendor must monitor the prevailing wage rates as established by the appropriate federal governmental entity during the term of this Contract and adjust wage rates accordingly.
- <u>8.10</u> Patent and copyright infringement: The Vendor agrees to indemnify and hold harmless Sourcewell and Sourcewell Members against any and all suits, claims, judgments, and costs instituted or recovered against the Vendor, Sourcewell, or Sourcewell Members by any person on account of the use or sale of any articles by Sourcewell or Sourcewell Members if the Vendor supplied such articles in violation of applicable patent or copyright laws.

C. ASSIGNMENT OF CONTRACT

- <u>8.11</u> No right or interest in this Contract may be assigned or transferred by the Vendor without prior written permission by Sourcewell. No delegation of any duty of the Vendor under this Contract may be made without prior written permission of Sourcewell. Sourcewell will notify Members by posting approved assignments on the Sourcewell website (www.sourcewell-mn.gov).
- **8.12** If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor-in-interest must perform all obligations under this Contract. Sourcewell reserves the right to reject the acquiring entity as a Vendor. A change of name agreement will not change the contractual obligations of the Vendor.

D. LIST OF PROPOSERS

<u>8.13</u> Sourcewell will not maintain a list of interested proposers, nor will it automatically send RFPs to them. All interested proposers must request the RFP as a result of Sourcewell's national solicitation advertisements. Because of the wide scope of the potential Members and qualified national suppliers, Sourcewell has determined this to be the best method of fairly soliciting proposals.

E. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

<u>8.14</u> The captions, illustrations, headings, and subheadings in this RFP are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

F. DATA PRACTICES

- <u>8.15</u> All materials submitted in response to this RFP become Sourcewell's property and become public records (under Minn. Stat. §13.591) after the evaluation process is completed. If the Proposer submits information in response to this RFP that it requests to be classified as nonpublic information (as defined by the Minnesota Government Data Practices Act, Minn. Stat. §13.37), the Proposer must meet the following requirements.
 - **8.15.1** The Proposer must make the request within thirty (30) days of the award/nonaward notification, and include the appropriate statutory justification. Pricing, marketing plans, and financial information is generally not redactable. The Sourcewell Legal Department will review the request to determine whether the information can be withheld or redacted. If Sourcewell determines that it must disclose the information upon a proper request for such information, Sourcewell will inform the Proposer of such determination.
 - **8.15.2** The Proposer must defend any action seeking release of the materials that it believes to be nonpublic information, and it must indemnify and hold harmless Sourcewell, its agents, and employees, from any judgments or damages awarded against Sourcewell in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the term of any contract awarded under this RFP. In submitting a response to this RFP.

the Proposer agrees that this indemnification survives as long as Sourcewell possesses the confidential information.

8.16 [This section is intentionally blank.]

G. ENTIRE AGREEMENT

8.17 This Contract, as defined herein, constitutes the entire agreement between the parties to this Contract. A Contract resulting from this RFP is formed when the vendor, Sourcewell Executive Director and Chief Procurement Officer approves and signs the applicable Contract Award & Acceptance document (Form E).

H. FORCE MAJEURE

8.18 Except for payments of sums due, neither party is liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented due to force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence including, but not limited to, the following: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure is deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and is deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure does not include late deliveries of products and services caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party must (if possible) notify the other party of such delay within forty-eight (48) hours.

8.19 through 8.20 [These sections are intentionally blank.]

I. LICENSES

- **8.21** The Vendor must maintain a valid status on all required federal, state, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Sourcewell Members.
- **8.22** All responding Proposers must be licensed (where required) and must have the authority to sell and distribute the offered products and services to Sourcewell and Sourcewell Members. Documentation of the required licenses and authorities, if applicable, should be included in the Proposer's response to this RFP.

J. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

8.23 The awarded Vendor must supply the names and addresses of sourcing suppliers and sub-contractors as a part of the purchase order when requested by Sourcewell or a Sourcewell Member.

K. NON-WAIVER OF RIGHTS

8.24 No failure of either party to exercise any power given to it hereunder, nor a failure to insist upon strict compliance by the other party with its obligations hereunder, nor a custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP constitutes a waiver of either party's right to demand exact compliance with the terms hereof. Failure by Sourcewell to take action or to assert any right hereunder does not constitute a waiver of such right.

L. PROTESTS OF AWARDS MADE

- 8.25 Any protests must be filed with Sourcewell's Executive Director and must be resolved in accordance with appropriate Minnesota rules. Protests will only be accepted from Proposers. A protest of an award or nonaward must be filed in writing with Sourcewell within ten (10) calendar days after the public notice or announcement of the award or nonaward. A protest must include the following items.
 - **8.25.1** The name, address, and telephone number of the protester;
 - **8.25.2** The original signature of the protester or its representative (you must document the authority of the representative);
 - **8.25.3** Identification of the solicitation by RFP number;
 - **8.25.4** Identification of the statute or procedure that is alleged to have been violated;
 - **8.25.5** A precise statement of the relevant facts;
 - **8.25.6** Identification of the issues to be resolved;
 - <u>8.25.7</u> The aggrieved party's argument and supporting documentation;
 - **8.25.8** The aggrieved party's statement of potential financial damages; and
 - **8.25.9** A protest bond in the name of Sourcewell and in the amount of 10% of the aggrieved party's statement of potential financial damages.

M. SUSPENSION OR DISBARMENT STATUS

8.26 If within the past five (5) years, any firm, business, person or Proposer responding to a Sourcewell solicitation has been lawfully terminated, suspended, or precluded from participating in any public procurement activity with a federal, state, or local government or education agency, the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose pertinent information may result in the termination of a Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

N. AFFIRMATIVE ACTION AND IMMIGRATION STATUS CERTIFICATION

- <u>8.27</u> An Affirmative Action Plan, Certificate of Affirmative Action, or other documentation regarding Affirmative Action may be required by Sourcewell or Sourcewell Members relating to a transaction from this RFP. Vendors must comply with any such requirements or requests.
- **8.28** Immigration Status Certification may be required by Sourcewell or Sourcewell Members relating to a transaction from this RFP. Vendors must comply with any such requirements or requests.

O. SEVERABILITY

8.29 In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, or statutory provision, or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms will be deemed stricken from the Contract, but such invalidity or unenforceability shall not invalidate any of the other terms of an awarded Contract resulting from this RFP.

P. RELATIONSHIP OF PARTIES

8.30 No Contract resulting from this RFP may be considered a contract of employment. The relationship between Sourcewell and an awarded Vendor is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties neither intend the proposed Contract to create, nor is to be construed as creating, a partnership, joint venture, master-servant, principal-agent, or any other, relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation, or otherwise in any manner whatsoever except as may be expressly provided herein.

Q. PROVISIONS FOR NON-FEDERAL ENTITY PROCUREMENTS UNDER FEDERAL AWARDS OR OTHER AWARDS; AIRPORT IMPROVEMENT PROGRAM PROVISIONS

8.31 Procurements by Sourcewell or Sourcewell Members utilizing funds under a federal grant or contract may be subject to specific federal laws, regulations, and requirements in addition to those under state and local laws. Applicable law may include, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR Part 200 (also referred to as the "Uniform Guidance" or "EDGAR"). The terms included in this section express Proposers willingness and ability to comply with certain requirements which may be applicable to specific Sourcewell Member purchases using federal grant or contract dollars. Sourcewell Members may also require Proposers to enter into ancillary agreements, in addition to the Sourcewell contract's general terms and conditions, to address the Member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts. Sourcewell reserves the right at any time within a contract term to require an awarded Vendor to reaffirm or resubmit proper documentation relating to these requirements. The numbering and identification contained within this section is only for reference purposes and does not identify any actual Federal designation or location of the rule. Rules are located in 2 CFR Part 200.

8.32 Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Sourcewell reserves all rights and privileges under the applicable laws and regulations with respect to this procurement process in the event of breach of contract by either party.

8.33 Contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Sourcewell reserves the right to terminate any agreement resulting from this procurement process pursuant to Sourcewell RFP sections 7.13 and 7.17. Prior to any termination for cause, Sourcewell will provide written notice to the Proposer, opportunity to respond and opportunity to cure. Sourcewell reserves the right to terminate any agreement resulting from this procurement process without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

8.34 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." This provision is hereby incorporated by reference into all applicable contracts.

The equal opportunity clause is incorporated by reference herein.

8.35 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Proposer shall be in compliance with all applicable Davis-Bacon Act provisions.

8.36 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into all applicable contracts.

Proposer certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Proposer shall comply with applicable requirements as referenced above.

8.37 Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Proposer certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Proposer shall comply with applicable requirements as referenced above.

8.38 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387).

Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Proposer certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Proposer shall comply with applicable requirements as referenced above.

8.39 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Proposer nor its principals shall be presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

8.40 Byrd Anti-Lobbying Amendment, as amended (31 U.S.C. 1352). Proposers shall file any required certifications. Proposers shall not have 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. Proposers shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Proposers shall file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

- **8.41** Record Retention Requirements. To the extent applicable, Proposer shall comply with the record retention requirements detailed in 2 CFR § 200.333. The Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.
- **8.42** Energy Policy and Conservation Act Compliance. To the extent applicable, Proposer shall comply with the 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.
- **8.43** Buy American Provisions Compliance. To the extent applicable, Proposer agrees to comply with 49 U.S.C. § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list. Purchases made in accordance with the Buy American Act shall follow the applicable procurement rules calling for free and open competition.
- **8.44** Title VI Solicitation Notice. Sourcewell, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises or airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- **<u>8.45</u>** Trade Restriction Certification. To the extent applicable, Proposer will comply with the provision in 49 U.S.C. § 50104 regarding certification and notice requirements for firm ownership or control by one or

more citizens of a foreign county listed by the Office of the United States Trade Representative as discriminating against U.S. firms.

<u>8.46</u> Procurement of Recovered Materials. To the extent applicable, Proposer agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247.

<u>8.47</u> Access to Records (2 CFR § 200.336). Proposer agrees that duly authorized representatives of an Agency shall have access to any books, documents, papers and records of Proposer that are directly pertinent to Proposer's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Proposer's personnel for the purpose of interview and discussion relating to such documents.

9 FORMS

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Form A

PROPOSER OUESTIONNAIRE- General Business Information

Item 12.

(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on Form P)

Proposer Name:Q	uestionnaire completed by:
Please identify the person Sourcewell should correspond	nd with from now through the Award process:
Name:	E-Mail address:

Please answer and submit the electronic version of the questions below in Microsoft Word® This allows Sourcewell evaluators to cut and paste your answers into a separate worksheet. Place your answer directly below each question. Sourcewell prefers a brief but thorough response to each question. Please do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; mark "NA" if the question does not apply to you (preferably with an explanation). Please create a response that is easy to read and understand. For example, you may consider using a different font and color to distinguish your answer from the questions.

Company Information & Financial Strength

- 1) Provide the full legal name, mailing and email addresses, tax identification number, and telephone number for your business.
- 2) Provide a brief history of your company, including your company's core values, business philosophy, and longevity in the HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES industry.
- 3) Provide a detailed description of the products and services that you are offering in your proposal.
- 4) What are your company's expectations in the event of an award?
- 5) Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters.
- 6) What is your US market share for the solutions that you are proposing? What is your Canadian market share, if any?
- 7) Has your business ever petitioned for bankruptcy protection? Please explain in detail.
- 8) How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization.
 - a) If your company is best described as a distributor/dealer/reseller (or similar entity), please provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned?
 - b) If your company is best described as a manufacturer or service provider, please describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?
- 9) If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.
- 10) Provide all "Suspension or Disbarment" information that has applied to your organization during the past ten years.
- 11) Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.

Industry Recognition & Marketplace Success

- 12) Describe any relevant industry awards or recognition that your company has received in the past five years.
- 13) Supply three references/testimonials from your customers who are eligible for Sourcewell membership. At a minimum, please include the entity's name, contact person, and phone number.
- 14) Provide a list of your top five governmental or educational customers (entity name is optional), including entity type, the state the entity is located in, scope of the projects, size of transactions, and dollar volumes from the past three years.
- 15) Indicate separately what percentages of your sales are to the government and education sectors in the past three years?
- 16) List any state or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?
- 17) List any GSA contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?

Proposer's Ability to Sell and Deliver Service Nationwide

- 18) Describe your company's capability to meet Sourcewell Member's needs across the country. Your response should address at least the following areas.
 - a) Sales force.
 - b) Dealer network or other distribution methods.
 - c) Service force.
 - Please include details, such as the locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.
- 19) Describe in detail the process and procedure of your customer service program, if applicable. Please include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.
- 20) a) Identify any geographic areas of the United States that you will NOT be fully serving through the proposed contract. b) Identify any Sourcewell Member sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Please explain your answer. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?
- 21) Define any specific contract requirements or restrictions that would apply to our Members in Hawaii and Alaska and in US Territories.

Marketing Plan

- 22) If you are awarded a contract, how will you train your sales management, dealer network, and direct sales teams (whichever apply) to ensure maximum impact? Please include how you will communicate your Sourcewell pricing and other contract detail to your sales force nationally.
- 23) Describe your marketing strategy for promoting this contract opportunity. Please include representative samples of your marketing materials in electronic format.
- 24) Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.

- 25) In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?
- 26) Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.

Value-Added Attributes

- 27) Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell Members. Please include details, such as whether training is standard or optional, who provides training, and any costs that apply.
- 28) Describe any technological advances that your proposed products or services offer.
- 29) Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.
- 30) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) certifications that your company or hub partners have obtained.
- 31) What unique attributes does your company, your products, or your services offer to Sourcewell Members? What makes your proposed solutions unique in your industry as it applies to Sourcewell members?
- 32) Identify your ability and willingness to provide your products and services to Sourcewell member agencies in Canada.
- 33) Sourcewell Members may intend to use funds from a federal grant or contract under the Federal Emergency Management Agency (FEMA). In that event, state your ability and willingness to complete, execute, and provide the "Required FEMA Terms and Conditions Certification" form attached as Appendix D to the RFP.

NOTE: Questions regarding Payment Terms, Warranty, Products/Equipment/Services, Pricing and Delivery, and Industry Specific Items are addressed on Form P.

Signature:	Date:	

Form B

PROPOSER INFORMATION



Company Name:		
Phone:		
Toll-Free Number:	E-mail:	
Website Address:		
	COMPANY PERSONNEL CONTACTS	
Authorized signer for your organ	<u>ization</u>	
Name:		
	Phone:	
Who prepared your RFP respons	<u>e?</u>	
Name:	Title:	
Email:		
Who is your company's primary	contact person for this proposal?	
Name:	Title:	
Email:	Phone:	
Other important contact informa	<u>tion</u>	
Name:	Title:	
Email:		
Name:	Title:	
Email:		

Form C

EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS, AND SOLUTIONS REQUEST



tion/page Specification Exception ACCEPTS ACCEPTS		Term, Condition, or		Sourcewell
	ection/page		Exception	ACCEPTS
	oser's Signatu	ıre:		Date:
Sourcewell's clarification on exceptions listed above:		-		
	Sourcewel	l's clarification on exceptions listed	l above:	

Contract Award RFP #032119

FORM D



Formal Offering of Proposal

(To be completed only by the Proposer)

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

In compliance with the Request for Proposal (RFP) for HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES, the undersigned warrants that the Proposer has examined this RFP and, being familiar with all of the instructions, terms and conditions, general and technical specifications, sales and service expectations, and any special terms, agrees to furnish the defined products and related services in full compliance with all terms and conditions of this RFP, any applicable amendments of this RFP, and all Proposer's response documentation. The Proposer further understands that it accepts the full responsibility as the sole source of solutions proposed in this RFP response and that the Proposer accepts responsibility for any subcontractors used to fulfill this proposal.

Company Name:	Date:	
Company Address:		
City:	State:	Zip:
CAGE Code/DUNS:		
Contact Person:	Title:	
Authorized Signature:		
		(Name printed or typed)

FORM E

CONTRACT ACCEPTANCE AND AWARD



(Top portion of this form will be completed by Sourcewell if the vendor is awarded a contract. The vendor should complete the vendor authorized signatures as part of the RFP response.)

Sourcewell Contract #: 032119-XXX

Proposer's full legal name: TBD

Based on Sourcewell's evaluation of your proposal, you have been awarded a contract. As an awarded vendor, you agree to provide the products and services contained in your proposal and to meet all of the terms and conditions set forth in this RFP, in any amendments to this RFP, and in any exceptions that are accepted by Sourcewell.

The effective date of the Contract will be MM DD, YYYY and will expire on MM DD, YYYY (no later than the later of four years from the expiration date of the currently awarded contract or four years from the date that the Sourcewell Chief Procurement Officer awards the Contract). This Contract may be extended for a fifth year at Sourcewell's discretion.

Sourcewell Authorized Signatures:	
SOURCEWELL DIRECTOR OF COOPERATIVE CONTRACTS AND PROCUREMENT/CPO SIGNATURE	Jeremy Schwartz (NAME PRINTED OR TYPED)
SOURCEWELL EXECUTIVE DIRECTOR/CEO SIGNATURE	Chad Coauette (NAME PRINTED OR TYPED)
Awarded on MM DD, YYYY	Sourcewell Contract # 032119-XXX
Vendor Authorized Signatures:	
The Vendor hereby accepts this Contract award, i	ncluding all accepted exceptions and amendments.
Vendor Name	
Authorized Signatory's Title	
VENDOR AUTHORIZED SIGNATURE	(NAME PRINTED OR TYPED)
Executed on 20	Sourcewell Contract # 032119-XXX



Form F

PROPOSER ASSURANCE OF COMPLIANCE

Proposal Affidavit Signature Page

PROPOSER'S AFFIDAVIT

The undersigned, authorized representative of the entity submitting the foregoing proposal (the "Proposer"), swears that the following statements are true to the best of his or her knowledge.

- 1. The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering any products and related services, all applicable licenses necessary for such delivery to Sourcewell members agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer to the terms in this Contract.
- 2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of Sourcewell, or any person, firm, or corporation under contract with Sourcewell, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.
- 3. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted in writing and have been included with the Proposer's RFP response.
- 4. The Proposer will, if awarded a Contract, provide to Sourcewell Members the /products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.
- 5. The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
- 6. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
- 7. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
- 8. The Proposer understands that it is the Proposer's duty to protect information that it considers nonpublic, and it agrees to defend and indemnify Sourcewell for reasonable measures that Sourcewell takes to uphold such a data designation.

[The rest of this page has been left intentionally blank. Signature page below]

By signing below, Proposer is acknowledging that he or she has read, understands, and agrees to comply with the terms and conditions specified above.

Company Name:		
Address:		
City/State/Zip:		
Telephone Number:		
E-mail Address:		
Authorized Signature:		
Authorized Name (printed):		
Title:		
Date:		
Notarized		
Subscribed and sworn to before me this	day of	, 20
Notary Public in and for the County of		State of
My commission expires:		
C'		



Form G

OVERALL EVALUATION AND CRITERIA

For the Proposed Subject HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

Conformance to RFP Terms and Conditions	50	
Financial Viability and Marketplace Success	75	
Ability to Sell and Deliver Service Nationwide	100	
Marketing Plan	50	
Value-Added Attributes	75	
Warranty	50	
Depth and Breadth of Offered Products and Related Services	200	
Pricing	400	
TOTAL POINTS	1000	

Reviewed by:	Its	
	Its	



Form P

PROPOSER QUESTIONNAIRE

Payment Terms, Warranty, Products and Services, Pricing and Delivery, and Industry-Specific Questions

Proposer Name:	
Questionnaire completed by:	

Payment Terms and Financing Options

- 1) What are your payment terms (e.g., net 10, net 30)?
- 2) Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?
- 3) Briefly describe your proposed order process. Please include enough detail to support your ability to report quarterly sales to Sourcewell. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell Members' purchase orders.
- 4) Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell Members for using this process?

Warranty

- 5) Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may include in your response a copy of your warranties, but at a minimum please also answer the following questions.
 - Do your warranties cover all products, parts, and labor?
 - Do your warranties impose usage restrictions or other limitations that adversely affect coverage?
 - Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?
 - Are there any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell Members in these regions be provided service for warranty repair?
 - Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?
 - What are your proposed exchange and return programs and policies?
- 6) Describe any service contract options for the items included in your proposal.

Pricing, Delivery, Audits, and Administrative Fee

- 7) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.
- 8) Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. (Keep in mind

that reasonable price and product adjustments can be made during the term of an awarded Contract. See the body of the RFP and the Price and Product Change Request Form for more detail.)

- 9) Please quantify the discount range presented in this response. For example, indicate that the pricing in your response represents is a 50% percent discount from the MSRP or your published list.
- 10) The pricing offered in this proposal is

 a. the same as the Proposer typically offers to an individual municipality, university, or school district.
 b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
 c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
d. other than what the Proposer typically offers (please describe).

- 11) Describe any quantity or volume discounts or rebate programs that you offer.
- 12) Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.
- 13) Identify any total cost of acquisition costs that are <u>NOT</u> included in the pricing submitted with your response. This cost includes all additional charges that are not directly identified as freight or shipping charges. For example, list costs for items like installation, set up, mandatory training, or initial/pre-delivery inspection. Identify any parties that impose such costs and their relationship to the Proposer.
- 14) If travel expense, delivery or shipping is an additional cost to the Sourcewell Member, describe in detail the complete travel expense, shipping and delivery program.
- 15) Specifically describe those travel expense, shipping and delivery programs for Alaska, Hawaii, Canada, or any offshore delivery.
- 16) Describe any unique distribution and/or delivery methods or options offered in your proposal.
- 17) Please specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.
- 18) Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See RFP Section 6.29 and following for details.)

Industry-Specific Questions

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17		scribe air	v muusu	v-soccine u	iuaiiiv	management	SVSICIII	certifications	Obtained	Dv voui	Organization.

- 20) Describe any environmental management system certifications obtained by your organization.
- 21) Describe any preventive maintenance programs that your organization offers for the solutions you are proposing in your response.

Signature:	Date:	
orginarare.	Buter	



10 PRE-SUBMISSION CHECKLIST

Check when Completed	Contents of Your Bid Proposal	Hard Copy Required Signed and Dated	Electronic Copy Required – Flash Drive or CD
Completed	Form A: Proposer Questionnaire with all	Signed and Dated	Dilve of CD
	questions answered completely	X – signature page only	X
	questions answered completely	A – signature page only	X
			A
	Form B: Proposer Information		**
	Form C: Exceptions to Proposal, Terms,		X
	Conditions, and Solutions Request	X	
			X
	Form D: Formal Offering of Proposal	X	
	Form E: Contract Acceptance and Award		X
	Form F: Proposers Assurance of Compliance	X	X
	Form P: Proposer Questionnaire with all		
	questions answered completely	X – signature page only	X
	Certificate of Insurance with \$1.5 million	v	v
	coverage	X	X
	Copy of all RFP Addendums issued by		
	Sourcewell	X	X
	Pricing for all Products/Equipment/Services		
	within the RFP being proposed		X
	Entire Proposal submittal including signed		v
	documents and forms		X
	A11.6 1.4 H 10 B 1.101		
	All forms in the Hard Copy Required Signed		
	and Dated should be inserted in the front of		
	the submitted response, unbound		
	Package containing your proposal labeled and sealed with the following language:		
	"Competitive Proposal Enclosed, Hold for		
	Public Opening XX-XX-XXXX"		
	Response Package mailed and delivered		
	prior to deadline to:		
	Sourcewell, 202 12 th St NE, PO Box 219		
	Staples, MN 56479		

11 SOURCEWELL VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 1. Instructions for Vendor

Requests for product or service changes, additions, or deletions will be considered at any time throughout the awarded contract term. All requests must be made in writing by completing sections 2, 3, and 4 of this Sourcewell Price and Product Change Request Form and signed by an authorized Vendor representative in section 5. All changes are subject to review by the Sourcewell Procurement Manager and to approval by Sourcewell's Chief Procurement Officer. Submit request through email to your assigned Sourcewell Contract Administrator.

Sourcewell will determine whether the request is 1) within the scope of the original RFP, and 2) in the best interests of Sourcewell and Sourcewell Members. Approved Price and Product Change Request Forms will be signed and emailed to the Vendor contact.

The Vendor must complete this change request form and individually list or attach all items or services subject to change, must provide sufficiently detailed explanation and documentation for the change, and must include a complete restatement of pricing documentation in an appropriate format (preferably Microsoft® Excel®). The pricing document must identify all products and services being offered and must conform to the following Sourcewell product/price change naming convention: (Vendor Name) (Sourcewell Contract #) (effective pricing date); for example, "Acme Widget Company #012416-AWC eff. 01-01-2017."

NOTE: New pricing restatements must include all products and services offered regardless of whether their prices have changed and must include a new "effective date" on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each Vendor and creates a historical record of pricing.

ADDITIONS. New products and related services may be added to a contract if such additions are within the scope of the original RFP.

DELETIONS. New products and related services may be deleted from a contract if, for example, they are no longer available or have been modified to a point where they are outside the scope of the RFP.

PRICE CHANGES: Vendors may request price changes if they provide sufficient rationale for the change. For example, a Vendor that manufactures products that require substantial petroleum-related material might request a 3% price increase because of a 20% increase in petroleum costs.

Price decreases: Sourcewell expects Vendors to propose their very best prices and anticipates that price reductions might occur because of improved technologies or marketplace efficiencies.

Price increases: Acceptable price increases typically result from specific Vendor cost increases. The Vendor must include reasonable justification for the price increase and must not, for example, offer merely generalized statements about an increase in a cost-of-living index. Appropriate documentation should be attached to this form, including such items as letters from suppliers announcing price increases.

Refer to the RFP for complete "Pricing" details.

Section 2. Vendor Name and Type of Change Request

	CHECK ALL CHANGES THAT APPLY:
AWARDED VENDOR NAME:	☐ Adding Products/Services vices
	☐ Deleting Products/Services
	☐ Price Increase
SOURCEWELL CONTRACT NUMBER:	☐ Price Decrease

Section 3. Detailed Explanation of Need for Changes

List the products and/or services that are changing or being added or deleted from the previous contract price list, along with the percentage change for each item or category. (Attach a separate, detailed document if changing more than 10 items.)
Provide a general statement and documentation explaining the reasons for these price and/or product changes. EXAMPLES: 1) "All pricing for paper products and services are increased 5% because of increased raw material and transportation costs (see attached documentation of fuel and raw materials increase)." 2) "The 6400 series floor polisher is being added to the product list as a new model, replacing the 5400 series. The 6400 series 3% increase reflects technological changes that improve the polisher's efficiency and useful life. The 5400 series is now included in the "Hot List" at a 20% discount from the previous pricing until the remaining inventory is liquidated."
If adding products, state how these are within the scope of the original RFP.
If changing prices or adding products or services, state how the pricing is consistent with existing Sourcewell contract pricing.

Section 4. Complete Restatement of Pricing Submitted

A COMPLETE restatement of the pricing, including all new and and has been emailed to the Vendor's Contract Administrator.	existing products and services is attached
□ Yes □ No	
Section 5. Signatures	
Vendor Authorized Signature	Date
Print Name and Title of Authorized Signer	
Jeremy Schwartz Sourcewell Director of Cooperative Contracts and Procurement/CPO	Date



Appendix A

Sourcewell on behalf of itself and its current and potential Member agencies, which includes all governmental, higher education, K-12 education, not-for-profit, tribal governmental, and all other public agencies located in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national contract solution.

For your reference, the links below include some, but not all, of the entities included in this proposal.

http://www.usa.gov/Agencies/Local Government/Cities.shtml

http://nces.ed.gov/globallocator/

https://www.census.gov/2010census/partners/pdf/FIPS StateCounty Code.pdf

http://nccs.urban.org/sites/all/nccs-archive/html//PubApps/search.php

https://www.usa.gov/tribes#item-37647

http://www.usa.gov/Agencies/State-and-Territories.shtml

Oregon

Hawaii

Washington



Appendix B - Political Subdivision List for HI, ID, OR, SC, UT, WA

Hawaii	ldaho	Oregon	South Carolina	Utah	Washington
	County	County	County	County	County
Hawaii County	Ada County	Baker County	Abbeville County	Beaver County	Adams County
Kauai County	Adams County	Benton County	Aiken County	Box Elder County	Asotin County
Maui County	Bannock County	Central Oregon Intergovernmental Council	Allendale County	Cache County	Benton County
Aunicipality	Bear Lake County	Clackamas County	Anderson County	Carbon County	Chelan County
City and County of Honolulu	Benewah County	Clackamas County Service District No. 1	Bamberg County	Daggett County	Clallam County
gher Education	Bingham County	Clatsop County	Barnwell County	Davis County	Clark County
Hawaii Community College	Blaine County	Columbia County	Beaufort County	Duchesne County	Columbia County
Honolulu Community College	Boise County	Coos County	Berkeley County	Duchesne County Special Service District No. 2	Cowlitz County
University of Hawaii	Bonner County	Crook County	Calhoun County	Emery County	Douglas County
University of Hawaii Research Corporation	Bonneville County	Curry County	Catawba Regional Council of Governments	Five County Association of Governments	Ferry County
Windward Community College	Boundary County	Deschutes County	Central Midlands Council of Governments	Garfield County	Franklin County
ucation (K-12)	Butte County	Douglas County	Charleston County	Grand County	Garfield County
Hanalani Schools	Camas County	Gilliam County	Cherokee County	Iron County	Grant County
Camehameha Schools	Canyon County	Grant County	Chester County	Juab County	Gravs Harbor County
ecial District	Caribou County	Harney County	Chesterfield County	Kane County	Island County
lawaii Community Development Authority	Cassia County	Hood River County	Clarendon County	Millard County	Jefferson County
awaii Public Housing Authority	Clark County	Jackson County	Colleton County	Morgan County	King County
lawaii Tourism Authority	Clearwater County	Jefferson County	Darlington County	Piute County	King County Directors' Association
onolulu Authority for Rapid Transportation	Custer County	Josephine County	Dillon County	Rich County	Kitsap County
atural Energy Laboratory of Hawaii Authority	Elmore County	Klamath County	Dorchester County	Salt Lake County	Kittitas County
e	Franklin County	Lake County	Edgefield County	San Juan County	Klickitat County
lawaii Department of Accounting and General Services	Fremont County	Lane Council of Governments	Fairfield County	Sanpete County	Lewis County
lawaii Department of Finance and Administration	Gem County	Lane County	Florence County	Sevier County	Lincoln County
lawaii Department of Health	Gooding County	Lincoln County	Georgetown County	Summit County	Mason County
lawaii Employer-Union Health Benefits Trust Fund	Idaho County	Linn County	Greenville County	Tooele County	Okanogan County
lawaii Health Systems Corporation	Jefferson County	Malheur County	Greenwood County	Uintah County	Pacific County
tate Of Hawaii	Jerome County	Marion County	Hampton County	Utah County	Pend Oreille County
	Kootenai County	Marion County Housing Authority	Horry County	Wasatch County	Pierce County
	Latah County	Morrow County	Jasper County	Washington County	San Juan County
	Lemhi County	Multnomah County	Kershaw County	Wayne County	Skagit County
	Lewis County	Polk County	Lancaster County	Weber County	Skamania County
	Lincoln County	Sherman County	Laurens County	Municipality	Snohomish County
	Madison County	Tillamook County	Lee County	Centerfield City	Spokane County
	Minidoka County	Umatilla County	Lexington County	City of Alpine City	Stevens County
	Nez Perce County	Union County	Lower Savannah Council of Governments	City of American Fork	Thurston County
	Oneida County	Wallowa County	Marion County	City of Aurora	Thurston Regional Planning Council
	Owyhee County	Wasco County	Marlboro County	City of Ballard	Wahkiakum County
	Payette County	Washington County	McCormick County	City of Beaver	Walla Walla County
	Power County	Wheeler County	Newberry County	City of Blanding	Whatcom County
	Shoshone County	Yamhill County	Oconee County	City of Bluffdale	Whitman County
	Teton County	Municipality	Orangeburg County	City of Bountiful	Yakima County
	Twin Falls County	City of Adair Village	Pickens County	City of Brigham	Yakima County Public Services
	Valley County	City of Adrian	Richland County	City of Castle Dale	Yakima Valley Conference of Governments
	Washington County	City of Albany	Saluda County	City of Cedar City	Municipality
	Municipality	City of Amity	Spartanburg County	City of Cedar Hills	City of Aberdeen
	City of Aberdeen	City of Arlington	Sumter County	City of Centerville	City of Aberdeen City of Airway Heights
	City of Albion	City of Ashland	Union County	City of Clearfield	City of Algona
	City of American Falls	City of Astoria	Williamsburg County	City of Clinton	City of Anacortes
	City of Ammon	City of Athena	York County	City of Coalville	City of Arlington
	City of Arco	City of Aumsville	Municipality	City of Colorado City	City of Asotin
	City of Arimo	City of Aurora	City of Abbeville	City of Corinne City	City of Auburn
	City of Ashton	City of Baker City	City of Aiken	City of Cottonwood Heights	City of Bainbridge Island
	City of Athol				
		City of Bandon	City of Anderson	City of Delta	
		City of Bandon	City of Anderson	City of Delta	City of Battle Ground
	City of Atomic City	City of Banks	City of Barnwell	City of Draper	City of Battle Ground City of Bellevue
	City of Atomic City City of Bancroft	City of Banks City of Bay City	City of Barnwell City of Beaufort	City of Draper City of Duchesne	City of Battle Ground City of Bellevue City of Bellingham
	City of Atomic City City of Bancroft City of Bellevue	City of Banks City of Bay City City of Beaverton	City of Barnwell City of Beaufort City of Belton	City of Draper City of Duchesne City of East Carbon	City of Battle Ground City of Bellevue City of Bellingham City of Benton City
	City of Atomic City City of Bancroft City of Bellevue City of Blackfoot	City of Banks City of Bay City City of Beaverton City of Bend	City of Barnwell City of Beaufort City of Belton City of Bennettsville	City of Draper City of Duchesne City of East Carbon City of Elik Ridge	City of Battle Ground City of Bellevue City of Bellingham City of Benton City City of Benton City City of Benton City City of Bingen
	City of Atomic City City of Bancroft City of Bellevue City of Blackfoot City of Bliss	City of Banks City of Bay City City of Beaverton City of Bend City of Boardman	City of Barnwell City of Beaufort City of Belton City of Benettsville City of Bennettsville City of Bishopville	City of Draper City of Duchesne City of East Carbon City of Elik Ridge City of Elik Ridge City of Elimo	City of Battle Ground City of Bellevue City of Bellingham City of Benton City City of Benton City City of Bingen City of Bingen City of Bingen
	City of Atomic City City of Bancroft City of Bellevue City of Bilackfoot City of Biliss City of Bilomington	City of Banks City of Bay City City of Bawerton City of Bend City of Bend City of Boardman City of Boardman	City of Barnwell City of Beaufort City of Belton City of Benettsville City of Bennettsville City of Bishopville City of Mishopville City of Camden	City of Draper City of Druchesne City of East Carbon City of Elik Ridge City of Elimo City of Elimo City of Elmo City of Elmo	City of Battle Ground City of Bellenue City of Bellingham City of Benton City City of Bingen City of Bingen City of Black Diamond City of Blaine
	City of Atomic City City of Bancroft City of Believue City of Bilackfoot City of Bilackfoot City of Bilack City of Biloomington City of Biloomington City of Biloomington	City of Banks City of Bay City City of Beaverton City of Bend City of Bend City of Borardman City of Brookings City of Brookings City of Brookings	City of Barnwell City of Beaufort City of Belton City of Bentetsville City of Bentestsville City of Bishopville City of Camden City of Camden City of Cayee	City of Draper City of Duchesne City of East Carbon City of East Kidge City of Ein Midge City of Elmo City of Elmo City of Elmo City of Elmo City of Cincerprise	City of Battle Ground City of Bellevue City of Bellingham City of Benton City City of Bingen City of Bingen City of Black Diamond City of Blaine City of Blaine City of Blaine
	City of Atomic City City of Bancroft City of Bellevue City of Bilackfoot City of Biliss City of Bilomington	City of Banks City of Bay City City of Bawerton City of Bend City of Bend City of Boardman City of Boardman	City of Barnwell City of Beaufort City of Belton City of Benettsville City of Bennettsville City of Bishopville City of Mishopville City of Camden	City of Draper City of Druchesne City of East Carbon City of Elik Ridge City of Elimo City of Elimo City of Elmo City of Elmo	City of Battle Ground City of Bellenue City of Bellingham City of Benton City City of Brigge City of Black Diamond City of Black Diamond City of Black Diamond
	City of Atomic City City of Bancroft City of Believue City of Bilackfoot City of Bilackfoot City of Bilack City of Biloomington City of Biloomington City of Biloomington	City of Banks City of Bay City City of Beaverton City of Bend City of Bend City of Borardman City of Brookings City of Brookings City of Brookings	City of Barnwell City of Beaufort City of Belton City of Bentetsville City of Bentestsville City of Bishopville City of Camden City of Camden City of Cayee	City of Draper City of Duchesne City of East Carbon City of East Kidge City of Ein Midge City of Elmo City of Elmo City of Elmo City of Elmo City of Cincerprise	City of Battle Ground City of Bellevue City of Bellingham City of Benton City City of Bingen City of Bingen City of Black Diamond City of Blaine City of Blaine City of Blaine
	City of Atomic City City of Bancroft City of Believue City of Blackfoot City of Bliss City of Bliss City of Bloomington City of Boise City of Boise	City of Banks City of Bay City City of Beaverton City of Bend City of Bend City of Broardman City of Brookings City of Brownsville	City of Barnwell City of Beaufort City of Betton City of Benetstville City of Benoperille City of Camden City of Cayee City of Cayee City of Cayee	City of Draper City of Duchesne City of East Carbon City of Elik Ridge City of Elmo City of Enoch City of Enoch City of Enoch City of Enterprise City of Enterprise City of Epriaim	City of Battle Ground City of Bellerue City of Bellergham City of Benton City City of Benton City City of Bingen City of Black Diamond City of Black City of Bonney Lake
	City of Atomic City City of Bancroft City of Believue City of Blackfoot City of Bliss City of Bliss City of Bliss City of Bliss City of Boise City of Boise City of Boise City of Bowlie City of Bowlie City of Bowlie City of Bowli	City of Banks City of Bay City City of Bay City City of Beaverton City of Beard City of Beardman City of Brookings City of Brownsville City of Brownsville City of Brownsville City of Canby City of Canby City of Canby	City of Barnwell City of Beaufort City of Benettsville City of Benettsville City of Camden City of Camden City of Camden City of Cayce City of Chesnee City of Chesnee City of Chester	City of Draper City of Duchesne City of East Carbon City of Elik Ridge City of Elmo City of Ennch City of Ennch City of Enterprise City of Enterprise City of Escalante City of Escalante City of Excalante City of Excalante	City of Battle Ground City of Bellenue City of Bellengham City of Benton City City of Benton City City of Bingen City of Bingen City of Bingen City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremerton
	City of Atomic City City of Sancoroft City of Salexone City of Salexone City of Blacktone City of Blacktone City of Blacktone City of Bloomington City of Bose City of Bull City of Bull City of Burley	City of Banks City of Baswerton City of Baswerton City of Bend City of Bardman City of Bardman City of Bardman City of Bardman City of Brookings City of Burns City of Cannon Beach City of Cannon Beach City of Cannon Be	City of Barnwell City of Beaufort City of Beaufort City of Bennettsville City of Bishopoille City of Camden City of Camden City of Camden City of Came City of Charleston City of Chester City of Cheston	City of Draper City of Extheme City of East Carbon City of Eik Ridge City of Elimo City of Elimo City of Enroch City of Enterprise City of Ephraim City of Exterprise City of Ephraim City of Escalante City of Eureka City of Eureka City of Eureka City of Eureka	City of Battle Ground City of Bellenue City of Bellingham City of Benton City City of Bingen City of Black Diamond City of Black Diamond City of Black Diamond City of Bonney Lake City of Bonney Lake City of Bornetton City of Brewster City of Briegeport
	City of Atomic City City of Bancroft City of Believue City of Blackfoot City of Blisch City of Boine City of Bonners Ferry City of Boine City of Bouil City of Buil City of Caldwell	City of Banks City of Bay City City of Bay City City of Beaverton City of Beard City of Beardman City of Brookings City of Brookings City of Brookings City of Canpowille City of Canpo City of Canpowille City of Canpowille City of Canpowille City of Canpowille City of Canyonville	City of Barnwell City of Beaufort City of Benetativille City of Benetativille City of Camden City of Camden City of Camden City of Camden City of Care City of Charleston City of Charleston City of Chester City of Clerson	City of Draper City of Duchesne City of East Carbon City of Elist Carbon City of Elist City of Elimo City of Elimo City of Enceh City of Enceh City of Enterprise City of Ephralim City of Estalante City of Fairwiew City of Fairwington	City of Battle Ground City of Balleruse City of Bellingham City of Benton City City of Bingen City of Bonney Lake City of Bonney City of Bonney City of Bonney City of Bremerton City of Bremerton City of Bremeter City of Bremeter City of Bridgeport City of Bridgeport City of Bridgeport City of Bridge
	City of Atomic City City of Sancorf City of Salecute City of Salecute City of Blackdoot City of Blackdoot City of Blackdoot City of Bloomington City of Boomers Ferry City of Soull City of Boull City of Bull City of Bull City of Bull City of Caldwell City of Caldwell City of Caldwell	City of Banks City of Baswetton City of Baswetton City of Bend City of Bend City of Baradman City of Baradman City of Baradman City of Brookings City of Burns City of Cannon City of Carathon City	City of Barnwell City of Beaufort City of Selon City of Selon City of Selon City of Sichopville City of Camden City of Camden City of Camden City of Camden City of Charleston City of Chester City of Chester City of Chester City of Chesten City of Chesten City of Clinton	City of Draper City of East Carbon City of East Carbon City of Eik Ridge City of Elimo City of Elimo City of Enceh City of Enterprise City of Ephraim City of Estalante City of Eureka City of Starlindew City of Farmington	City of Battle Ground City of Bellenue City of Bellingham City of Benton City City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bornet City of Bremetton City of Briewster City of Briewster City of Briegeport City of Brier City of Brier City of Buckley
	City of Atomic City City of Bencroft City of Believue City of Believue City of Blackfoot City of Bliss City of Bliss City of Bliss City of Bliss City of Boxine City of Boxine City of Boxine City of Boxin City of Boxin City of Boxin City of Boxin City of Cambridge	City of Banks City of Bay City City of Bay City City of Beaverton City of Bend City of Bend City of Brookings City of Brookings City of Brookings City of Grookings City of Canho City of Canho City of Canho City of Canho City of Cannon Beach City of Cannon Beach City of Cannon City of Cascade Locks	City of Barnwell City of Beaufort City of Benton City of Bentetsville City of Bentetsville City of Camden City of Camden City of Camden City of Camden City of Charleston City of Charleston City of Chester City of Chester City of Clemson City of Clemson City of Columbia	City of Draper City of Duchesne City of East Carbon City of East Carbon City of Elim City of Elim City of Elim City of Ench City of Ench City of Enterprise City of Eprivalim City of Estalante City of Fairwiew City of Fairwiest	City of Battle Ground City of Balleruse City of Bellingham City of Benton City City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney City of Bonney City of Bonney City of Bonney City of Bremerton City of Bremerton City of Bremetron City of Bremetron City of Bredgeport City of Budsley City o
	City of Atomic City City of Bancorft City of Believue City of Believue City of Blick City of Blick City of Blick City of Blick City of Boiles City of Boiles City of Boiles City of Boiles City of Boile City of Boile City of Edwill City of Edwill City of Caldwell City of Carey	City of Banks City of Bavetton City of Beavetton City of Beavetton City of Boardman City of Boardman City of Boardman City of Brookings City of Brownsville City of Burns City of Canton City of Carton City of Carton City of Carton City of Cave Junction City of Cave Junct	City of Barnwell City of Bealfort City of Belton City of Selton City of Senentsville City of Seixhopville City of Camden City of Cayee City of Charleston City of Charleston City of Chester City of Clinton City of Comway City of Comway City of Commay City of Commission	City of Draper City of Duchene City of East Carbon City of Eik Bidge City of Elemo City of Ench City of Ench City of Ench City of Ench City of Espiralm City of Espiralm City of Espiralm City of Standarte City of Standarte City of Farmington	City of Battle Ground City of Bellenue City of Bellingham City of Bellingham City of Bingen City of Bingen City of Bingen City of Binde City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bonney City of Bonney City of Bonney Lake City of Bonney Lake City of Bremerton City of Bremetton City of Bremetton City of Bremetton City of Brudgeport City of Budgeport City of Budgepo
	City of Atomic City City of Bencroft City of Believue City of Believue City of Blackfoot City of Bliss City of Bliss City of Bliss City of Bliss City of Boxine City of Boxine City of Boxine City of Boxin City of Boxin City of Boxin City of Boxin City of Cambridge	City of Banks City of Bay City City of Bay City City of Beaverton City of Bend City of Bend City of Brookings City of Brookings City of Brookings City of Grookings City of Canho City of Canho City of Canho City of Canho City of Cannon Beach City of Cannon Beach City of Cannon City of Cascade Locks	City of Barnwell City of Beaufort City of Benton City of Bentetsville City of Bentetsville City of Camden City of Camden City of Camden City of Camden City of Charleston City of Charleston City of Chester City of Chester City of Clemson City of Clemson City of Columbia	City of Draper City of Duchesne City of East Carbon City of East Carbon City of Elim City of Elim City of Elim City of Ench City of Ench City of Enterprise City of Eprivalim City of Estalante City of Fairwiew City of Fairwiest	City of Battle Ground City of Battle Ground City of Belingham City of Benton City City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney City of Bonney City of Bonney City of Bonney City of Bremerton City of Bremerton City of Bremeter City of Bingeport City of Binge City of Busckley City of Busckley City of Burien
	City of Atomic City City of Bancroft City of Balezue City of Balezue City of Blackfoot City of Bilackfoot City of Bilackfoot City of Biloomington City of Biloomington City of Boomers Ferry City of Boomers Ferry City of Bo	City of Banks City of Bavetton City of Beavetton City of Beavetton City of Boardman City of Boardman City of Boardman City of Brookings City of Brownsville City of Burns City of Canton City of Carton City of Carton City of Carton City of Cave Junction City of Cave Junct	City of Barnwell City of Beaufort City of Belton City of Bennettsville City of Bennettsville City of Eshopoille City of Camden City of Carden City of Charleston City of Charleston City of Chesnee City of Chesnee City of Chester City of Clemson City of Columbia City of Conway City of Darlington City of Columbar	City of Draper City of East Carbon City of East Carbon City of East Midge City of Elimo City of Elimo City of Enceth City of Enterprise City of Ephraim City of Estalante City of Eureka City of Farindew	City of Battle Ground City of Battle Ground City of Belingham City of Benton City City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremerton City of Bremetton City of Bremetton City of Bremetton City of Bremetton City of Buckley City of Buckley City of Burlington
	City of Atomic City City of Bancroft City of Believue City of Blick City of Bolins City of Bolins City of Bolins City of Bolins City of Bolin City of Bolin City of Bolin City of Bull City of Caldwell City of Carlew City of Carlew City of Carey City of Carey City of Castedroft City of Castelford	City of Banks City of Bavetton City of Bavetton City of Bavetton City of Boardman City of Brookings City of Cannon Beach City of Cannon Beach City of Carbon City of Carbon City of Carbon City of Carbon City of Cave Junction City of Cave Junction City of Cave Indicated Point City of Catscade Locks City of Cave Indicated City of Catscale Doint City of City of Chiloquin	City of Barmwell City of Beaufort City of Belton City of Senentsville City of Senentsville City of Senentsville City of Camden City of Camden City of Charleston City of Charleston City of Chester City of Chester City of Chester City of Climon City of Comway City of Denmark City of Delmark	City of Draper City of Duchene City of East Carbon City of East Carbon City of East Ridge City of Elmo City of Enco City of Enco City of Enco City of Expraim City of Excalante City of Euroka City of Earnington City of Farmington City of Form City of Form City of Form City of Fountain Green	City of Battle Ground City of Bellingham City of Bellingham City of Benton City City of Benton City City of Bingen City of Black Diamond City of Black Diamond City of Black Diamond City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremerton City of Brewster City of Bremerton City of Brewster City of Bridgeport City of Bridge City of Burlen City of Burlen City of Burlen City of Burlen City of Camas
	City of Atomic City City of Bacrott City of Balevue City of Balevue City of Blaction City of Bils City of Bonners Ferry City of Bonners Ferry City of Bonners City of Bunl City of Bunl City of Cambridge City of Cambridge City of Cascade City of Cascade City of Cascade City of Castelord City of Challis City of Challis City of Challis City of Challis	City of Banks City of Basverton City of Beaverton City of Beaverton City of Beard City of Beard City of Broadman City of Canton City of Canton City of Canton City of Cannon Beach City of Cannon Beach City of Canton City of Carscade Locks City of Carscade Locks City of Cascade Locks City of Carscade Incity City of Carscade City of Cattal City of City of Canton City of Cattal City of City of City of City City	City of Barnwell City of Beaufort City of Belton City of Benettsville City of Benettsville City of Eshopoille City of Camden City of Camden City of Charleston City of Charleston City of Charleston City of Chester City of Chester City of Chester City of Clemson City of Columbia City of Columbia City of Columbia City of Comay City of Darlington City of Eshomark City of Dillon City of Esaley	City of Draper City of East Carbon City of East Carbon City of East Carbon City of Elim City of Elim City of Elim City of Encer City of Enterprise City of Ephraim City of Estalante City of Stalante City of Stalante City of Farnington City of Filmore City of Filmore City of Filmore City of Fruth Heights City of Grutand Green City of Fruth Heights City of Cardand	City of Battle Ground City of Battle Ground City of Belingham City of Benton City City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremerton City of Bremerton City of Bremeter City of Bremeter City of Bremeter City of Buckley City of Burle City of Camas City of Camas City of Camas City of Camas City of Camation City of Camation
	City of Atomic City City of Bancroft City of Bancroft City of Balckhot City of Bliss City of Blosh City of Blosh City of Boomaton City of Camboun City of Carlow City of Carlow City of Carlow City of Carlow City of Castedror City of Chablack City of Chubbuck City of Chubbuck City of Chydon	City of Banks City of Bavetron City of Beavetron City of Beavetron City of Brodman City of Brodkings City of Brookings City of Brookings City of Brookings City of Brownsville City of Cannon Beach City of Cannon Beach City of Canyonville City of Caryonville City of Caryonville City of Caryonville City of Care Louction City of Cave Junction City of Cave Junction City of Cate Color City of Color City o	City of Barnwell City of Beaufort City of Beator City of Senentsville City of Sichopville City of Sichopville City of Carge City of Charleston City of Charleston City of Chester City of Clinton City of Columbia City of Columbia City of Comway City of Denmark City of Denmark City of Denmark City of Denmark City of Basley City of Basley City of Basley City of Corone	City of Oraper City of Duchene City of East Carbon City of East Carbon City of East Kidge City of Elmo City of Encoch City of Escalante City of Escalante City of Euroka City of Farmington City of Forco City of Forcoch City of Forcoch City of Fountain Green City of Fountain Green City of Fountain Green City of Fountain Green City of Garland City of Garland	City of Battle Ground City of Balleruse City of Bellingham City of Benton City City of Benton City City of Bingen City of Black Diamond City of Black City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Brementon City of Brementon City of Bremeton City of Bremeton City of Bremeton City of Bremeton City of Bruingen City of Buschey City of Busche City of Busche City of Buschen City of Camas City of Camas City of Cashmere
	City of Atomic City City of Bacteror City of Bellevue City of Blaction City of Blaction City of Bliss City of Bloomington City of Bonners Ferry City of Bonners Ferry City of Bonners City of Buhl City of Buhl City of Buhl City of Carbwell City of Clayton City of Clayton City of Cityton City of Cityton	City of Banks City of Basverton City of Beaverton City of Beaverton City of Beard City of Beard City of Beardman City of Brookings City of Command City of Brookings City of Cannon Beach City of Cannon Beach City of Cannon Beach City of Cannon City of Cannon City of Carton City of Catellar Point City of Catellar City of Catellar City of City of Columbia City of Colum	City of Barnwell City of Beaufort City of Belton City of Benettsville City of Benettsville City of Eshopville City of Canden City of Canden City of Canden City of Charleston City of Charleston City of Chester City of Chester City of Chester City of Clemson City of Columbia City of Columbia City of Columbia City of Conway City of Barlington City of Conway City of Barlington City of Columbia City of Fallon City of Fallon City of Folion City of Folion City of Florence City of Folion City of Florence City of Florence City of Folion	City of Draper City of East Carbon City of East Carbon City of East Ridge City of Elimo City of Elimo City of Encerb City of Encerb City of Enterprise City of Ephraim City of Escalante City of Escalante City of Escalante City of Farmington City of Carlantan Green City of Fruit Heights City of Garantsville City of City of Garantsville City of C	City of Battle Ground City of Battle Ground City of Belingham City of Benton City City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremetron City of Bremetron City of Bremetron City of Bremetron City of Buschley City of Buschley City of Buschley City of Busing City of Carmation City of Cashhernee City of Casther Rock City of Castler Rock Ci
	City of Atomic City City of Bancroft City of Bancroft City of Balckhot City of Bliss City of Blosk City of Blosk City of Bobis City of Cabwell City of Callowell City of Carey City of Carey City of Castedrod City of Coloro City of	City of Banks City of Bavetron City of Beavetron City of Beavetron City of Brodman City of Brodming City of Brownsville City of Brownsville City of Brownsville City of Cannon City of Catstane City of Cave Junction City of Cave Junction City of Catstane City of Coburg City of Coburg City of Coburg City of Condon	City of Barnwell City of Beaufort City of Beator City of Bentets will City of Bishopville City of Sishopville City of Care City of Charleston City of Charleston City of Charleston City of Chester City of Chester City of Chester City of Cienson City of Clinton City of Columbia City of Comway City of Comway City of Denmark City of Foliop Beach City of Forest Acres	City of Draper City of Duchesne City of East Carbon City of East Karbon City of East Kidge City of Eme City of Eme City of Enech City of Exclainte City of Eurela City of Eurela City of Fairwine City of Force City of Fountain Green City of Fountain Green City of Fountain Cere City of Fountain Cere City of Carataville City of Garataville City of Green River City of Corenison	City of Battle Ground City of Bellenyam City of Bellenyam City of Benton City City of Benton City City of Bingen City of Bingen City of Bingen City of Bonney Lake City of Bremerton City of Bremerton City of Bremerton City of Bremeton City of Bremeton City of Carden City
	City of Atomic City City of Sector City of Sector City of Selevue City of Somers Ferry City of Sowil City of Sevil City of Sevil City of Sevil City of Carby City of Carboacc City of Carboacc City of Carboacc City of Carboacc City of Council	City of Banks City of Baye-City City of Baeverton City of Baeverton City of Baeverton City of Bardman City of Broadman City of Broadman City of Cannon City of Countain City of Cannon City of Countain City of	City of Barnwell City of Beaufort City of Beaufort City of Bennettsville City of Bishopville City of Camden City of Camden City of Camden City of Camden City of Charleston City of Chester City of Chester City of Chester City of Clemson City of Clinton City of Columbia City of Farington City of Bearington City of Forest Acres City of Forest Ac	City of Draper City of East Carbon City of East Carbon City of Eik Ridge City of Elimo City of Eined City of Emoth City of Enterprise City of Ephraim City of Escalante City of Escalante City of Escalante City of Farmington City of Garnatington	City of Battle Ground City of Battle Ground City of Belingham City of Benton City City of Bingen City of Battle Damed City of Battle Damed City of Black Damed City of Black Damed City of Boney Lake City of Boney Lake City of Bremeton City of Bremeton City of Bremeter City of Busile City of Busile City of Busile City of Busile City of Camation City of Castle Rock City of Centalia City of Chebalia City of Chebalia
	City of Atomic City City of Bancroft City of Bancroft City of Balckhot City of Bliss City of Blosk City of Blosk City of Bobis City of Cabwell City of Callowell City of Carey City of Carey City of Castedrod City of Coloro City of	City of Banks City of Bavetron City of Beavetron City of Beavetron City of Brodman City of Brodming City of Brownsville City of Brownsville City of Brownsville City of Cannon City of Catstane City of Cave Junction City of Cave Junction City of Catstane City of Coburg City of Coburg City of Coburg City of Condon	City of Barnwell City of Beaufort City of Beator City of Bentets will City of Bishopville City of Sishopville City of Care City of Charleston City of Charleston City of Charleston City of Chester City of Chester City of Chester City of Cienson City of Clinton City of Columbia City of Comway City of Comway City of Denmark City of Foliop Beach City of Forest Acres	City of Draper City of Duchesne City of East Carbon City of East Karbon City of East Kidge City of Eme City of Eme City of Enech City of Exclainte City of Eurela City of Eurela City of Fairwine City of Force City of Fountain Green City of Fountain Green City of Fountain Cere City of Fountain Cere City of Carataville City of Garataville City of Green River City of Corenison	City of Battle Ground City of Bellenue City of Bellenue City of Benton City City of Benton City City of Benton City City of Binden City of Binden City of Binden City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremerton City of Bremerton City of Bremerton City of Bremeton City of Bremeton City of Buddeport City of Buddeport City of Budden City of Camac City of Camac City of Camac City of Camac City of Cashmere

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Idah

Idaho	Oregon	South Carolina	Utah	Washington
City of Culdesac	City of Cottage Grove	City of Goose Creek	City of Herriman	City of Clarkston
City of Dalton Gardens	City of Cove	City of Greenville	City of Highland	City of Cle Elum
City of Dayton	City of Creswell	City of Greenwood	City of Hildale	City of Clyde Hill
City of Deary	City of Culver	City of Greer	City of Holladay	City of Colfax
City of Dietrich	City of Dallas	City of Hanahan	City of Honeyville	City of College Place
City of Donnelly	City of Damascus	City of Hardeeville	City of Hooper	City of Colville
City of Dover	City of Dayton	City of Hartsville	City of Huntington	City of Connell
City of Downey	City of Dayville	City of Inman	City of Hurricane	City of Cosmopolis
City of Driggs	City of Depoe Bay	City of Isle of Palms	City of Hyde Park	City of Covington
City of Dubois	City of Detroit	City of Johnsonville	City of Hyrum	City of Davenport
City of Eagle	City of Donald	City of Lake City	City of Ivins	City of Dayton
City of Eden	City of Drain	City of Lancaster	City of Kamas	City of Deer Park
City of Elk River	City of Dundee	City of Landrum	City of Kanab	City of Des Moines
City of Emmett	City of Dundee City of Dunes City	City of Laurens	City of Kaysville	City of DuPont
City of Fairfield	City of Durham	City of Liberty	City of kayswille City of La Verkin	City of Duvall
City of Fernan Lake Village	City of Eagle Point	City of Liberty City of Loris	City of Layton	City of East Wenatchee
City of Filer	City of Eagle Point City of Echo	City of Manning	City of Lehi	City of Edgewood
City of Firth	City of Elein	City of Marining	City of Leviston	City of Edgewood City of Edmonds
City of Franklin	City of Enterprise	City of Mauldin	City of Lindon	City of Edmonds City of Electric City
City of Fruitland	City of Estacada	City of Mullins	City of Logan	City of Ellensburg
City of Fruitianu City of Garden City	City of Eugene	City of Myrtle Beach	City of Manti	City of Elma
City of Genesee	City of Fairview	City of New Ellenton	City of Mapleton	City of Entiat
City of Georgetown	City of Falls City	City of Newberry	City of Marriott-Slaterville	City of Enumclaw
City of Glenns Ferry	City of Florence	City of North Augusta	City of Mendon	City of Ephrata
City of Gooding	City of Forest Grove	City of North Charleston	City of Midvale	City of Everett
City of Grace	City of Fossil	City of North Myrtle Beach	City of Midway	City of Everson
City of Grand View	City of Garibaldi	City of Orangeburg	City of Milford	City of Federal Way
City of Grangeville	City of Gaston	City of Pickens	City of Millville	City of Ferndale
City of Greenleaf	City of Gates	City of Rock Hill	City of Moab	City of Fife
City of Hagerman	City of Gearhart	City of Seneca	City of Mona	City of Fircrest
City of Hailey	City of Gervais	City of Simpsonville	City of Monroe	City of Forks
City of Hansen	City of Gladstone	City of Spartanburg	City of Monticello	City of George
City of Harrison	City of Glendale	City of Sumter	City of Morgan	City of Gig Harbor
City of Hayden	City of Gold Beach	City of Tega Cay	City of Moroni	City of Gold Bar
City of Hazelton	City of Gold Hill	City of Travelers Rest	City of Mt. Pleasant City	City of Goldendale
City of Heyburn	City of Grants Pass	City of Union	City of Murray	City of Grand Coulee
City of Hollister	City of Greenhorn	City of Walhalla	City of Myton	City of Grandview
City of Homedale	City of Gresham	City of Walterboro	City of Naples	City of Granger
City of Hope	City of Haines	City of Wellford	City of Nephi	City of Granite Falls
City of Horseshoe Bend	City of Halfway	City of West Columbia	City of Nibley	City of Harrington
City of Huetter	City of Halsey	City of Westminster	City of North Logan	City of Hoquiam
City of Idaho City	City of Happy Valley	City of Woodruff	City of North Ogden	City of Ilwaco
City of Idaho Falls	City of Harrisburg	City of York	City of North Salt Lake	City of Issaguah
City of Inkom	City of Helix	Town of Allendale	City of Oakley	City of Kahlotus
City of Island Park	City of Heppner	Town of Andrews	City of Ogden	City of Kalama
City of Jerome	City of Hermiston	Town of Atlantic Beach	City of Orangeville	City of Kelso
City of Juliaetta	City of Hillsboro	Town of Awendaw	City of Orem	City of Kenmore
City of Kamiah	City of Hinsboro	Town of Aynor	City of Panguitch	City of Kennewick
City of Kellogg	City of Hood River	Town of Batesburg-Leesville	City of Park City	City of Kent
City of Kendrick	City of Hubbard	Town of Bethune	City of Park City City of Parowan	City of Kettle Falls
City of Ketchum	City of Huntington	Town of Blacksburg	City of Payson	City of Kirkland
City of Ketchum City of Kimberly	City of Huntington City of Idanha	Town of Blackville	City of Perry	
		Town of Blenheim		City of Kittitas
City of Kooskia	City of Imbler		City of Plain City	City of La Center
City of Kuna	City of Independence	Town of Bluffton	City of Pleasant Grove	City of Lacey
City of Lapwai	City of Irrigon	Town of Blythewood	City of Pleasant View	City of Lake Forest Park
City of Lava Hot Springs	City of Island City	Town of Bowman	City of Price	City of Lake Stevens
City of Lewiston	City of Jacksonville	Town of Branchville	City of Providence	City of Lakewood
City of Mackay	City of Jefferson	Town of Briarcliffe Acres	City of Provo	City of Langley
City of Malad City	City of John Day	Town of Brunson	City of Richfield	City of Leavenworth
City of Marsing	City of Johnson City	Town of Calhoun Falls	City of Richmond	City of Liberty Lake
City of McCall	City of Joseph	Town of Cameron	City of River Heights	City of Long Beach
City of McCammon	City of Junction City	Town of Campobello	City of Riverdale	City of Longview
City of Melba	City of Keizer	Town of Central	City of Riverton	City of Lynden
City of Menan	City of King City	Town of Chapin	City of Roosevelt	City of Lynnwood
City of Meridian	City of Klamath Falls	Town of Cheraw	City of Roy	City of Mabton
City of Middleton	City of La Grande	Town of Chesterfield	City of Salem	City of Maple Valley
City of Midvale	City of La Pine	Town of Clio	City of Salina	City of Marysville
City of Moscow	City of Lafayette	Town of Clover	City of Salt Lake City	City of Mattawa
City of Mountain Home	City of Lake Oswego	Town of Cottageville	City of Sandy	City of McCleary
City of Mullan	City of Lakeside	Town of Coward	City of Santa Clara	City of Medical Lake
City of Murtaugh	City of Lebanon	Town of Cowpens	City of Santaquin	City of Medina
City of Nampa	City of Lincoln City	Town of Denmark	City of Saratoga Springs	City of Mercer Island
City of New Meadows	City of Lonerock	Town of Donalds	City of Smithfield City	City of Mesa
City of New Plymouth	City of Lostine	Town of Due West	City of South Jordan	City of Mill Creek
City of Newdale	City of Lowell	Town of Duncan	City of South Ogden	City of Milton
City of Nezperce	City of Lyons	Town of Eastover	City of South Salt Lake City	City of Monroe
City of Notus	City of Madras	Town of Edgefield	City of South Weber	City of Montesano
City of Orofino	City of Malin	Town of Edisto Beach	City of Spanish Fork	City of Morton
City of Osburn	City of Manzanita	Town of Ehrhardt	City of Spring City	City of Moses Lake
City of Parker	City of Maupin	Town of Elgin	City of Springville	City of Mossyrock
City of Parma	City of McMinnville	Town of Elloree	City of St. George	City of Mountlake Terrace
City of Paul	City of Medford	Town of Estill	City of Sunnyside	City of Moxee
City of Payette	City of Metolius	Town of Eutawville	City of Sunset	City of Mt. Vernon
City of Pierce	City of Mill City	Town of Fairfax	City of Syracuse	City of Mukilteo
City of Pinehurst	City of Millersburg	Town of Ft. Mill	City of Taylorsville	City of Napavine
City of Plummer	City of Milton-Freewater	Town of Furman	City of Tooele	City of Newcastle
City of Pocatello	City of Milwaukie	Town of Gaston	City of Toquerville	City of Newport
City of Ponderay	City of Molalla	Town of Gifford	City of Tremonton	City of Nooksack
City of Post Falls	City of Monmouth	Town of Gilbert	City of Tropic	City of Normandy Park
City of Potlatch	City of Monroe	Town of Govan	City of Uintah	City of North Bend
City of Preston	City of Monument	Town of Gray Court	City of Vernal	City of North Bonneville
City of Priest River	City of Moro	Town of Great Falls	City of Washington	City of Oak Harbor
City of Rathdrum	City of Mosier	Town of Greeleyville	City of Washington Terrace	City of Oakville
City of Reubens	City of Mt. Angel	Town of Hampton	City of Wellington	City of Ocean Shores
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Idaho	Oregon	South Carolina	Utah	Washington
City of Rexburg	City of Mt. Vernon	Town of Harleyville	City of Wellsville	City of Okanogan
City of Richfield	City of Myrtle Creek	Town of Heath Springs	City of Wendover	City of Olympia
City of Rigby	City of Myrtle Point	Town of Hemingway	City of West Bountiful	City of Omak
City of Riggins	City of Nehalem	Town of Hilda	City of West Haven City	City of Oroville
City of Ririe	City of Newberg	Town of Hilton Head Island	City of West Jordan	City of Orting
City of Roberts	City of Newport	Town of Hodges	City of West Point	City of Othello
City of Rockland	City of North Bend	Town of Holly Hill	City of West Valley City	City of Pacific
City of Rupert	City of North Plains	Town of Hollywood	City of Willard	City of Palouse
City of Salmon	City of North Powder	Town of Honea Path	City of Woodland Hills	City of Pasco
City of Sandpoint	City of Nyssa	Town of Irmo	City of Woods Cross	City of Pateros
City of Shelley	City of Oakland	Town of Iva	Town of Alta	City of Pomeroy
City of Shoshone	City of Oakridge	Town of Jackson	Town of Altamont	City of Port Angeles
City of Smelterville City of Soda Springs	City of Ontario City of Oregon City	Town of James Island Town of Jamestown	Town of Alton Town of Amalga	City of Port Orchard City of Port Townsend
City of Social Springs City of Spirit Lake	City of Oregon City City of Paisley	Town of Jefferson	Town of Annahella	City of Poulsbo
City of St. Anthony	City of Pendleton	Town of Jenkinsville	Town of Antimony	City of Prosser
City of St. Charles	City of Philomath	Town of Johnston	Town of Apple Valley	City of Pullman
City of Stanley	City of Phoenix	Town of Jonesville	Town of Ballard	City of Puyallup
City of Star	City of Pilot Rock	Town of Kershaw	Town of Bear River City	City of Quincy
City of Stites	City of Port Orford	Town of Kiawah Island	Town of Bicknell	City of Rainier
City of Sugar City	City of Portland	Town of Kingstree	Town of Big Water	City of Raymond
City of Sun Valley	City of Powers	Town of Lake View	Town of Boulder	City of Redmond
City of Tensed	City of Prairie City	Town of Lamar South Carolina	Town of Brian Head	City of Renton
City of Tetonia	City of Prineville	Town of Lane	Town of Bryce Canyon City	City of Republic
City of Troy	City of Rainier	Town of Latta	Town of Cannonville	City of Richland
City of Twin Falls	City of Redmond	Town of Lexington Town of Lincolnville	Town of Castle Valley Town of Cedar Fort	City of Ridgefield
City of Ucon	City of Reedsport			City of Ritzville
City of Victor City of Wallace	City of Richland City of Riddle	Town of Little Mountain Town of Lockhart	Town of Centerfield Town of Central Valley	City of Rock Island City of Roslyn
City of Wallace	City of Rockaway Beach	Town of Lyman	Town of Circleville	City of Roy
City of Weiser	City of Rogue River	Town of Lynchburg	Town of Clarkston	City of Royal City
City of Werdell	City of Roseburg	Town of Mayesville	Town of Clawson	City of Royal City City of Sammamish
City of Weston	City of Rufus	Town of McBee	Town of Cleveland	City of SeaTac
City of White Bird	City of Salem	Town of McClellanville	Town of Cornish	City of Seattle
City of Wilder	City of Sandy	Town of McColl	Town of Daniel	City of Sedro-Woolley
City of Winchester	City of Scappoose	Town of McCormick	Town of Deweyville	City of Selah
Higher Education	City of Scio	Town of Meggett	Town of Eagle Mountain	City of Sequim
Boise State University	City of Scotts Mills	Town of Moncks Corner	Town of Elmo	City of Shelton
College of Southern Idaho	City of Seaside	Town of Mt. Pleasant	Town of Elsinore	City of Shoreline
College of Western Idaho	City of Seneca	Town of Neeses	Town of Elwood	City of Snohomish
Eastern Idaho Technical College	City of Shady Cove	Town of New Ellenton	Town of Emery	City of Snoqualmie
Idaho Division of Professional Technical Education	City of Sheridan	Town of Nichols	Town of Fairfield	City of Soap Lake
Idaho State University	City of Sherwood	Town of Ninety Six	Town of Francis	City of South Bend
Lewis-Clark State College	City of Silverton	Town of Norris	Town of Garden City	City of Spokane
North Idaho College University of Idaho	City of Silverton City of Sisters	Town of North Town of Norway	Town of Genola Town of Glendale	City of Spokane Valley
Education (K-12)	City of Sodaville	Town of Norway Town of Olanta	Town of Glenwood	City of Sprague City of Stanwood
Aberdeen School District No. 58	City of Spray	Town of Pacolet	Town of Goshen	City of Stevenson
Arbon Elementary School District No. 383	City of Springfield	Town of Pageland	Town of Hanksville	City of Sultan
Avery School District	City of St. Helens	Town of Pamplico	Town of Hatch	City of Sumas
Basin School District No. 72	City of St. Paul	Town of Patrick	Town of Henefer	City of Sumner
Bear Lake County School District No. 33	City of Stanfield	Town of Pawleys Island	Town of Henrieville	City of Sunnyside
Bear Lake School District No. 33	City of Stayton	Town of Pelion	Town of Hideout	City of Tacoma
Blackfoot School District No. 55	City of Sublimity	Town of Pelzer	Town of Hinckley	City of Tekoa
Blaine County School District No. 61	City of Sumpter	Town of Pendleton	Town of Holden	City of Tenino
Bliss Joint School District No. 234	City of Sutherlin	Town of Perry	Town of Howell	City of Tieton
Bonneville Joint School District No. 93	City of Sweet Home	Town of Port Royal	Town of Huntsville	City of Toledo
Boundary County School District No. 101	City of Talent	Town of Prosperity	Town of Joseph	City of Tonasket
Bruneau-Grand View Joint School District	City of Tangent	Town of Ravenel	Town of Junction	City of Toppenish
Buhl Joint School District No. 412 Butte County Joint School District No. 111	City of The Dalles City of Tigard	Town of Reidville Town of Ridge Spring	Town of Kanarraville Town of Kanosh	City of Tukwila City of Tumwater
Caldwell School District No. 111	City of Tillamook	Town of Ridgeland	Town of Kingston	City of Lumwater City of Union Gap
Caldwell School District No. 132 Camas County School District No. 121	City of Tillamook City of Toledo	Town of Ridgeland Town of Ridgeville	Town of Kingston Town of Koosharem	City of Union Gap City of University Place
Cambridge School District	City of Troutdale	Town of Ridgeway	Town of Leeds	City of Vader
Cascade School District No. 422	City of Tualatin	Town of Raint Matthews	Town of Levan	City of Vancouver
Cassia County Joint School District No. 151	City of Turner	Town of Saint Stephen	Town of Loa	City of Waitsburg
Castleford Joint School District No. 417	City of Ukiah	Town of Salem	Town of Manila	City of Walla Walla
Challis Joint School District No. 181	City of Umatilla	Town of Salley	Town of Mantua	City of Wapato
Clark County School District No. 161	City of Union	Town of Saluda	Town of Marysvale	City of Warden
Coeur d'Alene School District No. 271	City of Unity	Town of Santee	Town of Meadow	City of Washougal
Cottonwood Joint School District No. 242	City of Vale	Town of Scranton	Town of Minersville	City of Wenatchee
Council School District No. 13	City of Veneta	Town of Seabrook Island	Town of New Harmony	City of West Richland
Culdesac Joint School District No. 342	City of Vernonia	Town of Sellers	Town of Newton	City of Westport
Dietrich School District No. 314	City of Waldport	Town of Sharon Town of Six Mile	Town of Ophir Town of Orderville	City of White Salmon
Emmett Independent School District No. 221 Filer School District No. 413	City of Wallowa City of Warrenton	Town of Six Mile Town of Snelling	Town of Orderville Town of Paradise	City of Winlock City of Woodinville
Firth School District No. 413 Firth School District No. 59	City of Wasco	Town of Society Hill	Town of Paragonah	City of Woodland
Fremont County School District No. 215	City of West Linn	Town of South Congaree	Town of Portage Utah	City of Woodiana City of Yakima/Yakima County
Fruitland School District No. 373	City of West chili	Town of Springdale	Town of Randolph	City of Yelm
Garden Valley School District	City of Weston	Town of St. George	Town of Redmond	City of Zillah
Genesee Joint School District No. 282	City of Wheeler	Town of St. Matthews	Town of Rockville	Consolidated Borough of Quil Ceda Village
Glenns Ferry Joint School District No. 192	City of Willamina	Town of Stuckey	Town of Rocky Ridge	Grays Harbor Council of Governments
Gooding Joint School District No. 231	City of Wilsonville	Town of Sullivans Island	Town of Rush Valley	Town of Almira
Grace Joint School District No. 148	City of Winston	Town of Summerton	Town of Scipio	Town of Beaux Arts Village
Hagerman Joint School District No. 233	City of Wood Village	Town of Summerville	Town of Scofield	Town of Bucoda
Hansen School District No. 415	City of Woodburn	Town of Summit	Town of Sigurd	Town of Carbonado
Highland Joint School District No. 305	City of Yachats	Town of Surfside Beach	Town of Springdale	Town of Cathlamet
Homedale School District No. 370	City of Yamhill	Town of Swansea	Town of Stockton	Town of Clyde Hill
Horseshoe Bend School District No. 73	City of Yoncalla	Town of Timmonsville	Town of Toquerville	Town of Colton
Idaho Falls School District No. 91	Town of Bonanza	Town of Trenton	Town of Torrey	Town of Conconully
Independent School District of Boise City Jefferson County School District No. 251	Town of Butte Falls Town of Canvon City	Town of Turbeville Town of Ulmer	Town of Trenton Town of Tropic	Town of Concrete Town of Coulee City
Jefferson County School District No. 251 Jerome Joint School District No. 261	Town of Canyon City Town of Lakeview	Town of Ulmer Town of Varnville	Town of Tropic Town of Uintah	Town of Coulee City Town of Coulee Dam
Jerome Joint School District No. 261 Joint School District No. 2	Town of Lakeview Town of Lexington	Town of Varnville Town of Wagener	Town of Uintah Town of Vernon	Town of Couneville
John School District No. 2	Town or comigton	TOWN OF MUBCINET	rown or vernall	TOWN OF COURCEMITE

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aho		South Carolina	Utah	Washington
Kamiah School District No. 304	Higher Education	Town of Ward	Town of Vineyard	Town of Creston
Kellogg Joint School District 391	Blue Mountain Community College	Town of Ware Shoals	Town of Virgin	Town of Cusick
Kendrick Joint School District No. 283	Central Oregon Community College	Town of West Pelzer	Town of Wales	Town of Darrington
Kimberly School District No. 414	Chemeketa Community College	Town of West Union	Town of Wallsburg	Town of Eatonville
Kootenai School District No. 274	Clackamas Community College	Town of Whitmire	Uintah Basin Association of Governments	Town of Elmer City
Kuna Joint School District No. 3	Clatsop Community College		Higher Education	Town of Endicott
Lake Pend Oreille School District No. 84	Columbia Gorge Community College	Town of Williston	College of Eastern Utah	Town of Fairfield
			Davis Applied Technology College	
Lakeland School District No. 272	Eastern Oregon University	Town of Winnsboro		Town of Farmington
Lapwai School District No. 341	Klamath Community College District	Town of Yemassee	Dixie Applied Technology College	Town of Friday Harbor
Lewiston Independent School District No. 1		Higher Education	Dixie State University	Town of Garfield
Mackay School District No. 182	Linn-Benton Community College	Aiken Technical College	Mountainland Applied Technology College	Town of Hamilton
Madison School District No. 321	Mt. Hood Community College	Beaufort Jasper Higher Education Commission	Rocky Mountain University of Health Professions	Town of Harrah
Marsh Valley Joint School District No. 21	Oregon Coast Community College	Central Carolina Technical College	Salt Lake Community College	Town of Hatton
Marsing Joint School District No. 363	Oregon Department of Community Colleges and Workforce Development	Clemson University	Snow College	Town of Hunts Point
McCall-Donnelly Joint School District No. 421	Oregon Health and Science University	Coastal Carolina University	Southern Utah University	Town of Index
Meadows Valley School District No. 11	Oregon Institute of Technology	College of Charleston	Tooele Applied Technology College	Town of lone
Melba School District No. 136	Oregon State University	Denmark Technical College	Uintah Basin Applied Technology College	Town of La Conner
Middleton School District No. 134	Oregon State University, Oregon Agricultural Experiment Station	Florence-Darlington Technical College	University of Utah	Town of LaCrosse
Midvale School District No. 433	Oregon University System	Francis Marion University	University of Utah Hospitals and Clinics	Town of Lamont
Minidoka County School District No. 331	Portland Community College	Greenville Technical College	Utah State University	Town of Latah
Moscow School District No. 281	Portland State University	Horry-Georgetown Technical College	Utah System of Higher Education	Town of Lind
Mountain Home School District No. 193	Reed College	Lander University	Utah Valley University	Town of Lyman
Mountain Home School District No. 193		Lander University		Town of Lyman
Mountain View School District No. 244	Rogue Community College	Medical University of South Carolina	Weber State University	Town of Malden
Mullan School District 392	Southern Oregon University	Midlands Technical College	Education (K-12)	Town of Mansfield
Murtaugh Joint School District No. 418	Southern Oregon University Family Housing	Northeastern Technical College	Alpine School District	Town of Marcus
Namna Christian Schools Inc.	Southwestern Oregon Community College	Orangeburg-Calhoun Technical College	Beaver County School District	Town of Metaline
Nampa School District No. 131	Tillamook Bay Community College	Piedmont Technical College	Box Elder School District	Town of Millwood
Nampa School District No. 131 New Plymouth School District				Town of Naches
	Treasure Valley Community College	South Carolina State Board for Technical and Comprehensive Education	Cache County School District	
Nez Perce Joint School District No. 302	Umpqua Community College	South Carolina State University	Canyons School District	Town of Nespelem
North Gem School District No. 149	University of Oregon	South Carolina Technical College System	Carbon School District	Town of Northport
Notus School District	Western Oregon University	Spartanburg Community College	Centro De La Familia De Utah Head Start Program School District	Town of Oakesdale
Oneida County School District No. 351	Education (K-12)	Technical College of the Lowcountry	Daggett School District	Town of Odessa
Orofino Joint School District No. 171	Adel School District 21	The Citadel	Davis School District	Town of Pe Ell
	Adei School District 21 Adrian School District	Tri-County Technical College	Davis School District Duchesne County School District	
Parma School District No. 137				Town of Prescott
Payette School District No. 371	Alsea School District No. 7J	Trident Technical College	Emery County School District	Town of Reardan
Plummer-Worley Joint School District No. 44	Amity School District 4J	University of South Carolina	Freedom Preparatory Academy School District	Town of Riverside
Pocatello-Chubbuck School District No. 25	Annex School District 29	University of South Carolina, Aiken	Garfield County School District	Town of Rockford
Post Falls School District No. 273	Arlington School District No. 3	University of South Carolina, Upstate	Grand County School District	Town of Rosalia
Potlatch School District No. 285	Arock School District No. 81	Williamsburg Technical College	Granite School District	Town of Ruston
Preston Joint School District No. 201	Ashland School District No. 5	Winthrop University	Iron County School District	Town of Skykomish
Richfield School District No. 316	Ashwood School District	York Technical College	Jordan School District	Town of South Cle Elum
tirie Joint School District No. 252	Astoria School District No. 1C	Education (K-12)	Juab School District	Town of South Prairie
Rockland School District No. 382	Athena-Weston School District No. 29RJ	Abbeville County School District	Kane County School District	Town of Spangle
Salmon River Joint School District No. 243	Baker School District No. 5J	Aiken County Public Schools	Logan City School District	Town of Springdale
Salmon School District No. 291	Bandon School District	Allendale County School District	Millard School District	Town of St. John
helley School District No. 60	Banks School District No. 13	Anderson County School Districts 1 and 2 Career and Technology Center	Morgan School District	Town of Steilacoom
Shoshone Joint School District No. 312	Beaverton School District No. 48	Anderson School District No. 1	Mountainland Head Start Program School District Office	Town of Twisp
Snake River School District	Bend-La Pine Public Schools	Anderson School District No. 2	Murray City School District	Town of Uniontown
Soda Springs Joint School District No. 150	Bethel School District No. 52	Anderson School District No. 3	Nebo School District	Town of Washtucna
outh Lemhi School District No. 292	Blachly School District	Anderson School District No. 4	North Sanpete County School District	Town of Waterville
t. Maries Joint School District No. 41	Blachly School District 90	Anderson School District No. 5	North Sanpete School District	Town of Waverly
iugar-Salem Joint District No. 322	Brookings Harbor School District	Bamberg School District No. 1	North Summit School District	Town of Wilbur
wan Valley Elementary School District No. 33	Camas Valley School District	Bamberg School District No. 2	Ogden City School District	Town of Wilkeson
wan Valley School District No. 92	Canby School District No. 86	Barnwell School District No. 45	Park City School District	Town of Wilson Creek
eton County School District No. 401	Cascade School District No. 5	Beaufort County School District	Piute County School District	Town of Winthron
hree Creek Joint School District No. 416	Centennial School District No. 28J	Berkeley County School District	Provo City School District	Town of Woodway
roy School District No. 287	Central Curry School District No. 1	Blackville-Hilda Public Schools	Rich County School District	Town of Yacolt
win Falls School District No. 411	Central Linn School District	Calhoun County School District	Rich School District	Town of Yarrow Point
alley School District No. 262	Central Point School District No. 6	Charleston County School District	Rural Utah Child Development Head Start Program School District Office	Higher Education
allivue School District No. 139	Central School District No. 13J	Cherokee County School District	Salt Lake City School District	Bates Technical College
ision Charter School District # 463	Clackamas Education Service District	Chester County School District	San Juan School District	Bellevue Community College
Vallace School District No. 393	Clatskanie School District No. 6J	Chesterfield County School District	Sevier School District	Bellingham Technical College
/eiser School District No. 431	Colton School District No. 53	Clarendon County School District No. 1	South Sanpete School District	Big Bend Community College
/endell School District No. 232	Columbia Gorge Education Service District	Clarendon County School District No. 2	South Summit School District	Cascadia Community College
est Bonner County School District No. 83	Condon School District No. 25J	Clarendon County School District No. 3	Suu Head Start Program School District	Central Washington University
Vest Jefferson School District No. 253	Coos Bay School District No. 9	Clover School District No. 2	Thomas Edison Charter Schools	Centralia College
/est Side School District No. 202	Coquille School District No. 8	Colleton County School District	Tintic School District	Clark College
/hitepine Joint School District No. 288	Corbett School District No. 39	Darlington County School District	Tooele County School District	Clover Park Technical College
filder School District No. 133	Corvallis School District No. 509J	Delta R-V School District	Uintah School District	Columbia Basin Community College
cial District	Cove School District No. 15	Dillon County School District No. 1	Wasatch County School District	Community Colleges of Spokane
da County Emergency Medical Services District	Crane Elementary School District	Dillon County School District No. 2	Washington County School District	Eastern Washington University
da County Highway District	Creswell School District No. 40	Dillon County School District No. 3	Wayne County School District	Edmonds Community College
dams County Recreation District			Weber School District	
	Crook County School District	Dillon County School District No. 4		Everett Community College
hsahka Water and Sewer District	Crow-Applegate-Lorane School District No. 66	Diocese Of Charleston Schools	Special District	Evergreen State College
lbion Highway District	Culver School District No. 4	Dorchester School District No. 2	Ash Creek Special Service District	Grays Harbor College
lpine Meadows Water and Sewer District	Dallas School District No. 2	Dorchester School District No. 4	Ashley Valley Water and Sewer Improvement District	Green River Community College
merican Falls Free Library District	David Douglas School District No. 40	Edgefield County Schools	Ballard Water and Sewer Improvement District	Highline Community College
merican Falls Housing Authority	Dayton School District No. 8	Fairfield County School District	Bear Lake Special Service District	Lake Washington Institute of Technology
		Families County SCHOOL DISTREE		
tlanta Highway District	Dayville School District No. 16J	Florence County School District No. 1	Bear River Water Conservancy District	Lower Columbia College
very Water and Sewer District	Douglas County School District	Florence County School District No. 2	Benchland Water District	Northwest Indian College
vondale Irrigation District	Douglas County School District No. 4	Florence County School District No. 3	Benson Culinary Water Improvement District	Olympic College
ayview Water and Sewer District	Douglas Education Service District	Florence County School District No. 4	Bona Vista Water Improvement District	Peninsula College
ear Lake County Library District	Dufur School District No. 29	Florence County School District No. 4 Florence County School District No. 5	Cache Mosquito Abatement District	Pierce College
ench Sewer District	Eagle Point School District No. 9	Ft. Mill School District No. 4	Cache Valley Transit District	Renton Technical College
enewah County Free Library District	Echo School District No. 5	Georgetown County School District	Canyonlands Health Care Special Service District	Seattle Community Colleges District VI
ig Canyon Fire District	Elgin School District	Greenville County School District	Carbon County Housing Authority	Shoreline Community College
laine County Housing Authority	Elkton School District No. 34	Greenwood School District No. 50	Carbon County Municipal Building Authority	Skagit Valley College
		Greenwood School District No. 50	Carbon County Municipal Bulluing Authority	
Blaine County Recreation District	Enterprise School District No. 21	Greenwood School District No. 52	Carbon County Recreation Transportation Special Service District	South Puget Sound Community College
liss Fire District	Estacada School District No. 108	Hampton County School District No. 2	Carbon Water Conservancy District	Tacoma Community College
oise Basin Library District	Eugene School District No. 4J	Hampton School District No. 1	Castle Valley Special Service District	University of Washington
Joise City/Ada County Housing Authority	Falls City School District	Horry County Schools	Cedar City Housing Authority	Walla Walla Community College
oise-Kung Irrigation District	Fern Ridge School District No. 28J	Jasper County School District	Cedar Mountain Fire Protection District	Washington State Board for Community and Technical Colleges
onneville County Fire District No. 1	Forest Grove School District	John de la Howe School District	Cedarview-Montwell Special Service District	Washington State Board for Community and Technical Coneges Washington State Higher Education Facilities Authority
Bruneau Valley District Library	Fossil School District 21J	Kershaw County School District	Central Davis County Sewer District	Washington State Student Achievement Council

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Idaho Oregon South Carolina Utah Washington

Idaho					Washington
Brun	neau Water and Sewer District	Gaston School District 511 J	Lancaster County School District	Central Iron County Water Conservancy District	Washington State University
Rubl	l Highway District	Gervais School District	Laurens County School District No. 55	Central Utah Water Conservancy District	Washington State University, Vancouver
	I Rural Fire Protection District	Gladstone School District			
			Laurens County School District No. 56	Central Weber Sewer Improvement District	Wenatchee Valley College
Burl	ley Highway District	Glendale School District No. 77	Lee County School District	Charleston Water Conservancy District	Western Washington University
Cald	dwell Housing Authority	Glide School District	Legacy Charter Schools	Copperton Improvement District	Whatcom Community College
Cam	yon Highway District No. 4	Grant County Education Service District	Lexington County School District No. 1	Cottonwood Improvement District	Yakima Valley Community College
			Lexington County School District No. 1	Cottonwood improvement bistrict	File of the Annual Control of the Annual Con
	cade Rural Fire District	Grant School District No. 3	Lexington County School District No. 2		Education (K-12)
Cast	tleford Rural Fire District	Grants Pass School District No. 7	Lexington County School District No. 3	Davis County Housing Authority	Aberdeen School District No. 5
Cent	tral Fire District	Greater Albany Public School District 8J	Lexington County School District No. 4	Davis-Salt Lake Aerial Spray Authority	Adna School District No. 226
	tral Orchards Sewer District	Gresham-Barlow School District	Lexington-Richland Counties School District No. 5	Duchesne County Upper Country Water Improvement District	Almira School District No. 17
	tral Shoshone County Water District	Harney County School District No. 3	Marion County School District	Duchesne County Water Conservancy District	Anacortes School District No. 103
Clari	k County District Library	Harney Education Service District	Marion County School District No. 7	Emery County Housing Authority	Arlington Public Schools
Clari	kia Free Library District	Harper School District No. 66	Marlboro County School District	Emery County Municipal Building Authority	Asotin-Anatone School District
	kia Highway District	Harrisburg School District No. 7	McCormick County School District	Emery County Special Service District No. 1	Auburn School District No. 408
	arwater Free Library District	Helix School District No. 1-R	Newberry County School District	Emery Water Conservancy District	Bainbridge Island School District No. 303
Clea	arwater Highway District	Hermiston School District	Oconee County School District	Emigration Improvement District	Battle Ground School District No. 119
Clea	arwater Soil and Water Conservation District	High Desert Education Service District	Orangeburg Consolidated School District Four	Fruitland Special Service District	Bellevue Christian School District
	arwater Water District	Hillsboro School District No. 1J	Orangeburg County Consolidated School District No. 3	Garden City Fire District	Bellevue School District No. 405
	solidated Free Library District	Hood River County School District	Orangeburg County Consolidated School District No. 5	Grand County Housing Authority	Bellingham School District No. 501
	tonwood Highway District	Huntington School District No. 16J	Pickens County School District	Granger-Hunter Improvement District	Benge School District No. 122
Cust	ter Soil and Water Conservation District	Imbler School District No. 11	Richland County School District No. 1	Heber Valley Special Service District	Bethel School District No. 403
	trich Fire District	InterMountain Education Service District	Richland County School District No. 2	Hooper Water Improvement District	Bickleton School District
Diet	trich Highway District	Ione School District R2	Rock Hill School District No. 3	Jensen Water Improvement District	Blaine School District No. 503
Dou	mecq Highway District	Jackson County School District No. 9	Saluda School District No. 1	Johnson Water Improvement District	Boistfort School District No. 234
Dow	vnev Swan Lake Highway District	Jackson Education Service District	South Carolina Public Charter School District	Jordan Valley Water Conservancy District	Bremerton School District
	Creek Cemetery Maintenance District	Jefferson County School District No. 509-J	Spartanburg County School District No. 1	Jordanelle Special Service District	Brewster School District No. 111
	le Fire Protection District	Jefferson School District	Spartanburg County School District No. 2	Juab Special Service Fire District	Bridgeport School District No. 75
Eagl	le Sewer District	Jewell School District No. 8	Spartanburg County School District No. 3	Kane County Water Conservancy District	Brinnon School District No. 46
Fast	Bonner County Free Library District	John Day School District No. 3	Spartanburg County School District No. 4	Kearns Improvement District	Burlington-Edison School District No. 100
	t Bonner County Library District	Jordan Valley School District No. 3	Spartanburg County School District No. 5	Lake Point Improvement District	Camas School District
EdSt	Bornier County Library District		spartanourg county school district No. 5	Lake Point Improvement District	Callias Scribbi District
	t Greenacres Irrigation District	Joseph School District No. 6	Spartanburg County School District No. 6	Logan-Cache Airport Authority	Cape Flattery School District No. 401
East	tern Idaho Public Health District	Junction City School District No. 69	Spartanburg County School District No. 7	Maeser Water and Sewer Improvement District	Capital Region Educational Service District No. 113
	tern Idaho Regional Wastewater Authority	Klamath County School District	Sumter School District	Magna Mosquito Abatement District	Carbonado Historical School District No. 19
	River Free Library District	Klamath Falls City Schools	Sumter School District No. 17	Magna Water District	Cascade Christian Schools
Elmo	ore Soil and Water Conservation District	Knappa School District	Sumter School District No. 2	Metropolitan Water District of Salt Lake and Sandy	Cascade School District No. 228
Fenr	n Highway District	La Grande School District No. 1	Union County School District	Midvalley Improvement District	Cashmere School District No. 222
	dinand Highway District	Lake County School District No. 7	Ware Shoals School District No. 51	Midway Sanitation District	Castle Rock School District No. 401
reru	allianu nigriway bistrict	Lake County School District No. 7			
	Haven Mosquito Abatement District	Lake Ed Service District	Williamsburg County Schools	Milford Area Healthcare Service District	Central Kitsap School District No. 401
Fren	mont County District Library	Lake Oswego School District No. 7J	Williston School District No. 29	Moab Mosquito Abatement District	Central Valley School District No. 356
Fried	dman Memorial Airport Authority	Lakeview School District No. 7	York School District No. 1	Moab Valley Fire Protection District	Centralia School District No. 401
	den Valley District Library		Special District	Mountain Green Sewer Improvement District	Chehalis School District No. 302
Gard	den valley district cibrary				
	den Valley Fire Protection District	Lebanon Community School District No. 9	Abbeville Housing Authority	Mountain Regional Water Special Service District	Cheney School District No. 360
Gard	den Valley Recreation District	Lincoln County School District	Aiken Housing Authority	Mountain View Special Service District	Chewelah School District No. 36
Gate	eway Fire Protection District	Linn-Benton-Lincoln Education Service District	Anderson Housing Authority	Mt. Olympus Improvement District	Chief Leschi School System
	n County Fire Protection District	Long Creek School District No. 17	Atlantic Beach Housing Authority	North Davis County Sewer District	Chimacum School District No. 49
	n County Mosquito Abatement District	Lowell School District No. 71	Beaufort Housing Authority	North Davis Fire District	Clarkston School District No. J250-185
Glen	nns Ferry Highway District	Mapleton School District No. 32	Beaufort-Jasper Water and Sewer Authority	North Emery Water Users Special Service District	Cle Elum-Roslyn School District
Gold	den Gate Highway District No. 3	Marcola School District No. 79J	Beech Island Rural Community Water District	North Fork Special Services District	Clover Park School District No. 400
Goo	oding County Memorial Hospital District	McKenzie School District	Belton-Honea Path Water Authority	North Pointe Solid Waste Special Service District	Colfax School District No. 300
	ce District Library	McMinnville School District No. 40	Bennettsville Housing Authority	North Summit Fire District	College Place School District No. 250
	ngeville Highway District	Medford School District No. 549C	Berea Public Service District	North Tooele County Fire Protection District	Colton School District No. 306
Gran	nite Reeder Water and Sewer District	Milton-Freewater School District No. 7	Berkeley County Water and Sanitation Authority	North Utah Water Conservancy District	Columbia School District No. 206
	ater Boise Auditorium District	Mitchell School District No. 55	Big Creek Water and Sewerage District	North View Fire District	Columbia School District No. 206, Stevens County
	ater Middleton Parks and Recreation District	Molalla River School District	Bluffton Township Fire District		Columbia School District No. 400
				Ogden Housing Authority	
Grea	ater Swan Valley Fire Protection District No. 2	Monument School District	Boiling Springs Fire District, Greenville County	Ouray Park Water Improvement District	Colville School District No. 115
Grov	veland Water and Sewer District	Morrow County School District	Broad Creek Public Service District	Park City Fire Service District	Concrete School District No. 11
	bor View Estates Water and Sewer District	Mt. Angel School District	Buffalo-Mt. Pisgah Fire Protection District	Price River Water Improvement District	Conway Consolidated School District No. 317
Hait	DOI VIEW Estates Water and Sewer District			Price River Water Improvement District	Conway Consolidated School District No. 317
	den Lake Irrigation District	Multnomah Education Service District Consortium	Burton Fire District	Provo Housing Authority	Cosmopolis School District
Hay	den Lake Recreational Water and Sewer District	Myrtle Point School District	Central Midlands Regional Transit Authority	Rockville/Springdale Fire Protection District	Coulee-Hartline School District No. 151
Hills	sdale Highway District	Neah-Kah-Nie School District No. 56	Charleston Area Regional Transportation Authority	Roosevelt City Housing Authority	Coupeville School District No. 204
	nedale Highway District	Nestucca Valley School District No. 101	Charleston County Aviation Authority	Salt Lake City Housing Authority	Crescent School District
		New Hope Christian Schools			Creston School District No. 73
	Doo Water and Sewer District		Charleston County Housing and Redevelopment Authority	Salt Lake City Mosquito Abatement District	
Hors	seshoe Bend Fire Protection District	Newberg School District No. 29J	Charleston Housing Authority	Salt Lake County Housing Authority	Curlew School District No- 50
Idah	no Soil and Water Conservation District	North Bend School District No. 13	Charleston Naval Complex Redevelopment Authority	Sandy Suburban Improvement District	Cusick School District
	an Valley Rural Fire District	North Central Education Service District	Charleston Soil and Water Conservation District	Scofield Reservoir Special Service District	Darrington School District No. 330
1-	a-Bonneville Sewer District	North Clackamas School District No. 12	Cheraw Housing Authority	Sevier County Special Service District No. 1	Davenport School District No. 207
	nd Park Fire District	North Douglas School District No. 22	Chester Housing Authority	Skyline Mountain Special Service District	Dayton School District No. 2
	ome Highway District	North Lake School District	Chester Metropolitan District	Snyderville Basin Special Recreation District	Deer Park School District No. 414
Jern	ome Recreation District	North Marion School District No. 15	Chester Sewer District	Snyderville Basin Water Reclamation District	Dieringer School District
	ome Rural Fire District No. 1	North Santiam School District No. 29	Coast Regional Transportation Authority	Solid Waste Special Service District No. 1	Dixie School District
	niah Fire Protection District	North Wasco County School District No. 21	Columbia Housing Authority	South Davis Sewer District	East Valley School District No. 361
Kam	niah Highway District	Northwest Regional Education Service District	Conway Housing Authority	South Davis Water District	East Valley School District No. 361, Spokane County
Ketc	chum Rural Fire Protection District	Nyssa School District No. 26	Daniel Morgan Water District	South Ogden Conservation District	East Valley School District No. 90, Yakima County
	der Harris Highway District	Oakland School District	Darlington County Fire District	South Salt Lake Valley Mosquito Abatement District	Eastmont School District No. 206
	zston Water District	Oakridge School District No. 76	Darlington County Water and Sewer Authority	South Summit Fire Protection District	Eatonville School District No. 404
	tenai County Water District No. 1	Ontario School District No. 8C	Darlington Housing Authority	South Utah Valley Solid Waste District	Edmonds School District No. 15
Koot	tenai Ponderay Sewer District	Oregon City School District No. 62	Donalds-Due West Water and Sewer Authority	South Valley Sewer District	Educational Service District No. 112
Koot	tenai-Shoshone Soil and Water Conservation District		Dorchester County Sales Tax Transportation Authority	Southeastern Utah Housing Authority	Ellensburg School District No. 401
W	a Library District	Paisley School District No. 11	Dorchester County Water Authority	Spanish Valley Water and Sewer Improvement District	Elma School District No. 68
. Kuna	a ciprary product	raisiey scriour district NO. 11	Dorchester county water Authority	Spanish variety water and sewer improvement district	Elina School District NO. 00
	ede Water District	Parkrose School District No. 3	Duncan Chapel Fire District	St. George Housing Authority	Endicott School District No. 308
	es Highway District	Pendleton School District No. 16	Easley Housing Authority	Stansbury Park Improvement District	Entiat School District No. 127
	ah County Library District	Perrydale School District No. 21J	Easley-Central Water District	Strawberry Electric Service District	Enumclaw School District No. 216
1	ah Soil and Water Conservation District	Philomath School District No. 17J	East Richland County Public Service District	Sugar House Park Authority	Ephrata School District No. 165
	hi Soil and Water Conservation District	Phoenix-Talent School District	Edgefield County Water and Sewer Authority	Tabby Valley Park Special Service District	Evaline School District No. 36
Lewi	riston Orchards Irrigation District	Pilot Rock School District No. 2	Florence Housing Authority	Taylorsville-Bennion Improvement District	Everett School District No. 2
	riston-Nez Perce County Regional Airport Authority	Pine Eagle School District No. 61	Fort Mill Housing Authority	Thompson Special Service District	Evergreen School District No. 114, Clark County
Lewi	ale County Descention Dist in		Friend Indeed Dublic Country District		Francisco Cabaci District No. 225
	oln County Recreation District	Pinehurst School District	Fripp Island Public Service District	Timpanogos Special Service District	Evergreen School District No. 205
	e Blacktail Ranch Water District	Pleasant Hill School District	Gaffney Housing Authority	Tooele County Housing Authority	Federal Way Public Schools
Little	e Wood River Library District	Plush School District 18	Gaston Rural Community Water District	Tooele County Recreation Special Service District	Ferndale School District No. 502
Lizze	rd Butte Library District	Port Orford-Langlois School District No. 2CJ	Georgetown County Water and Sewer District	Tridell-Lapoint Water Improvement District	Fife School District No. 417
	River Highway District	Total Control Computer School District No. 200	Georgetown County Water and Sewer District Georgetown Housing Authority	Thorn Exposit Water Improvement District	THE SCHOOL DISCHEL NO. 427
		Portland Public School District No. 1		Uintah Animal Control and Shelter Special Service District	Finley School District
M&1	T Water and Sewer District	Powers School District No. 31	Gilbert-Summit Rural Water District	Uintah County Municipal Building Authority	Franklin Pierce School District No. 402
Mac	ckay Free Library District	Prairie City School District No. 4	Grand Strand Water and Sewer Authority	Uintah Fire Suppression Special Service District	Freeman School District No. 358
Mad	dison Library District	Prospect School District	Greenville Arena District	Uintah Health Care Special Service District	Garfield School District No. 302

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Hannell

Idaho	Oregon	South Carolina	Utah	Washington
Marsing Rural Fire District	Rainier School District No. 13	Greenville County Recreation District	Uintah Highlands Water and Sewer Improvement District	Glenwood School District
McCall Fire Protection District	Redmond School District No. 2J	Greenville County Redevelopment Authority	Uintah Mosquito Abatement District	Goldendale School District
McCall Memorial Hospital District	Reedsport School District No. 105	Greenville Housing Authority	Uintah Recreation District	Grand Coulee Dam School District
Meridian Cemetery Maintenance District	Region 9 Education Service District	Greenville Transit Authority	Uintah Transportation Special Service District	Grandview School District No. 200
Meridian Library District	Reynolds School District No. 7	Greenwood Metropolitan District	Uintah Water Conservancy District	Granger School District No. 204
Meridian Rural Fire Protection District	Riddle School District No. 70	Greer Housing Authority	Unified Fire Authority	Granite Falls School District No. 332
Mica Kidd Island Fire Protection District	Riverdale School District No. 51J	Hartsville Housing Authority	Utah County Housing Authority	Grapeview School District No. 54
Middleton Rural Fire District	Rogue River School District No. 35	Hilton Head No. 1 Public Service District	Utah Paiute Housing Authority	Great Northern School District
Midvale Fire Protection District	Roseburg Public Schools	Holly Springs Fire-Rescue District	Utah Transit Authority	Green Mountain School District No. 103
Minidoka County Fire Protection District	Salem-Keizer Public School District No. 24J	Homeland Park Water and Sewer District	Utah Valley Dispatch Special Service District	Griffin School District No. 324
Minidoka County Highway District Moreland Water and Sewer District	Santiam Canyon School District No. 129J Santiam Christian Schools	James Island Public Service District Kingstree Housing Authority	Wasatch County Fire District Wasatch Front Waste and Recycling District	Harrington Public Schools Highland School District No. 203
Mountain Home Highway District	Santiam Christian Schools Scappoose School District No. 1J	Lady's Island-St. Helena Fire District	Wasatch Integrated Waste Management District	Highland School District No. 203 Highline School District No. 401
Mountain Rides Transportation Authority	Scio School District No. 95C	Lake City Housing Authority	Washington County Water Conservancy District	Hockinson School District
Nampa and Meridian Irrigation District	Seaside School District	Lancaster County Water and Sewer District	Waste Management Service District No. 5	Hond Canal School District No. 404
Nampa Highway District No. 1	Sheridan School District No. 48J	Lancaster Housing Authority	Weber Basin Water Conservancy District	Hoguiam School District No. 28
Nampa Housing Authority	Sherman County School District	Lancaster Soil and Water Conservation District	Weber Fire District	Inchelium School District No. 70
New Plymouth Fire District	Sherwood School District No. 88J	Laurens Housing Authority	Weber Mosquito Abatement District	Issaquah School District No. 411
North Bingham County District Library	Silver Falls School District No. 4J	Lexington County Health Services District, Inc.	Weber-Box Elder Conservation District	Kahlotus School District No. 56
North Custer Hospital District	Sisters School District No. 6	Liberty-Chesnee-Fingerville Water District	Wellsville-Mendon Conservancy District	Kalama School District No. 402
North Kootenai Water and Sewer District	Siuslaw School District No. 97J	Local Housing Authority	White City Water Improvement District	Keller School District No. 3
North Lake Recreational Sewer and Water District	South Coast Education Service District, Region No. 7	Lowcountry Regional Transportation Authority	Woodruff Fire District	Kelso School District No. 458
North Latah County Highway District	South Lane School District No. 45J3	Lugoff-Elgin Water Authority	State	Kennewick School District No. 17
Northern Lakes Fire District	South Umpqua School District No. 19	Marion Housing Authority	State Of Utah	Kent School District No. 415
Northside Fire District	South Wasco County School District No. 1	Marlboro County Housing Authority	Utah Department of Administrative Services	Kettle Falls School District No. 212
Notus-Parma Highway District No. 2	Southern Oregon Education Service District	McColl Housing Authority	Utah Department of Health	Kiona-Benton City School District No. 52
Oakley Highway District	Spray School District No. 1	Medical University Hospital Authority	Utah State Legislature	Kittitas School District
Oakley Library District	Springfield School District No. 19	Metropolitan Sewer Sub-District	Utah State Treasurer	Klickitat School District No. 402
Ola District Library	St. Helens School District No. 502	Mitford Water and Sewer District	Tribal	La Center School District
Oneida County Fire District Oregon Trail Recreation District	St. Paul School District No. 45 Stanfield School District No. 61	Mullins Housing Authority Murrells Inlet-Garden City Fire District	Confederated Tribes of the Goshute Reservation Kanosh Band of the Paiute Indian Tribe of Utah	La Conner School District No. 311 LaCrosse School District
Oregon Trail Recreation District Outlet Bay Water and Sewer District	Sutherlin School District No. 61 Sutherlin School District No. 130	Myrtle Beach Air Force Base Redevelopment Authority	Koosharem Band of the Paiute Indian Tribe of Utan Koosharem Band of the Paiute Indian Tribe	Lake Chelan School District Lake Chelan School District No. 129
Panhandle Health District	Sweet Home School District No. 55	Myrtle Beach Housing Authority	Northwestern Band of Shoshone Nation	Lake Quinault School District No. 97
Parma Rural Fire Protection District	Three Rivers School District	Newberry County Water and Sewer Authority	Northwestern Band of the Shoshone Nation Housing Authority	Lake Stevens School District No. 4
Pine Ridge Water and Sewer District	Tigard-Tualatin School District No. 23J	Newberry County Water and Sewer Authority Newberry Housing Authority	Paiute Indian Tribe of Utah	Lake Washington School District No. 414
Pinehurst Water District	Tillamook School District No. 9	North Charleston Housing Authority	Skull Valley Band of Goshute Indians	Lakewood School District No. 306
Pioneer Irrigation District	Ukiah School District 80 R	North Charleston Newer District	Ute Indian Tribe	Lamont School District
Placerville Fire Protection District	Umatilla School District No. 6	North Greenville Fire District	ote main moe	Liberty School District No. 362
Pocatello Housing Authority	Union School District 5	Oconee County Joint Regional Sewer Authority		Lind School District
Pocatello-Chubbuck Auditorium District	Vale School District No. 84	Parker Sewer and Fire Subdistrict		Longview School District No. 122
Portneuf District Library	Vernonia School District No. 47J	Patriots Point Development Authority		Loon Lake School District No. 183
Post Falls Highway District	Wallowa School District No. 12	Pee Dee Regional Airport District		Lopez Island School District No. 144
Power County Highway District	Warrenton-Hammond School District No. 30	Pee Dee Regional Transportation Authority		Lyle School District No- 406
Prairie Highway District	West Linn-Wilsonville School District	Piedmont Public Service District		Lynden School District No. 504
Prairie-River Library District	Willamette Education Service District	Pioneer Rural Water District		Mabton School District No. 120
Progressive Irrigation District	Willamina School District No. 30J	Powdersville Water District		Mansfield School District No. 207
Raft River Highway District	Winston-Dillard School District No. 116	Richland-Lexington Airport District		Manson School District
Rapid River Water and Sewer District	Woodburn School District No. 103	Richland-Lexington Riverbanks Park District		Mary M. Knight School District
Richfield District Library	Yamhill-Carlton School District No. 1	Rock Hill Housing Authority		Mary Walker School District No. 207
Riverside Independent Water District	Yoncalla School District No. 32	Saluda County Water and Sewer Authority		Marysville School District No. 25
Rock Creek Fire District	Special District	Sandy Springs Water District		McCleary School District No. 65
Rockland Rural Fire District	Adair Rural Fire Protection District	Santee Fire Service District		Mead School District No. 354
Rogerson Water District	Amity Fire District	Santee Wateree Regional Transportation Authority		Medical Lake School District No. 326
Ross Point Water District	Applegate Valley Fire District No. 9	Sheldon Township Fire District		Mercer Island School District No. 400
Sagle Fire District	Arch Cape Sanitary District	Slater-Marietta Fire District		Meridian School District No. 505
Salmon River Clinic Hospital District Sam Owen Fire District	Arch Cape Water District	South Carolina Housing Authority Bond Council		Methow Valley School District Monroe School District No. 103
Sam Owen Fire District Santa-Fernwood Water and Sewer District	Arnold Irrigation District	South Carolina Public Employee Benefit Authority		
Schweitzer Fire-Rescue District	Aumsville Rural Fire District Baker County Library District	South Carolina Regional Housing Authority No. 1 South Carolina Regional Housing Authority No. 3		Montesano School District No. 66 Morton School District No. 214
Schweitzer Fire-Rescue District Settlers Irrigation District	Baker Rural Fire Protection District	South Carolina Regional Housing Authority No. 3 South Carolina State Education Assistance Authority		Moses Lake School District No. 161
Shelley/Firth Fire District	Baker Valley Soil and Water Conservation District	South Carolina State Education Assistance Addronty South Carolina State Fiscal Accountability Authority		Mossyrock School District No. 206
Shoshone City & Rural Fire District	Bandon Rural Fire Protection District	South Carolina State Fiscal Accountability Authority South Carolina State Housing Finance and Development Authority		Mt. Adams School District No. 206
Shoshone County Fire Protection District No. 2	Barlow Water Improvement District	South Carolina State Housing Finance and Development Authority South Carolina State Ports Authority		Mt. Baker School District No. 209
Shoshone Highway District No. 2	Bay Area Hospital District	South Greenville Fire District		Mt. Vernon School District No. 320
South Bannock Library District	Bend Parks and Recreation District	South Island Public Service District		Mukilteo School District No. 6
South Bingham Soil Conservation District	Beverly Beach Water District	Southside Rural Community Water District		Naches Valley School District No. 3
South Boundary Fire Protection District	Black Butte Ranch Rural Fire Protection District	Spartanburg Housing Authority		Napavine School District No. 14
South Custer Fire District	Blue Mountain Hospital District	Spartanburg Regional Health Services District		Naselle-Grays River Valley School District No.165
South Fork Coeur d'Alene River Sewer District	Blue River Water District	St. Andrews Public Service District South Carolina		Nespelem School District No. 14
South Latah Highway District	Boardman Park and Recreation District	St. John's Fire District		Newport School District No. 56-415
Southside Water and Sewer District	Boardman Rural Fire Protection District	Starr-Iva Water and Sewer District		Nine Mile Falls School District No. 325/179
Southwestern Idaho Cooperative Housing Authority	Boring Water District No. 24	Startex-Jackson-Wellford-Duncan Water District		Nooksack Valley School District No. 506
St. Maries Fire Protection District	Boulder Creek Retreat Special Road District	Sumter Housing Authority		North Beach School District No. 64
Star Joint Fire District	Brownsville Rural Fire District	Talatha Rural Community Water District		North Franklin School District No. 51
Star Sewer and Water District	Buell-Red Prairie Water District	Taylors Fire and Sewer District		North Kitsap School District No. 400
Sun Valley Water and Sewer District	Bunker Hill Sanitary District	Three Rivers Solid Waste Authority		North Mason School District
Sunset Heights Water District	Burlington Water District	Tigerville Fire District		North Thurston Public Schools
Targhee Regional Public Transit Authority	Camellia Park Sanitary District	Tri-County Solid Waste Authority		Northport School District No. 211
Targhee Regional Public Transportation Authority Teton County Fire Protection District	Cannon Beach Rural Fire Protection District Central Lincoln People's Utility District	Union Housing Authority Valley Public Service Authority		Northshore School District No. 417 Oak Harbor School District No. 201
Teton County Fire Protection District Three Creek Highway District	Central Lincoln People's Utility District Central Oregon Irrigation District	Valley Public Service Authority Waccamaw Regional Transportation Authority		Oak Harbor School District No. 201 Oakesdale School District No. 324
Three Creek Highway District Three Mile Water District	Central Oregon Park and Recreation District	Wedgefield Stateburg Water District		Oakville School District No. 324 Oakville School District No. 400
Timberlake Fire Protection District	Central Oregon Regional Housing Authority	West Anderson Water District West Anderson Water District		Ocean Beach School District No. 101
Twin Falls Highway District	Charleston Fire District	Westview-Fairforest Fire District		Ocosta School District No. 172
Twin Falls Highway District Twin Falls Housing Authority	Charleston Fire District Charleston Sanitary District	Whitney Fire Protection District		Ocosta School District No. 172 Odessa School District No. 105
Twin Falls Rural Fire Protection District	Chehalem Park and Recreation District	Williamsburg County Transit Authority		Okanogan School District No. 105
Twin Ridge Rural Fire District	Chenowith Water Public Utility District	Williamsburg County Water and Sewer Authority		Olympia School District No. 111
Union Independent Highway District	Chiloquin-Agency Lake Rural Fire Protection District	Woodruff Housing Authority		Olympic Educational Service District
Upper Fords Creek Rural Fire District	Christmas Valley Domestic Water Supply District	Woodruff-Roebuck Water District		Omak School District No. 19
Warm Lake Recreational Water District	Christmas Valley Park and Recreation District	York County Natural Gas Authority		Onalaska School District No. 300
Wendell Highway District	Clackamas County Fire District No. 1	State		Onion Creek School District No. 30
West Boise Sewer District	Clackamas County Housing Authority	Santee-Lynches Regional Council of Governments		Orcas Island School District No. 137
West Bonner Library District	Clackamas County Soil and Water Conservation District	South Carolina Department of Health and Environmental Control		Orchard Prairie School District No. 123
West Bonner Water and Sewer District	Clatskanie Park and Recreation District	South Carolina Department of Mental Health		Orient School District No. 65

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South Carolina Washington West Pend Oreille Fire District Clatskanie People's Utility District South Carolina Department of Revenue Oroville School District No. 410 Western Ada Recreation District Clatskanie Rural Fire Protection District South Carolina General Services Division Orting School District No. 344 Western Elmore County Recreation District Clatson Care Center Health District South Carolina Office of Regulatory Staff Othello School District Clatsop County Housing Authority South Carolina State Budget and Control Board Palisades School District No. 102 Wilder Irrigation District South Carolina State Treasurer's Office State Of South Carolina Wilder Public Library District Cloverdale Rural Fire Protection District Palouse School District No. 301 Wilder Rural Fire Protection District Coburg Rural Fire Protection District Pasco School District No. 1 Wilderness Ranch Fire Protection District Colton Fire District Township Pateros School District Township of Grand Meadow Winona Highway District Colton Water District Paterson School District No. 50 Pe Ell School District No. 301 Worley Fire District Columbia Corridor Drainage Districts Joint Contracting Authority Tribal Worley Highway District Columbia Health District Catawha Indian Nation Peninsula School District Columbia Improvement District Pioneer School District No. 402 Idaho Department of Administration Columbia River People's Utility District Pomeroy School District No. 110 Idaho Department of Health and Welfare Columbia Soil and Water Conservation District Port Angeles School District No. 121 State Of Idaho Coos County Airport District Port Townsend School District No. 50 Tribal Coos County Library Service District Presentt School District No. 402-37 Coeur d'Alene Tribe Coquille Indian Housing Authority Pride Prep Schools Kootenai Tribe of Idaho Coguille Valley Hospital District Prosser School District No. 116 Nez Perce Tribal Enterprises Corbett Water District Puget Sound Educational Service District Nez Perce Tribe Corvallis Rural Fire Protection District Pullman School District No. 267 Shoshone-Bannock Tribes Cove Rural Fire Protection District Puvallup School District No. 3 Crooked River Ranch Rural Fire Protection District Queets-Clearwater School District No. 20 Crooked River Ranch Special Road District Quilcene School District No. 48 Quillayute Valley School District No. 402 Curry Health District Curry Public Library District Quincy School District No. 144 Dallas Cemetery District No. 4 Rainier School District No. 307 Dean Minard Water District Raymond School District No. 116 Dee Rural Fire Protection District Reardan-Edwall School District Deschutes County 911 Service District Renton School District No. 403 Deschutes County Rural Fire District No. 1 Republic School District Deschutes Valley Water District Richland School District No. 400 Ridgefield School District No. 122 Devils Lake Water Improvement District Dexter Rural Fire Protection Distric Ritzville School District Douglas County Fire District No. 2 Riverside School District Douglas County Housing Authority Riverview School District No. 407 Douglas Soil and Water Conservation District Rochester School District Drakes Crossing Rural Fire Protection District Rosalia School District No. 320 Dufur Recreation District Royal School District Eagle Valley Soil and Water Conservation District San Juan Island School District No. 149 East Fork Irrigation District Satsop School District No. 104 East Multnomah Soil and Water Conservation District Seattle Public Schools East Umatilla County Health District Sedro-Woolley School District No. 101 East Valley Water District Selah School District No. 119 Echo Rural Fire District Selkirk School District No. 70 Flsie-Vinemanle Rural Fire Protection District No. 11 Sequim School District No. 323 Emerald People's Utility District Shaw Island School District No. 10 Estacada Rural Fire District No. 69 Shelton School District No. 309 Fairview Water District Shoreline School District No. 412 Falcon Cove Beach Water District Skykomish School District Farmers Irrigation District Gardiner Sanitary District Snohomish School District No. 201 Snoqualmie Valley School District No. 410 Gaston Rural Fire District Soap Lake School District No. 156 Gates Rural Fire Protection District South Bend School District No. 118 Gearhart Rural Fire Protection District South Kitsap School District No. 402 Glendale Rural Fire Protection District South Whidhey School District No. 206 Gleneden Sanitary District Southside School District Goshen Fire District Spokane Public Schools Government Camp Sanitary District Sprague School District Grand Ronde Sanitary District St. John School District No. 322 Grant County Transportation District Stanwood-Camano School District No. 401 Grant Soil and Water Conservation District Steilacoom Historical School District No. 1 Grants Pass Irrigation District Steptoe School District No. 304 Stevenson-Carson School District No. 303 Green Sanitary District Hahlen Road Special District Sultan School District No. 311 Summit Valley School District 202 Halsey-Shedd Rural Fire Protection District Hamlet Rural Fire Protection District Sumner School District No. 320 Harbor Sanitary District Sunnyside School District No. 201 Harbor Water Public Utility District Tacoma School District No. 10 Harney District Hospital Taholah School District No. 77 Harney Soil and Water Conservation District Tahoma School District No. 409 Harriman Rural Fire Protection District Tekoa School District No. 265 Hazeldell Rural Fire Protection District Tenino School District No. 402 Hebo Joint Water and Sewer Authority Thorp School District No. 400 Heceta Water District Toledo School District No. 237 Hermiston Cemetery District Tonasket School District Hermiston Fire and Emergency Services District Toppenish School District No. 202 Hermiston Irrigation District Touchet School District No. 300 Hood River County Library District Toutle Lake School District No. 130 Hood River County Transportation District Hood River Valley Parks and Recreation District Trout Lake School District No. R-400 Tukwila School District No. 406 Hoodland Fire District No. 74 Tumwater School District No. 33 Union Gap School District No. 2 **Hubbard Rural Fire Protection District** Ice Fountain Water District University Place School District No. 83 Illinois Valley Rural Fire Protection District Valley School District Ione Rural Fire Protection District Valley School District No. 70 Irrigon Community Park and Recreation Maintenance District Vancouver School District No. 37 Vashon Island School District No. 402 Jackson County Airport Authority Jackson County Fire District No. 3 Wahkiakum School District No. 200 Jackson County Fire District No. 5 Wahluke School District No. 73

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Jackson County Housing Authority

Jackson County Vector Control District

Jefferson Rural Fire Protection District

Jackson Soil and Water Conservation District

John Day/Canyon City Parks and Recreation District

Jackson County Library District

Waitsburg School District

Walla Walla School District No. 140

Warden School District No. 146-161

Washington Schools Risk Management Pool

Washington State Educational Service District

Wapato School District No. 207

Oregon South Carolin

Junction City Rural Fire Protection District Juniper Flat Rural Fire Protection District Keating Soil and Water Conservation District Keizer Rural Fire Protection District

Keno Fire Protection District

Kernville-Gleneden Beach-Lincoln Beach Water District Klamath County Fire District No. 1

Klamath County Library Service District Klamath Housing Authority Klamath Irrigation District Klamath Vector Control District

La Grande Rural Fire Protection District La Pine Park and Recreation District

La Pine Rural Fire Protection District

La Pine Water District Lake District Hospital

Lake Grove Water District Lakeside Fire District No. 4

Lane County Fire District No. 1

Lane Library District

Lane Transit District

Langlois Water District LaPine Special Sewer District

Lebanon Aquatic District

Lehanon Fire District

Lewis and Clark Rural Fire Protection District

Libby Drainage District

Linn Benton Housing Authority

Lookingglass Rural Fire District

Lorane Rural Fire Protection District

Lowell Rural Fire Protection District

Lower Umpqua Hospital District Lusted Water District

Madras Aquatic Center District

Malheur County Housing Authority

Malin Rural Fire Protection District

Manleton Water District

Marion County Fire District No. 1 Marion Soil and Water Conservation District

Medford Irrigation District

Merrill Rural Fire Protection District

Metro

McMinnville Water & Light

Mid-County Cemetery Maintenance District

Middle Fork Irrigation District

Miles Crossing Sanitary Sewer District Mill City Rural Fire Protection District

Milton-Freewater Water Control District Mist-Rickenfeld Rural Fire Protection District

Mohawk Valley Rural Fire District

Molalla River Improvement District

Molalla Rural Fire Protection District No. 73

Monroe Rural Fire Protection District

Morrow County Health District

Mountain View Hospital District Mt. Angel Fire District

Multnomah County Drainage District No. 1

Multnomah County Rural Fire Protection District No. 10

Multnomah County Rural Fire Protection District No. 14

Nesika Beach-Ophir Water District

Neskowin Regional Sanitary Authority

Neskowin Regional Water District

Nestucca Rural Fire Protection District Netarts Oceanside Sanitary District

Netarts-Oceanside Rural Fire Protection District

North Bay Rural Protection Fire District

North Bend City/Coos-Curry Housing Authority North Central Public Health District

North Clackamas Parks and Recreation District

North County Recreation District

North Gilliam Cemetery District

North Gilliam County Rural Fire Protection District

North Lincoln Fire and Rescue District No. 1 North Powder Rural Fire Protection District

North Sherman County Rural Fire Protection District North Unit Irrigation District

Northeast Oregon Housing Authority

Northern Wasco County Park and Recreation District

Northern Wasco County People's Utility District

Northwest Oregon Housing Authority

Nyssa Road Assessment District No. 2 Nyssa Rural Fire Protection District

Oak Hill Sanitary District

Oak Lodge Sanitary District Oak Lodge Water District

Oceanside Water District

Ochoco West Sanitary District

Odell Sanitary District

Ontario Library District Oregon Fire Districts Association

Oregon Infrastructure Finance Authority

Oregon Trail Library District

Oregon Water Wonderland Unit II Sanitary District Owyhee Irrigation District

Washington Washougal School District

Washtucna School District

Waterville School District No. 209

Wellpinit School District Wenatchee School District No. 246

West Valley School District No. 208, Yakima County

West Valley School District No. 363, Spokane County

White Pass School District No. 303

White River School District No. 416

White Salmon Valley School District No. 405-17

Wilbur School District No. 200

Willapa Valley School District No. 160

Wilson Creek School District

Winlock School District No. 232

Wishkah Valley School District No. 117 Woodland School District No. 404

Yakima School District No. 7

Yelm Community School District No. 2

Zillah School District No. 205

Special District

Acme Water District No. 18

Adams County Fire Protection District No. 1

Adams County Mosquito Control District

Aeneas Lake Irrigation District

Alderwood Water and Wastewater District

Alpine Water District

Anacortes Housing Authority Annapolis Water District

Asotin County Cemetery District No. 1

Asotin County Conservation District

Asotin County Fire District No. 1 Asotin County Housing Authority

Asotin County Public Utility District No. 1

Badger Mountain Irrigation District Bainbridge Island Metropolitan Park and Recreation District

Basin City Water/Sewer District

Rawiew Reach Water District Beacon Hill Water and Sewer District

Beehive Irrigation District

Belfair Water District No. 1

Bellevue Convention Center Authority Bellingham Housing Authority

Bellingham Public Development Authority

Benton County Diking District No. 1 Benton County Fire Protection District No. 1

Benton County Fire Protection District No. 2 Benton County Fire Protection District No. 4

Benton County Fire Protection District No. 5

Renton County Fire Protection District No. 6 Benton County Mosquito Control District

Benton County Public Utility District No. 1 Benton Irrigation District

Benton-Franklin Health District

Reverly Water District Birch Bay Water and Sewer District

Black Diamond Water District

Bremerton Housing Authority

Buckhannon-Upshur County Airport Authority Burbank Irrigation District No. 4

Carnhope Irrigation District No 7

Cascadia Conservation District Cedar River Water and Sewer District

Central Klickitat County Park and Recreation District

Central Pierce Fire and Rescue District No. 6

Central Puget Sound Regional Transit Authority

Central Valley Ambulance Authority Chelan County Fire District No. 1

Chelan County Fire District No. 3

Chelan County Fire District No. 5 Chelan County Fire District No. 6

Chelan County Fire District No. 7

Chelan County Fire District No. 8 Chelan County Fire District No. 9

Chelan County Public Hospital District No. 1

Chelan County Public Utility District No. 1

Chelan County/Wenatchee Housing Authority Chelan-Douglas Health District

Chinnok Water District

Chuckanut Community Forest Park District

Clallam Conservation Distric Clallam County Fire District No. 2

Clallam County Fire District No. 5 Clallam County Fire District No. 6

Clallam County Fire Protection District No. 1

Clallam County Fire Protection District No. 3 Clallam County Fire Protection District No. 4

Clallam County Hospital District No. 1

Clallam County Housing Authority

Clallam County Parks and Recreation District No. 1

Clallam County Public Hospital District No. 2 Clallam County Public Utility District No. 1

Clark County Fire District No. 10

Clark County Fire District No. 11 Clark County Fire District No. 13

Appendix B Page 8 of 14 Hawaii Idaho Oregon South Carolina Utah Washington

Pacific City Joint Water Sanitary Authority Clark County Fire District No. 5 Pacific Communities Health District Clark County Fire Protection District No. 3 Palatine Hill Water District Clark County Fire Protection District No. 6 Peninsula Drainage District No. 1 Clark County Public Utility District No. 1 Peninsula Drainage District No. 2 Pilot Rock Fire Protection District Clark Regional Wastewater District Cline Irrigation District Pine Grove Rural Fire Protection District Clinton Water District Pleasant Hill Rural Fire Protection District Coal Creek Utility District Pleasant Home Water District Columbia Conservation District Polk County Fire District No- 1 Columbia County Fire District No. 3 Polk County Housing Authority Columbia County Public Hospital District No. 1 Polk Soil and Water Conservation District Columbia County Rural Library District Portland Metropolitan Area Water District Columbia Irrigation District Public Procurement Authority Columbia Valley Water District Rainhow Water District Colville Indian Housing Authority Raleigh Water District Consolidated Irrigation District No. 14 Redmond Area Park and Recreation District Covington Water District Riddle Rural Fire District Cowiche Sewer District River Forest Acres Special Road District Cowlitz County Cemetery District No. 2 River Road Park and Recreation District Cowlitz County Fire District No. 6 Rivergrove Water District Cowlitz County Public Utility District No. 1 Roads End Sanitary District Cowlitz Transit Authority Roberts Creek Water District Cross Valley Water District Rockwood Water People's Utility District Dallesport Water District Rogue River Cemetery Maintenance District Douglas County Fire District No. 2 Rogue Valley Transportation District Douglas County Fire Protection District No. 5 Roseburg Urban Sanitary Authority Douglas County Public Utility District No. 1 Sable Drive Road District Douglas County Sewer District No. 1 Salem Area Mass Transit District Douglas-Okanogan County Fire District No. 15 Salem Housing Authority East Columbia Basin Irrigation District Salem-Keizer Transit District East Gig Harbor Water District Santa Clara Rural Fire Protection District East Lewis County Public Development Authority Santiam Water Control District East Pierce Fire and Rescue District No. 22 Scappoose Rural Fire District East Spokane Water District No. 1 Scio Rural Fire District East Wenatchee Water District Scottsburg Rural Fire District Eastmont Metropolitan Park District Seal Rock Fire District Fastsound Sower and Water District Seal Rock Water District Edmonds Public Facilities District Shangri-La Water District Ellensburg Business Development Authority Enterprise Cemetery District No. 7 Shasta View Irrigation District Siletz Rural Fire Protection District Entiat Irrigation District Silverton Fire District Everett Housing Authority Sisters-Camp Sherman Rural Fire Protection District Everett Public Facilities District Siuslaw Public Library District Evergreen Water-Sewer District No. 19 South Clackamas Transportation District Fall City Water District South Suburban Sanitary District Ferry County Public Utility District No. 1 Southern Curry Cemetery Maintenance District Ferry/Okanogan County Fire Protection District No. 13 Southwest Lincoln County Water District Fisherman Bay Sewer District Spring River Special Road District Foster Creek Conservation Distric Four Lakes Water District No. 10 Springfield Utility District Stanfield Fire District No. 7-402 Franklin Conservation District Stayton Fire District Franklin County Cemetery District No. 2 Suburban East Salem Water District Franklin County Fire District No. 1 Sunrise Water Authority Sunset Empire Transportation District Franklin County Fire Protection District No. 3 Franklin County Irrigation District No. 1 Swalley Irrigation District Sweet Home Fire and Ambulance District Franklin County Public Utility District No. 1 Freeland Water and Sewer District Talent Irrigation District Ft. Worden Public Development Authority Terrebonne Domestic Water District Gardena Farms Irrigation District No. 13 Three Sisters Irrigation District Goforth Special Utility District Tillamook County Transportation District Grand Coulee Project Hydroelectric Authority Tillamook People's Utility District Grandview Irrigation District Tiller Rural Fire District Grant County Airport District No. 1 Toledo Rural Fire Protection District Grant County Fire District No. 10 Tri City Rural Fire District No. 4 Grant County Fire District No. 11 Tri City Water District Grant County Fire District No. 3 Grant County Fire District No. 4 Tri-City Service District Tri-County Metropolitan Transportation District Grant County Fire District No. 7 Tualatan Hills Park and Recreation District Grant County Fire Protection District No. 5 Tualatin Hills Park and Recreation District Grant County Housing Authority Tualatin Valley Irrigation District Grant County Mosquito Control District No. 1 Tualatin Valley Water District Grant County Mosquito District No. 2 Tumalo Irrigation District Grant County Port District No. 4 Twin Rocks Sanitary District Grant County Port District No. 6 Umatilla County Housing Authority Grant County Port District No. 7 Umatilla Hospital District Grant County Public Hospital District No. 1 Umatilla Land Redevelopment Authority Grant County Public Hospital District No. 2 Umatilla Morrow Radio and Data District Grant County Public Hospital District No. 3 Grant County Public Hospital District No. 4 Umatilla Reservation Housing Authority Umatilla Rural Fire Protection District Grant County Public Utility District No. 2 Union Cemetery District Grant Transit Authority Vale Oregon Irrigation District Grays Harbor Conservation District Valley View Water District Grays Harbor County Fire Protection District No. 1 Grays Harbor County Fire Protection District No. 12 Vandevert Acres Special Road District Vineyard Mountain Water and Improvement District Grays Harbor County Fire Protection District No. 14 Walla Walla River Irrigation District Gravs Harbor County Fire Protection District No. 2 Wallowa County Health Care District Grays Harbor County Fire Protection District No. 7 Wamic Water and Sanitary Authority Gravs Harbor County Housing Authority Warm Springs Housing Authority Grays Harbor County Water District No. 1 Wasco County Soil and Water Conservation District Washington County Fire District No. 2 Grays Harbor County Water District No. 2 Grays Harbor Drainage District No. 1 Washington County Housing Authority Grays Harbor Fire District No. 10 Water Wonderland Improvement District Gravs Harbor Historical Seaport Authority

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Wedderburn Sanitary District

Grays Harbor Public Utility District No. 1

Oregon Washington West Slope Water District Grays Harbor Transportation Authority West Valley Housing Authority Greater Wenatchee Irrigation District Western Lane Ambulance District Greater Wenatchee Regional Events Center Public Facilities District Westport Wauna Rural Fire Protection District Green Tank Irrigation District No. 11 Westwood Hills Road District Wiard Memorial Park District Hartstene Pointe Water-Sewer District Highland Water District Wickiup Water District Highlands Sewer District Willamalane Park and Recreation District Highline Water District Williams Rural Fire Protection District Historic Seattle Preservation and Development Authority Willow Creek Park District Holmes Harbor Sewer District Winchester Bay Sanitary District Hunters Water District Winston-Dillard Fire District Hydro Irrigation District No. 9 Winston-Dillard Water District Icicle Irrigation District Woodburn Rural Fire Protection District Yamhill County Housing Authority Irvin Water District No. 6 Yamhill Fire Protection District Island County Fire District No. 3 Youngs River-Lewis and Clark Water District Island County Fire Protection District No. 1 Island County Housing Authority Oregon Department of Administrative Services Jefferson County Conservation District Oregon Department of Revenue Jefferson County Fire District No. 5 Oregon Health Licensing Agency Jefferson County Fire Protection District No. 1 Oregon Higher Education Coordinating Commission Jefferson County Fire Protection District No. 3 Jefferson County Public Utility District No. 1 Oregon Secretary of State Oregon State Board of Nursing Jefferson County Water District No. 3 State of Oregon Jefferson Transit Authority Juniper Beach Water District Burns Paiute Tribe Kapowsin Water District Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Kelso Housing Authority Confederated Tribes of Grand Ronde Community Kennewick Housing Authority Confederated Tribes of Siletz Indians Kennewick Irrigation District Confederated Tribes of the Umatilla Indian Reservation Kennewick Public Facilities District Confederated Tribes of the Warm Springs Kennewick Public Hospital District Coquille Indian Tribe Kent Fire Department Regional Fire Authority Klamath Tribes Key Peninsula Metro Parks District King County Airport District No. 1 King County Ferry District King County Fire Protection District No. 16 King County Fire Protection District No. 2 King County Fire Protection District No. 20 King County Fire Protection District No. 25 King County Fire Protection District No. 27 King County Fire Protection District No. 28 King County Fire Protection District No. 34 King County Fire Protection District No. 37 King County Fire Protection District No. 40 King County Fire Protection District No. 43 King County Fire Protection District No. 44 King County Fire Protection District No. 45 King County Fire Protection District No. 47
King County Fire Protection District No. 50 King County Flood Control District King County Hospital District No. 4 King County Housing Authority King County Public Hospital District No. 1 King County Public Hospital District No. 2 King County Water District No. 1 King County Water District No. 111 King County Water District No. 117 King County Water District No. 119 King County Water District No. 125 King County Water District No. 19 King County Water District No. 20 King County Water District No. 45 King County Water District No. 49 King County Water District No. 54 King County Water District No. 90 Kitsap Conservation District Kitsap County Consolidated Housing Authority Kitsap County Fire District No. 18 Kitsap County Public Utility District No. 1 Kitsap County Rural Library District Kitsap Public Health District Kittitas County Conservation District Kittitas County Fire District No. 2 Kittitas County Fire Protection District No. 7 Kittitas County Hospital District No. 2 Kittitas County Housing Authority Kittitas County Public Utility District No. 1 Kittitas County Water District No. 5 Kittitas County Water District No. 6 Kittitas County Water District No. 7 Klickitat County Fire District No. 14 Klickitat County Fire District No. 15 Klickitat County Fire District No.1 Klickitat County Fire Protection District No. 4 Klickitat County Fire Protection District No. 5 Klickitat County Port District No. 1 Klickitat County Public Hospital District No. 1 Klickitat County Public Hospital District No. 2 Klickitat County Public Utility District No. 1 Lacey Fire District 3

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Lake Chelan Reclamation District Lake Chelan Sewer District Lake Forest Park Water District Oregon South Carolina

Washington Lake Stevens Sewer District Lake Wenatchee Water District Lake Whatcom Water and Sewer District Lakehaven Utility District Lakewood Water District Lenora Water and Sewer District Lewis County Conservation District Lewis County Fire District No. 1 Lewis County Fire District No. 11 Lewis County Fire District No. 13 Lewis County Fire District No. 18 Lewis County Fire District No. 9 Lewis County Fire Protection District No. 14 Lewis County Fire Protection District No. 16 Lewis County Fire Protection District No. 2 Lewis County Fire Protection District No. 5 Lewis County Fire Protection District No. 6 Lewis County Fire Protection District No. 8 Lewis County Hospital District No. 1 Lewis County Public Facilities District Lewis County Public Utility District No. 1 Lewis County Water District No. 1 Lewis County Water District No. 3 Lewis Public Transportation Benefit Area Authority Liberty Lake Sewer and Water District Lincoln County Fire District No. 1 Lincoln County Fire District No. 4 Lincoln County Fire Protection District No. 5 Lincoln County Fire Protection District No. 6 Lincoln County Fire Protection District No. 8 Lincoln County Hospital District No. 3 Lincoln-Adams County Fire Protection District No. 3 Longview Housing Authority Lopez Island Library District Lower Elwha Housing Authority Lower Squilchuck Irrigation District Lummi Housing Authority Lummi Tribal Sewer and Water District Makah Housing Authority Malaga Water District Manchester Water District Manson Park and Recreation District Marshland Flood Control District Marysville Fire District Mason Conservation District Mason County Fire District No. 13 Mason County Fire District No. 17 Mason County Fire District No. 2 Mason County Fire District No. 4 Mason County Fire Protection District No. 5 Mason County Fire Protection District No. 8 Mason County Housing Authority Mason County Public Hospital District No. 1 Mason County Public Utility District No. 1 Mason County Public Utility District No. 3 Mason County Transit Authority Methow Valley Irrigation District Mid-Columbia Library District Midway Sewer District Moab Irrigation District No. 20 Moses Lake Irrigation and Rehabilitation District Mukilteo Water and Wastewater District Naches-Selah Irrigation District North Beach Water District North Central Washington Economic Development District North City Water District North County Regional Fire Authority North Highline Fire District North Perry Avenue Water District North Whidbey Park and Recreation District Northeast Sammamish Sewer and Water District Northshore Utility District Northwest Park and Recreation District No. 2 Okanogan Conservation District Okanogan County Cemetery District No. 4 Okanogan County Fire District No. 6 Okanogan County Fire Protection District No. 11 Okanogan County Housing Authority
Okanogan County Public Hospital District No. 3 Okanogan County Public Hospital District No. 4 Okanogan County Public Utility District No. 1 Okanogan Fire Protection District No. 16 Okanogan Irrigation District
Olympic View Water and Sewer District Olympus Terrace Sewer District Orcas Island Library District Orchard Avenue Irrigation District No. 6 Oroville Housing Authority Oroville-Tonasket Irrigation District Othello Housing Authority Pacific Conservation District

Pacific County Fire District No. 2 Pacific County Fire Protection District No. 1 Pacific County Fire Protection District No. 3

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Oregon South Carolina

Pacific County Public Healthcare Services District No. 3 Pacific County Public Utility District No. 2 Pacific Hospital Preservation and Development Authority Palouse Conservation District Pasco/Franklin County Housing Authority Pend Oreille County Fire District No. 2 Pend Oreille County Fire District No. 4 Pend Oreille County Fire District No. 5 Pend Oreille County Library District Pend Oreille County Public Hospital District No. 1 Pend Oreille County Public Utility District No. 1 Peninsula Housing Authority Peninsula Metropolitan Park District Peshastin Irrigation District Peshastin Water District Pierce Conservation District Pierce County Fire District No. 13 Pierce County Fire District No. 16 Pierce County Fire District No. 18 Pierce County Fire District No. 23 Pierce County Fire District No. 27 Pierce County Fire District No. 3 Pierce County Fire District No. 5 Pierce County Fire District No. 8 Pierce County Fire Protection District No. 14 Pierce County Fire Protection District No. 2 Pierce County Fire Protection District No. 21 Pierce County Housing Authority Pike Place Market Preservation and Development Authority Point Roberts Water District No. 4 Ponderay Shores Water and Sewer District Port Ludlow Drainage District
Prescott Joint Parks and Recreation District Prosser Fire District No. 3 Prosser Public Hospital District Public Hospital District No. 1 Public Hospital District No. 3 Public Utility District No- 1 Puyallup Tribal Health Authority Quileute Housing Authority Quinault Housing Authority Quincy-Columbia Basin Irrigation District Renton Housing Authority Richland Housing Authority Richland Public Facilities District Ronald Wastewater District Roza Irrigation District Sacheen Lake Sewer and Water District Sammamish Plateau Water and Sewer District San Juan Island Library District Saratoga Water District Scatchet Head Water District Seattle Chinatown International District Preservation and Development Authority Seattle Housing Authority Seattle Southside Regional Tourism Authority Selah-Moxee Irrigation District Si View Metropolitan Park District Silver Lake Flood Control District Silver Lake Water And Sewer District Silverdale Water District Skagit Conservation District Skagit County Cemetery District No. 2 Skagit County Fire District No. 10 Skagit County Fire District No. 11 Skagit County Fire District No. 15 Skagit County Fire District No. 9 Skagit County Fire Protection District No. 13 Skagit County Fire Protection District No. 14 Skagit County Fire Protection District No. 2 Skagit County Fire Protection District No. 3 Skagit County Fire Protection District No. 4 Skagit County Fire Protection District No. 5 Skagit County Fire Protection District No. 8 Skagit County Housing Authority
Skagit County Public Hospital District No. 1 Skagit County Public Hospital District No. 2 Skagit County Public Hospital District No. 304 Skagit County Public Utility District No. 1 Skagit County Sewer District No. 1 Skagit County Sewer District No. 2 Skagit Valley Public Hospital District No. 1 Skamania County Fire District No. 1 Skamania County Fire District No. 4 Skamania County Public Hospital District No. 1 Skamania County Public Utility District No. 1 Skamokawa Water and Sewer District Skyway Water and Sewer District Snohomish County Fire District No. 15 Snohomish County Fire District No. 16 Snohomish County Fire District No. 19 Snohomish County Fire District No. 26

Snohomish County Fire District No. 5 Snohomish County Fire Protection District No. 1 Snohomish County Fire Protection District No. 17

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Hawaii Idaho Oregon South Carolina Utah Washington

Washington Snohomish County Fire Protection District No. 21 Snohomish County Fire Protection District No. 22 Snohomish County Fire Protection District No. 25 Snohomish County Fire Protection District No. 28 Snohomish County Fire Protection District No. 3 Snohomish County Fire Protection District No. 7 Snohomish County Housing Authority Snohomish County Public Hospital District No. 1 Snohomish County Public Hospital District No. 2 Snohomish County Public Utility District No. 1 Snohomish Health District Snohomish River Regional Water Authority Snoqualmie Valley Hospital District South Columbia Basin Irrigation District South Correctional Entity Public Development Authority South Naches Irrigation District South Whatcom Fire Authority South Whidbey Parks and Recreation District South Yakima Conservation District Southwest Suburban Sewer District Spokane Conservation District Spokane County Fire District No. 12 Spokane County Fire District No. 2 Spokane County Fire District No. 4 Spokane County Fire Protection District No. 10 Spokane County Fire Protection District No. 11 Spokane County Fire Protection District No. 13 Spokane County Fire Protection District No. 3 Spokane County Fire Protection District No. 5 Spokane County Fire Protection District No. 8 Spokane County Fire Protection District No. 9 Spokane County Library District Spokane County Water District No. 3 Spokane Housing Authority Spokane Indian Housing Authority Spokane Public Facilities District Spokane Regional Health District Spokane Transit Authority Startup Water District Steptoe Sewer District No. 1 Stevens County Fire District No. 2 Stevens County Fire District No. 6 Stevens County Fire Protection District No. 1 Stevens County Fire Protection District No. 10 Stevens County Fire Protection District No. 12 Stevens County Fire Protection District No. 5 Stevens County Public Utility District No. 1 Stevens County Rural Library District Stevens Pass Sewer District Sun Harbor Water District No. 3 Sunnyside Housing Authority Sunnyside Valley Irrigation District Sunnyslope Water District Swinomish Housing Authority
Tacoma Community Redevelopment Authority Tacoma Housing Authority
Tacoma Metropolitan Park District Terrace Heights Sewer District Thea Foss Waterway Development Authority Three Rivers Regional Wastewater Authority Thurston Conservation District Thurston County Fire District No. 12 Thurston County Fire District No. 4 Thurston County Fire District No. 9 Thurston County Fire Protection District No. 3 Thurston County Fire Protection District No. 5 Thurston County Fire Protection District No. 6 Thurston County Fire Protection District No. 8 Thurston County Housing Authority Thurston County Public Utility District No. 1 Tri-County Economic Development District Tukwila Metropolitan Park District Underwood Conservation District Union Gap Irrigation District Val Vue Sewer District Valley Regional Fire Authority Valley View Sewer District Valley Water District Vancouver Housing Authority Vashon Park District
Wahkiakum County Public Utility District No. 1 Wahkiakum Fire Protection District No. 1 Wahkiakum Port District No. 1 Walla Walla County Fire Protection District No. 1 Walla Walla County Fire Protection District No. 3 Walla Walla County Fire Protection District No. 4 Walla Walla County Fire Protection District No. 5 Walla Walla County Fire Protection District No. 8 Walla Walla County Rural Library District Walla Walla Housing Authority Wallula Water District No. 1 Washington State Convention Center Public Facilities District

Washington State Major League Baseball Stadium Public Facilities District

Washington State Tobacco Settlement Authority

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Oregon South Carolina Washington Water District 19

Wells Ranch Irrigation District Wenatchee Reclamation District
Wenatchee-Chiwawa Irrigation District West Sound Utility District Whatcom Conservation District Whatcom County Fire District No. 1 Whatcom County Fire District No. 11 Whatcom County Fire District No. 14 Whatcom County Fire District No. 16 Whatcom County Fire District No. 17 Whatcom County Fire District No. 4 Whatcom County Fire District No. 5 Whatcom County Fire District No. 7 Whatcom County Fire District No. 8 Whatcom County Public Utility District No. 1 Whatcom County Water District No. 12 Whatcom County Water District No. 13 Whatcom County Water District No. 2 Whatcom County Water District No. 7 Whatcom Transportation Authority Whidbey Island Public Hospital District Whitestone Reclamation District Whitman County Fire District No. 11 Whitman County Fire Protection District No. 12 Whitman County Fire Protection District No. 14 Whitman County Fire Protection District No. 7 Whitman County Public Hospital District No. 3 Whitman County Rural Library District Whitworth Water District No. 2 Willapa Valley Water District William Shore Memorial Pool District Williams Lake Sewer District No. 2 Wine Science Center Development Authority Wollochet Harbor Sewer District Woodinville Water District Yakima County Fire District No. 1 Yakima County Fire District No. 3 Yakima County Fire District No. 4 Yakima County Fire District No. 5 Yakima County Fire District No. 6 Yakima County Fire Protection District No. 12 Yakima County Fire Protection District No. 14 Yakima County Mosquito Control District Yakima Housing Authority Yakima Regional Clean Air Authority Yakima Rural County Library District Yakima-Tieton Irrigation District

State

North Seattle Community College Seattle Colleges State Of Washington Washington State Department of Enterprise Services Washington State Department of Health
Washington State Department of Social and Health Services

Washington State Health Care Authority

Tulalip Tribes Upper Skagit Indian Tribe Yakama Nation Land Enterprise

Tribal

Columbia River Inter-Tribal Fish Commission Confederated Tribes of the Chehalis Reservation Confederated Tribes of the Colville Reservation Confederated Tribes of the Yakama Nation Cowlitz Indian Tribe Hoh Indian Tribe Jamestown S'Klallam Tribe Kalispel Tribe of Indians Lower Elwha Klallam Tribe Lummi Indian Nation Makah Tribe Muckleshoot Indian Tribe Nisqually Indian Tribe Nooksack Indian Tribe Port Gamble S'Klallam Tribe Puyallup Tribe of Indians Quileute Indian Tribe Quinault Indian Nation Samish Indian Nation Sauk-Suiattle Indian Tribe Skokomish Indian Tribe Snoqualmie Indian Tribe Spokane Tribe Squaxin Island Tribe Stillaguamish Tribe of Indians Suquamish Tribe Swinomish Indian Tribal Community

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Appendix C - Political Subdivision List for City/Town City of Alexandria City of Bristol City of Buena Vista City of Charlottesville City of Chesapeake City of Colonial Heights City of Covington City of Danville City of Emporia City of Falls Church City of Franklin City of Fredericksburg City of Galax City of Hampton City of Harrisonburg City of Honewell City of Lexington City of Lynchburg

City of Manassa City of Manassas Park City of Martinsville City of Newport News City of Norfolk City of Norton City of Petersburg City of Poquoson City of Portsmouth

City of Radford City of Richmond City of Roanoke City of Salem City of Staunton City of Suffolk City of Virginia Beach City of Waynesboro City of Williamsburg

City of Wincheste Town of Abingdon Town of Alberta Town of Altavista Town of Amherst Town of Annalachia

Town of Appomattox Town of Ashland Town of Redford Town of Berryville Town of Big Stone Gap Town of Blacksburg Town of Bluefield

Town of Boones Mill Town of Bowling Green Town of Boyce Town of Boydton

Town of Broadway Town of Brodnax Town of Brookneal Town of Buchanan Town of Burkeville Town of Cedar Bluff Town of Charlotte Court House

Town of Chase City Town of Chatham Town of Chariton Town of Chilhowie Town of Chincoteague Town of Christiansburg Town of Claremont

Town of Clarksville Town of Clifton Town of Clifton Forge Town of Clinchco Town of Coeburn Town of Colonial Beach

Town of Columbia Town of Courtland Town of Craigsville Town of Crewe Town of Culpepe Town of Damascus Town of Dayton Town of Dendron

Town of Dillwyn Town of Drakes Branch Town of Dublin Town of Dungannon

Special Distrricts

Accomack-Northampton Transportation District Albemarle County Service Authority Albemarle-Charlottesville Regional Jail Authority Alexandria Redevelopment and Housing Authority Appomattox River Water Authority Bath County Airport Authority Bedford County Economic Develop

Bedford Regional Water Authority Big Stone Gap Redevelopment and Housing Authority Blacksburg-Christiansburg-VPI Water Authority Blacksburg-Virginia Polytechnic Institute Sanitation Authority

Blue Ridge Airport Authority
Blue Ridge Crossroads Economic Development Authority

Blue Ridge Regional Jail Authority Blue Ridge Soil and Water Conservation District Bristol Redevelopment and Housing Authority Brookneal-Campbell County Airport Authority Brunswick County Industrial Development Authority Buchanan County Industrial Development Authority

Buena Vista Public Service Authority Campbell County Utilities and Service Authority
Carroll County Industrial Development Authority Carroll-Grayson-Galax Solid Waste Authority Castlewood Water and Sewage Authority Central Shenandoah Planning District Commission

Central Virginia Regional Jail Authority Central Virginia Waste Management Authority Charlottesville Redevelopment and Housing Authority

Charlottesville-Albemarle Airport Authority
Chesapeake Airport Authority
Chesapeake Bay Bridge and Tunnel District Chesapeake Hospital Authority
Chesapeake Redevelopment and Housing Authority

Coeburn-Norton-Wise Regional Wastewater Authority
Craig-New Castle Solid Waste Authority
Crater District Area Agency on Aging/Foster Grandparent Program, Inc.

Culpener Soil and Water Conservation District

Cumberland Plateau Planning District Commission Cumberland Plateau Regional Housing Authority Cumberland Plateau Regional Waste Management Authority Danville Redevelopment and Housing Authority

Danville-Pittsylvania County Regional Industrial Facilities Authority Dickenson County Industrial Development Authority

Dickenson County Public Service Authority Dinwiddie Airport and Industrial Authority Dinwiddie County Water Authority District Three Governmental Cooperative Dryden Water Authority

Eastern Shore of Virginia Broadband Authority Essex County Industrial Development Authority Fairfax County Economic Development Authority

Fairfax County Park Authority
Fairfax County Redevelopment and Housing Authority

Fairfax County Water Authority
Fauquier County Water and Sanitation Authority
Floyd County Economic Development Authority
Floyd-Floyd County Public Service Authority Franklin Redevelopment and Housing Authority Frederick County Sanitation Authority

Frederickshurg Stafford Park Authority

Frederick-Winchester Service Authority Front Royal-Warren County Economic Development Authority

Ft. Monroe Authority Giles County Public Service Authority Greensville County Water and Sewer Authority Halifax County Industrial Development Authority Halifax County Service Authority Hampton Redevelopment and Housing Authority

Hampton Roads Planning District Commission Hampton Roads Regional Jail Authority Hampton Roads Sanitation District Harrisonburg Redevelopment and Housing Authority Harrisonburg-Rockingham Regional Sewer Authority Headwaters Soil and Water Conservation District

Hopewell Redevelopment and Housing Authority

James River Water Authority John Flannagan Water Authority Joint Public Service Authority Lee County Industrial Development Authority

Lee County Public Service Authority LENOWISCO Planning District Commission Lord Fairfax Soil and Water Conservation District Loudoun County Sanitation Authority Louisa County Water Authority

Lynchburg Redevelopment and Housing Authority Marion Redevelopment and Housing Authority

Maury Service Authority Mecklenburg-Brunswick Regional Airport Authority Meherrin River Regional Jail Authority Middle Peninsula Regional Airport Authority

Public K-12

County Accomack County Public Schools Accomack County Albemarle County Albemarle County Public Schools Alexandria City Public Schools Alleghany County Alleghany County Public Schools Amelia County Public Schools Amherst County Amherst County Public Schools Appomattox County Appomattox County Public School Arlington County Arlington Public Schools Augusta County Bath County Bedford County Atlantic Shores Christian Schools

Augusta County Public Schools Bedford County Public Service Authority Bath County Public Schools Bedford County Public Schools Bland County Public Schools Bland County Botetourt County

Rotetourt County Public Schools Brunswick County Bristol Virginia Public Schools Brunswick County Public Schools

Buchanan County Buchanan County Public Service Authority **Buchanan County Schools** Buckingham County Buckingham County Public Schools Buena Vista City Public Schools Buckingham County Board of Supervisors

Campbell County

Charles City County

Charlotte County

Chesterfield County

Caroline County

Carroll County

Clarke County

Craig County

Culpeper County

Cumberland County Dickenson County

Dinwiddie County

Essex County Fairfax County

Fauguier County

Floyd County Fluvanna County

Franklin County

Giles County

Frederick County

Gloucester County Goochland County

Grayson County

Greensville County

Greene County

Halifax County

Hanover County

Henrico County

Highland County

Isle of Wight County

King William County

Lancaster County

Loudoun County

Madison County

Mathews County

Middlesex County

New Kent County

Nottoway County Orange County

Page County

Patrick County

Powhatan County

Pulaski County

Roanoke County

Rockbridge County

Prince Edward County

Prince George County

Rappahannock County Richmond County

Lunenburg County

Mecklenburg County

Montgomery County Nelson County

Northampton County

Northumberland County

Pittsylvania County
Pittsylvania County Service Authority

Prince William County
Prince William County Service Authority

Rockbridge County Public Service Authority

Louisa County

James City County King and Queen County

Henry County Public Service Authority

King George County King George County Service Authority

Henry County

Campbell County Public Schools Caroline County Public Schools Carroll County Public Schools Charles City County School District

Charlotte County Public Schools Charlottesville City Schools Chesapeake Public Schools Chesterfield County Public Schools Clarke County School District Colonial Beach Schools Colonial Heights Public Schools Copper River School District Covington City Public Schools

Craig County Public Schools Culnener County Public Schools Cumberland County Public Schools Danville Public Schools Dickenson County Public Schools Dinwiddie County Public Schools Fairfax County Public Schools Falls Church City Public Schools Fauquier County Public Schools

Floyd County Public Schools Fluvanna County Public Schools Franklin City Schools Franklin County Public Schools Frederick County Public School Fredericksburg City Public Schools Galax City Public Schools

Giles County Public Schools Gloucester County Public Schools Goochland County Public Schools Grayson County Public Schools

Greene County Schools Greensville County Public Schools Halifax County Public Schools Hampton City Schools Hanover County Public Schools Harrisonburg City Public Schools

Henrico County Public Schools Henry County Public Schools Highland County Public Schools Hopewell Public Schools Imagine Schools Isle of Wight County Schools King and Queen County Public Schools King George County Public Schools King William County Public Schools Lancaster County Public School System Lee County Public Schools

Lexington City Schools Loudoun County Public Schools Louisa County Public Schools Lynchburg City Schools Madison County Public Schools Manassas City Public Schools Manassas Park City Schools

Martinsville Public Schools Mathews County School District Mecklenburg County Public Schools

Middlesex County Public Schools Montgomery County Public Schools Nelson County Public Schools New Kent County Schools Newport News Public Schools Norfolk Public Schools

Northampton County School District Northumberland County Public Schools Norton City Public Schools

Rockingham County Nottoway County Public Schools Orange County Public Schools Scott County

Public Higher Education

Blue Ridge Community College Central Virginia Community College Christopher Newport University College of William and Mary Dabney S. Lancaster Community College Danville Community College Eastern Shore Community College Eastern Virginia Medical School George Mason University Germanna Community College

J. Sargeant Reynolds Community College James Madison University John Tyler Community College Longwood University Lord Fairfax Community College Massanutten Technical Center Mountain Empire Community College

New College Institute New River Community College Norfolk State University Northern Virginia Community College Carroll County Public Service Authority Old Dominion University Patrick Henry Community College

Paul D. Camp Community College Piedmont Virginia Community College Radford University Rappahannock Community College Richard Bland College

Rowanty Technical Center Southern Virginia Higher Education Center Southside Virginia Community College Southwest Virginia Community College State Council of Higher Education for Virginia Thomas Nelson Community College Tidewater Community College University of Mary Washington University of Virginia

University of Virginia Foundation University of Virginia Health System University of Virginia, Wise Virginia College Savings Plan Virginia Commonwealth University Virginia Community College System Virginia Highlands Community College

Virginia Military Institute Virginia Polytechnic Institute and State University Virginia State University

Virginia Western Community College Wytheville Community College

State

State of Virginia Virginia Department of Behavioral Health and Developmental Services

Virginia Department of General Services Virginia Department of Health Virginia Department of Health Professions Virginia Department of Public Works

Townships enship of Green Ross County

Appendix C Page 1 of 2 City/Town Special Distrricts Town of Elkton Montgomery County Public Service Authority Town of Exmore Montgomery Regional Solid Waste Authority Town of Farmville Mt. Rogers Planning District Commission Town of Fincastle New River Regional Water Authority Town of Floyd New River Resource Authority Town of Fries New River Valley Planning District Commission New River Valley Regional Jail Authority Town of Front Royal Newport News Redevelopment and Housing Authority Town of Gate City Town of Glade Spring Nicholas County Solid Waste Authority

Town of Glasgow Norfolk Airport Authority Norfolk Economic Development Authority Town of Glen Lvn Town of Gordonsvill Town of Goshen Norfolk Redevelopment and Housing Authority Northern Neck Planning District Commission Town of Gretna Northern Virginia Regional Park Authority Town of Grottoes Northern Virginia Transportation Authority Northwestern Regional Jail Authority Town of Halifax Town of Hamilton Town of Haymarket NRV Regional Water Authority Pamunkey Regional Jail Authority
Patrick County Economic Development Authority Town of Havsi Town of Herodon

Town of Herndon Pepper's Ferry Regional Wastewater Treatment Authority Town of Hillsville Petersburg Redevelopment and Housing Authority Town of Honaker Peumansend Creek Reponal all Authority Town of Hurt Pledmont Soil and Water Conservation District Town of Hurt Pledmont Soil and Water Conservation District Town of Independence Planning Bistrict One Behavioral Health Services Town of Iron Gate Portsmouth Redevelopment and Housing Authority Town of Jonesville Pince William County Park Authority Town of Jonesville Pulsaki County Public Service Authority Pown of Kenbridge Pulsaki County Severage Authority

Town of Keysville Radford Industrial Development Authority
Town of Kilmarnock Randolph County Water, Sewer and Fire Protection Authority

Town of La Crosse Rapidan Service Authority

Town of Lawrenceville Rappahannock Regional Jail Authority
Town of Leesburg Rappahannock-Shenandoah-Warren Regional Jail Authority

| Town of Lesburg | Rappanatholics-Intended-Invarient regional ain / Town of Louise | Region 2000 Services, a Authority | Town of Louise | Region 2000 Services, a Authority | Richmond Behavioral Health Authority | Richmond Relavioral Health Authority | Richmond Regional Planta Authority | Richmond Regional Planta Authority | Town of Middleburg | Richmond Metropolatina Authority | Richmond Regional Planning District Commission | Town of Middleburg | Richmond Regional Planning District Commission | Town of Mineral | Rivanna Solid Waste Authority | Town of Monterey | Rivanna Water and Sewer Authority | Rivanna Water and Sewer Authority | Rivanna Rivanna Solid Waste Authority | Rivanna Riv

Town of Montross Rherside Regional Jail Authority
Town of Mt. Jackson Roaneke Redevelopment and Housing Authority
Town of Narrows Roaneke River Service Authority
Town of New Castle Roaneke Valley Broadband Authority
Town of New Market Roaneke Valley Roane Authority

Town of New Market Town of Nickelsville Robert E. Lee Soil and Water Conservation District Town of Occopian Rockbridge Area Network Authority Town of Onancock Rockbridge County Solid Waste Authority Town of Orange Russell County Industrial Development Authority Town of Pamplin City Russell County Public Service Authority Town of Parksley Scott County Economic Development Authority Town of Pearisburg Scott County Redevelopment and Housing Authority Town of Pembroke Shenandoah Valley Soil and Water Conservation District

Smyth County Industrial Development Authority Town of Pennington Gap Town of Phenix Smyth Washington Regional Industrial Facilities Authority Town of Pocahontas Town of Pound South Central Wastewater Authority Southeastern Public Service Authority Town of Pulaski Southside Planning District Town of Purcellville Town of Quantico Southside Regional Jail Authority Southwest Regional Recreation Authority Town of Remineton Southwest Virginia Regional Jail Authority Suffolk Redevelopment and Housing Authority Tappahannock-Essex County Airport Authority Town of Rich Creek Town of Richlands Town of Ridgeway Tazewell County Airport Authority Tazewell County Industrial Development Authority Town of Round Hill Tazewell County Public Service Authority

Tazwell County Public Service Authority

Town of Saltville Thomas Jefferson Planning District Commission Town of Scottsville Thomas Jefferson Soil and Water Conservation District Town of Shenandoal Toms Brook-Maurertown Sanitary District Town of Smithfield Upper Occoquan Service Authority Town of South Boston Valley Municipal Utility District No. 2 Vint Hill Economic Development Authority
Virginia Beach Development Authority Town of South Hill Town of St. Paul Town of Stanley Virginia Commercial Space Flight Authority Town of Stephens City Town of Strasburg Virginia Highlands Airport Authority Virginia Housing Development Authority Town of Stuart Virginia Peninsulas Public Service Authority

Town of Tangler Virginia Port Authority
Town of Tappahannock Virginia Resources Authority

Town of Tazewell Virginia Tech/Montgomery Regional Airport Authority
Town of Timberville Virginia/Carolina Water Authority
Town of Troutville Virginia's First Regional Industrial Facility Authority

Town of Troutville Virginia's First Regional Industrial Facility Authority
Town of Urbanna Washington County Industrial Development Authority
Town of Victoria Washington County Service Authority
Town of Vienna Waynesbore Economic Development Authority

Town of Vinton Waynesboro Redevelopment and Housing Authority
Town of Wakefield West Pledmont Planning District
Town of Warrenton Western Vignila Water Authority

Town of Warrenton Western Virginia Water Authority
Town of Warsaw Williamsburg Area Transit Authority
Town of Washington Winchester Regional Airport Authority
Town of Washington Waverly Wired Road Authority
Town of West Point Wise Country Public Service Authority

Town of White Stone Wise County Redevelopment and Housing Authority
Town of Windsor Woodway Water and Sewer Authority
Town of Wing.

Town of Wise Town of Woodstock Town of Wytheville

Town of Rural Retreat

Public K-12

Page County Public Schools Patrick County Public Schools Petersburg City Public Schools Pittsylvania County School District Poquoson City Public Schools Portsmouth Public Schools Porwhatan County Public Schools Prince Edward County Schools Prince Gorge County Public Schools Prince Gorge County Public Schools Prince William County Schools

Pulaski County Public Schools Radford City Schools Rappahannock County Public Schools Richmond City Public Schools

Richmond County Public Schools
Roanoke City Public Schools
Roanoke County Public Schools
Rockbridge County Schools
Rockbridge County Public Schools
Russell County Public Schools
Salem City Schools
Scott County Public Schools
Scott County Public Schools
Scott County Public Schools
Scott County Public Schools
Smyth County Public Schools
Smyth County Public Schools
Southampton County Public Schools
Southampton County Public Schools

Spotsylvania County Public Schools Stafford County Public Schools Stauthon City Schools Surflook Public Schools Surf County Public Schools Sussex County Public Schools Trazewell County Public Schools Virginia Beach City Public Schools Warsington County School District Wavensdorn Public Schools Washington County School District Wavensdorn Public Schools

West Point Public Schools Westmoreland County Public Schools Williamsburg-James City County Public Schools

Winchester Public Schools
Wise County Public Schools
Wythe County Public Schools
York County Public Schools

Public Higher Education

Scott County Public Service Authority Shenandoah County Smyth County Southampton County

Spotsylvania County Stafford County Surry County Sussex County Tazewell County

County

Tri-County Lake Administrative Commission

Warren County
Washington County
Westmoreland County
Wise County
Wythe County
York County

ic Higher Education State Townships

Appendix C Page 2 of 2

SOURCEWELLSM (Formerly NJPA) AWARDED VENDOR

REQUIRED FEMA TERMS AND CONDITIONS CERTIFICATION

Procurements by SourcewellSM (Formerly NJPA) or Sourcewell Members utilizing funds under a federal grant or contract funded all or in part by the Federal Emergency Management Agency (FEMA) may be subject to specific federal laws, regulations, and requirements in addition to those under other federal, state and local laws. This may include, but is not limited to, the procurement standards of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Title 44 of the Code of Federal Regulations, Part 13 (44 CFR Part 13).

The terms included in this section express Vendors willingness and ability to comply with certain requirements which may be applicable to specific Sourcewell Member purchases using FEMA grant or contract dollars. Sourcewell Members may also require Proposers to enter into ancillary agreements, in addition to the Sourcewell contract's general terms and conditions, to address a Member's specific contractual needs, including contract requirements for a procurement using FEMA grants or contracts. Sourcewell reserves the right at any time within a contract term to require an awarded Vendor to reaffirm or resubmit proper documentation relating to these requirements.

Note: The numbering and identification contained within this section is only for reference purposes and does not identify any actual Federal designation or location of the rule. Rules are located in 44 CFR Part 13.

(A) Pursuant to 44 CFR 13.36(i)(1), Sourcewell is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Vendor's compliance with the terms of the request for proposal and contract award, including but not limited to those remedies set forth at 44 CFR 13.43.

Vendor Agrees (YES or NO)

Initials of Authorized Representative

(B) Pursuant to 44 CFR 13.36(i)(2), Sourcewell may terminate the contract award for cause or convenience in accordance with the procedures set forth in the request for proposal and contract award and those provided by 44 CFR 13.44.

Vendor Agrees (YES or NO) Initials of Authorized Representative (C) Pursuant to 44 CFR 13.36(i)(3)-(6)(12), and (13), Vendor shall comply with the following federal laws during the term of an award for this contract by Sourcewell:

- a. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor ("DOL") regulations (41 CFR Ch. 60);
- b. Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in DOL regulations (29 CFR Part 3);
- c. Davis-Bacon Act (40 U.S.C. 276a-276a-7) as supplemented by DOL regulations (29 CFR Part 5);
- d. Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by DOL regulations (29 CFR Part 5);
- e. Section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and

f. 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 (Pub. L. 94-163, 89 Stat. 871).

Vendor Agrees (YES or NO)

Initials of Authorized Representative

(D) Pursuant to 44 CFR 13.36(i)(7), Vendor shall comply with FEMA requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41.

Vendor Agrees (YES or NO)

Initials of Authorized Representative

- (E) Pursuant to 44 CFR 13.36(i)(8), Vendor agrees to the following provisions regarding patents:
 - a. During the term of an award for this contract by Sourcewell, all rights to inventions and/or discoveries that arise or are developed, in the course of or under this request for proposal and contract award, shall belong to the Sourcewell Member and be disposed of in accordance with their policy. Sourcewell and Sourcewell members, at its own discretion, may file for patents in connection with all rights to any such inventions and/or discoveries.

Vendor Agrees (YES or NO)

Initials of Authorized Representative

- (F) Pursuant to 44 CFR 13.36(i)(9), Vendor agrees to the following provisions, regarding copyrights:
 - a. During the term of an award for this contract by Sourcewell, any copyrightable material or inventions, in accordance with 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for Federal Government purposes:
 - (1) The copyright in any work developed under a grant or contract; and
 - (2) Any rights of copyright to which a grantee or a contactor purchases ownership with grant support.

Vendor Agrees (YES or NO)

Initials of Authorized Representative

(G) Pursuant to 44 CFR 13.36(i)(10), Vendor shall maintain any books, documents, papers, and records of the Vendor which are directly pertinent to this request for proposal and contract award. At any time during normal business hours and as often as Sourcewell or Sourcewell Members deems necessary, Vendor shall permit Sourcewell or Sourcewell Member, FEMA, the Comptroller General of United States, or any of their duly authorized representatives to inspect and photocopy such records for the purpose of making audit, examination, excerpts, and transcriptions

Vendor Agrees (YES or NO)

Initials of Authorized Representative

(H) Pursuant to 44 CFR 13.36(i)(11), Vendor shall retain all required records for three years after FEMA or Sourcewell or Sourcewell Members makes final payments and all other pending matters are closed. In addition, Vendor shall comply with record retention requirements set forth in 44 CFR 13.42

Date:

Vendor Agrees (YES or NO)

Initials of Authorized Representative

Vendor agrees to comply with federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that Vendor certifies compliance with provisions, laws, acts, regulations, etc. as noted above.

This certification shall be effective through the term of the Vendor's Sourcewell awarded contract.

Vendor:

Contract number:

Category:

Maturity date:

Address:

City, state, zip code:

Phone number:

Printed name and title of authorized representative:

Signature of authorized representative:

ADDENDUM ONE (1)

to that certain

Sourcewell RFP #032119

Issued by
Sourcewell sM (Formerly NJPA)
for the procurement of



HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

Consider the following to be part of the above-titled RFP: Appendices B, C and D.

Appendices B, C and D, referenced as items 13, 14 and 15 respectively in the RFP Table of Contents, were erroneously omitted from the version of the RFP document originally published on the Sourcewell website and provided to inquirers. **Appendices B, C and D** are attached to this Addendum, and have now been added to the posted version of the RFP document.

Acknowledgment of Addendum One (1) to RFP #032119 emailed on February 21, 2019.

COMPANY NAME:		
SIGNATURE:		
DATE:		
Please include this s	igned Addendum with your RFP response.	



Appendix B - Political Subdivision List for HI, ID, OR, SC, UT, WA

	Idaho	Oregon	South Carolina	Utah	Washington
	County	County	County	County	County
Hawaii County	Ada County	Baker County	Abbeville County	Beaver County	Adams County
Kauai County	Adams County	Benton County	Aiken County	Box Elder County	Asotin County
faui County	Bannock County	Central Oregon Intergovernmental Council	Allendale County	Cache County	Benton County
nicipality	Bear Lake County	Clackamas County	Anderson County	Carbon County	Chelan County
ity and County of Honolulu	Benewah County	Clackamas County Service District No. 1	Bamberg County	Daggett County	Clallam County
her Education	Bingham County	Clatsop County	Barnwell County	Davis County	Clark County
awaii Community College	Blaine County	Columbia County	Beaufort County	Duchesne County	Columbia County
onolulu Community College	Boise County	Coos County	Berkeley County	Duchesne County Special Service District No. 2	Cowlitz County
niversity of Hawaii	Bonner County	Crook County	Calhoun County	Emery County	Douglas County
niversity of Hawaii Research Corporation	Bonneville County	Curry County	Catawba Regional Council of Governments	Five County Association of Governments	Ferry County
indward Community College	Boundary County	Deschutes County	Central Midlands Council of Governments	Garfield County	Franklin County
cation (K-12)	Butte County	Douglas County	Charleston County	Grand County	Garfield County
analani Schools	Camas County	Gilliam County	Cherokee County	Iron County	Grant County
amehameha Schools	Canyon County	Grant County	Chester County	Juab County	Grays Harbor County
cial District					
	Caribou County	Harney County	Chesterfield County	Kane County	Island County
waii Community Development Authority	Cassia County	Hood River County	Clarendon County	Millard County	Jefferson County
waii Public Housing Authority	Clark County	Jackson County	Colleton County	Morgan County	King County
waii Tourism Authority	Clearwater County	Jefferson County	Darlington County	Piute County	King County Directors' Association
nolulu Authority for Rapid Transportation	Custer County	Josephine County	Dillon County	Rich County	Kitsap County
tural Energy Laboratory of Hawaii Authority	Elmore County	Klamath County	Dorchester County	Salt Lake County	Kittitas County
	Franklin County	Lake County	Edgefield County	San Juan County	Klickitat County
waii Department of Accounting and General Services		Lane Council of Governments	Fairfield County	Sanpete County	Lewis County
waii Department of Finance and Administration	Gem County	Lane County	Florence County	Sevier County	Lincoln County
waii Department of Finance and Administration waii Department of Health					
	Gooding County	Lincoln County	Georgetown County	Summit County	Mason County
waii Employer-Union Health Benefits Trust Fund	Idaho County	Linn County	Greenville County	Tooele County	Okanogan County
waii Health Systems Corporation	Jefferson County	Malheur County	Greenwood County	Uintah County	Pacific County
ate Of Hawaii	Jerome County	Marion County	Hampton County	Utah County	Pend Oreille County
	Kootenai County	Marion County Housing Authority	Horry County	Wasatch County	Pierce County
	Latah County	Morrow County	Jasper County	Washington County	San Juan County
	Lemhi County	Multnomah County	Kershaw County	Wayne County	Skagit County
	Lewis County	Polk County	Lancaster County	Weber County	Skamania County
	Lincoln County	Sherman County	Laurens County	Municipality	Snohomish County
	Madison County	Tillamook County	Lee County	Centerfield City	Spokane County
	Minidoka County	Umatilla County	Lexington County	City of Alpine City	Stevens County
	Nez Perce County	Union County	Lower Savannah Council of Governments	City of American Fork	Thurston County
	Oneida County	Wallowa County	Marion County	City of Aurora	Thurston Regional Planning Council
	Owyhee County	Wasco County	Marlboro County	City of Ballard	Wahkiakum County
	Payette County	Washington County	McCormick County	City of Beaver	Walla Walla County
	Power County	Wheeler County	Newberry County	City of Blanding	Whatcom County
	Shoshone County	Yamhill County	Oconee County	City of Bluffdale	Whitman County
	Teton County	Municipality	Orangeburg County	City of Bountiful	Yakima County
	Twin Falls County	City of Adair Village	Pickens County	City of Brigham	Yakima County Public Services
	Valley County	City of Adrian	Richland County	City of Castle Dale	
					Yakima Valley Conference of Governments
	Washington County	City of Albany	Saluda County	City of Cedar City	Municipality
	Municipality	City of Amity	Spartanburg County	City of Cedar Hills	City of Aberdeen
	City of Aberdeen	City of Arlington	Sumter County	City of Centerville	City of Airway Heights
	City of Albion	City of Ashland	Union County	City of Clearfield	City of Algona
	City of American Falls	City of Astoria	Williamsburg County	City of Clinton	City of Anacortes
	City of Ammon	City of Athena	York County	City of Coalville	City of Arlington
	City of Arco	City of Aumsville	Municipality	City of Colorado City	City of Asotin
	City of Arimo	City of Aurora	City of Abbeville	City of Corinne City	City of Auburn
	City of Ashton	City of Baker City	City of Aiken	City of Cottonwood Heights	City of Bainbridge Island
	City of Athol	City of Bandon	City of Anderson	City of Delta	City of Battle Ground
	City of Athol City of Atomic City	City of Bandon City of Banks	City of Anderson City of Barnwell	City of Delta City of Draper	City of Battle Ground City of Bellevue
	City of Athol City of Atomic City City of Bancroft	City of Bandon City of Banks City of Bay City	City of Anderson City of Barnwell City of Beaufort	City of Delta City of Draper City of Duchesne	City of Battle Ground City of Bellevue City of Bellingham
	City of Athol City of Atomic City	City of Bandon City of Banks	City of Anderson City of Barnwell	City of Delta City of Draper	City of Battle Ground City of Bellevue
	City of Athol City of Atomic City City of Bancroft City of Bellevue City of Blackfoot	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend	City of Anderson City of Barmwell City of Beaufort City of Beletton City of Bennettsville	City of Delta City of Draper City of Duchesne City of East Carbon City of Elst Glidge	City of Battle Ground City of Bellevue City of Bellengham City of Benton City City of Bingen
	City of Athol City of Atomic City City of Bancroft City of Bellevue	City of Bandon City of Banks City of Bay City City of Beaverton	City of Anderson City of Barnwell City of Beaufort City of Belton	City of Delta City of Draper City of Duchesne City of East Carbon	City of Battle Ground City of Bellevue City of Bellingham City of Benton City
	City of Athol City of Atomic City City of Bancroft City of Bellevue City of Blackfoot	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend	City of Anderson City of Barmwell City of Beaufort City of Beletton City of Bennettsville	City of Delta City of Draper City of Duchesne City of East Carbon City of Elst Glidge	City of Battle Ground City of Bellevue City of Bellevue City of Bellingham City of Benton City City of Bingen
	City of Athol City of Atomic City City of Bancroft City of Bellevue City of Blackfoot City of Blackfoot City of Bliss City of Bliss City of Bliss	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend City of Bend City of Bordman City of Bordman	City of Anderson City of Banwell City of Beaufort City of Beaufort City of Defenton City of Defentitiville City of Bishopville City of Camden	City of Delta City of Draper City of Duchesne City of East Carbon City of Elik Ridge City of Elik Ridge City of Enoch	City of Battle Ground City of Batlevue City of Bellevue City of Betlingham City of Benton City City of Bingen City of Black Diamond City of Black Diamond
	City of Atholi City of Atomic City City of Bancroft City of Bellevue City of Beldectoot City of Blackfoot City of Bloomington City of Bloomington City of Bloomington City of Boise	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend City of Boardman City of Boardman City of Brownsyll City of Brownsyll City of Brownsyll	City of Anderson City of Barnwell City of Beaufort City of Beaufort City of Selton City of Selton City of Selton City of Bennettsville City of Sishopville City of Cayee	City of Delta City of Delta City of Duchesne City of East Carbon City of Els Ridge City of Els Ridge City of Elmo City of Enter	City of Battle Ground City of Bellewe City of Bellingham City of Benton City City of Bingen City of Bingen City of Black Diamond City of Black Plance City o
	City of Athol City of Hamin City City of Bancroft City of Believue City of Blackfoot City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomington City of Bosie City of Bosie	City of Bandon City of Banks City of Bay City City of Beaverton City of Beaverton City of Beardman City of Boardman City of Boardman City of Browings City of Browings City of Browings City of Browings	City of Anderson City of Banwell City of Beaufort City of Beaufort City of Belein City of Demetsville City of Shoppville City of Canden City of Canden City of Caye City of Charleston	City of Delta City of Draper City of Duchesne City of Exit Carbon City of Eik Ridge City of Eik Ridge City of Einch City of Enoch City of Enoch City of Enoch City of Epriain	City of Battlet Ground City of Bellevue City of Bellingham City of Bellingham City of Binnen City City of Binnen City of Binnen City of Binnen City of Binnen City of Bonnen
	City of Athol City of Atomic City City of Bancroft City of Bellevue City of Blackfoot City of Blaskfoot City of Bliss City of Bloomington City of Bloomers Ferry City of Bonners Ferry City of Bonners Ferry City of Bonle	City of Bandon City of Banks City of Bay City City of Bay City City of Beaverton City of Bend City of Boardman City of Brockings City of Brownsville City of Burns City of Gromsville City of Groms City of Groms City of Conby	City of Anderson City of Barnwell City of Beaufort City of Besulort City of Bennettwille City of Bennettwille City of Garnele City of Canden City of Canden City of Canden City of Cayte City of Cherieston City of Cheries	City of Delta City of Draper City of Duchesne City of East Carbon City of Elk Ridge City of Elk Ridge City of Elmo City of Enno City of Enno City of Encerh City of Enterprise City of Expraim City of Escalante	City of Battle Ground City of Bellevue City of Bellingham City of Benton City City of Bingen City of Blaine City of Blaine City of Blaine City of Bonney Lake City of Bonney Lake City of Bornerton
	City of Athol City of Athol City of Bancoft City of Bellevue City of Bellevue City of Blackfoot City of Blass City of Blass City of Bloss City of Bloss City of Bonse City of Bonil	City of Bandon City of Banks City of Bay City City of Beaverton City of Beaverton City of Beardman City of Beardman City of Brookings City of Brookings City of Brownsville City of Burns City of Canby City of Canby City of Canono Beach	City of Anderson City of Banwell City of Beaufurt City of Selution City of Camden City of Camden City of Carden City of Charleston City of Charleston City of Chesinee City of Chesine	City of Delta City of Draper City of Drabere City of East Carbon City of Eix Rüdge City of Eix Rüdge City of Eimo City of Emon City of Emon City of Emon City of Ephraim City of Ephraim City of Exercise	City of Battle Ground City of Bellevue City of Bellingham City of Bellingham City of Black Diamond City of Black Diamond City of Black Diamond City of Black City of Black City of Boney Lake City of Boney City of Boney City of Boney City of Brewster
	City of Athol City of Atomic City City of Bancroth City of Believue City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomington City of Boomington City of Boomers Ferry City of Bowll City of Buth Cit	City of Bandon City of Banks City of Bay City City of Beaverton City of Beaverton City of Beard City of Boardman City of Brookings City of Brookings City of Brookings City of Company City of Company City of Canby City of Canby City of Canby City of Cannon Beach	City of Anderson City of Barnwell City of Beaufort City of Beaufort City of Benefit City of Benefit wille City of Binhopville City of Camden City of Camden City of Camden City of Charleston City of Chesnee City of Chesnee City of Chesnee City of Chesnee	City of Delta City of Draper City of Duchesne City of East Carbon City of Els Ridge City of Els Ridge City of Elmo City of Enoch City of Enoch City of Enoch City of Enoch City of Establish	City of Battle Ground City of Batlevue City of Belingham City of Bedingham City of Benton City City of Bingen City of Blaine City of Blaine City of Boney Lake City of Boney Lake City of Boney Lake City of Bornetton City of Brewerton City of Brewerton City of Brewerton City of Brewerton City of Bremerton City of Bridgeport
	City of Athol City of Athol City of Bancroft City of Bellevue City of Bellevue City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomigaton City of Boomigaton City of Bound City of Bound City of Bunley City of Bunley City of Culdwell	City of Sandon City of Sanks City of Say City City of Seaverton City of Bend City of Bend City of Boardman City of Brookings City of Brookings City of Brookings City of Canby City of Canby City of Canby City of Canpowille City of Canyowille City of Canyowille City of Canyowille City of Caryowille City of Caryowille City of Caryowille	City of Anderson City of Banwell City of Beaufort City of Betton City of Betton City of Betton City of Schopville City of Camden City of Camden City of Camden City of Camden City of Charleston City of Charleston City of Chesinee City of Chesine City of Chesinen City of Chesinen City of Chesinen City of Chesinen City of Cimson City of Cimson	City of Delta City of Draper City of Draper City of Duckesne City of East Carbon City of Eik Ridge City of Eino City of Eino City of Einoch City of Enoch City of Enoch City of Enterprise City of Ephraim City of Estrainte City of Estrainte City of Fairniew	City of Battle Ground City of Bellevue City of Bellevue City of Bellevue City of Bellevie City of Bellevie City of Bingen City of Black Diamond City of Black Diamond City of Blaine City of Boney Lake City of Bornetton City of Brewster City of Brewster City of Brewster City of Briewster City of Briere
	City of Athol City of Bancroth City of Bancroth City of Balcarcoth City of Balcator City of Balcator City of Balcator City of Balcator City of Bosinipation City of Bosine City of Bosine City of Bowill City of Bowill City of Bowill City of Bowill City of Burley City of Caldwell City of Candwell	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend City of Boardman City of Boardman City of Brookings City of Brookings City of Brookings City of Caryon City of Canby City of Canby City of Canby City of Canbon Beach City of Caryonville City of Carsade Locks	City of Anderson City of Barnwell City of Beaufort City of Beaufort City of Benefact City of Benefactwille City of Bishopville City of Canden City of Canden City of Canden City of Charleston City of Charleston City of Charleston City of Charlest City of Charlest City of Charlest City of Charlest City of Clemson City of Clemson City of Columbia	City of Delta City of Dotta City of Duchesne City of Exect Carbon City of Elk Ridge City of Elk Ridge City of Elmo City of Enoch City of Enoch City of Enoch City of Enoch City of Establish City of Fairwiew City of Fairwiew City of Fairwiew City of Fair West	City of Battle Ground City of Ballevue City of Bellevue City of Bellevue City of Berton City City of Bingen City of Black Diamond City of Black Diamond City of Blaine City of Boney Lake City of Bonell City of Bonell City of Brewster City of Bridgeport City of Bridgeport City of Buckley
	City of Athol City of Athol City of Bancroft City of Bellevue City of Bellevue City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomigaton City of Boomigaton City of Bound City of Bound City of Bunley City of Bunley City of Culdwell	City of Sandon City of Sanks City of Say City City of Seaverton City of Bend City of Bend City of Boardman City of Brookings City of Brookings City of Brookings City of Canby City of Canby City of Canby City of Canpowille City of Canyowille City of Canyowille City of Canyowille City of Caryowille City of Caryowille City of Caryowille	City of Anderson City of Banwell City of Beaufort City of Betton City of Betton City of Betton City of Schopville City of Camden City of Camden City of Camden City of Camden City of Charleston City of Charleston City of Chesinee City of Chesine City of Chesinen City of Chesinen City of Chesinen City of Chesinen City of Cimson City of Cimson	City of Delta City of Draper City of Draper City of Duckesne City of East Carbon City of Eik Ridge City of Eino City of Eino City of Einoch City of Enoch City of Enoch City of Enterprise City of Ephraim City of Estrainte City of Estrainte City of Fairniew	City of Battle Ground City of Bellevue City of Bellevue City of Bellevue City of Bellevie City of Bellevie City of Bingen City of Black Diamond City of Black Diamond City of Blaine City of Boney Lake City of Bornetton City of Brewster City of Brewster City of Brewster City of Briewster City of Briere
	City of Athol City of Athol City of Bancroft City of Bellevue City of Bellevue City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomington City of Boomington City of Bunley City of Bunley City of Cambridge City of Carery	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend City of Bend City of Broadman City of Candy City of Candy City of Candy City of Cannon Beach City of Canyonville City of Carton City of Cascade Locks City of Casca	City of Anderson City of Samwell City of Searwell City of Search City of Selection City of Selection City of Selection City of Selection City of Camden City of Camden City of Camden City of Camden City of Charleston City of Cherieston City of Cherieston City of Chesinee City of Ciemson City of Cimiton City of Cilmiton City of Cilmiton City of Comway	City of Delta City of Draper City of Draber City of Duckesne City of East Carbon City of Est Ridge City of Elim City of Encorh City of Exprain City of Estrainte City of Estrainte City of Estrainte City of Fariniew City of Farinies City of Farinies City of Farinies	City of Battlet Ground City of Belleivue City of Belleivue City of Belleivue City of Belleivus City of Belleivus City of Bingen City of Bingen City of Bingen City of Bonned City of Bremeton City of Bremeton City of Bremeton City of Bremeton City of Briede City of Brief City of Buckley City of Buckley City of Buckley
	City of Athol City of Athol City of Bancroft City of Bancroft City of Blackfoot City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomington City of Boomers Ferry City of Bowill City of Bowill City of Bourley City of Caldwell City of Caldwell City of Carey City of Carea	City of Bandon City of Banks City of Bay City City of Beaverton City of Beard City of Bend City of Boardman City of Brookings City of Brookings City of Brookings City of Brookings City of Canby City of Canby City of Canby City of Canby City of Canpon Beach City of Caryonville City of C	City of Anderson City of Beaufort City of Beaufort City of Beaufort City of Benedion City of Benedion City of Beneditwille City of Shopwille City of Camden City of Camden City of Carye City of Charleston City of Chesnee City of Chesnee City of Chesnee City of Chesnen City of Clemson City of Clemson City of Clemson City of Columbia	City of Delta City of Draper City of Duchesne City of East Carbon City of Elk Ridge City of Elk Ridge City of Elmo City of Enoch City of Enoch City of Enoch City of Enoch City of Enterprise City of Ephraim City of Estalante City of Earte City of Fairwiew City of Fairwiew City of Fairwiew City of Fairwiest	City of Battle Ground City of Bellevue City of Bellevue City of Bellevue City of Benton City City of Bingen City of Blaine City of Blaine City of Blaine City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremstron City of Brewstre City of Budgeport City of Budgepor
	City of Athol City of Athol City of Bancroft City of Bellevue City of Bellevue City of Blackfoot City of Black City of Boness Ferry City of Boness Ferry City of Bouli City of Bunley City of Cambridge City of Cambridge City of Cambridge City of Cassade City of Cassade City of Cassade City of Cassade	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend City of Boardman City of Boardman City of Broardman City of Broardman City of Broardman City of Broardman City of Canton City of Carton City of Carton City of Cave Lonction City of Cascade Locks City of Cave Lonction City of Cave Lonction City of Cave Lonction City of Cave Lonction City of Central Point City of City of Canton City of City of City of City of City of City of Carton City of City o	City of Anderson City of Samwell City of Seaufort City of Selection City of Camden City of Camden City of Camden City of Charleston City of Chesnee City of Chesnee City of Chesner City of Chesner City of Cimmon City of Cimmon City of Cimmon City of Cimmon City of Comway City of Comway City of Comway City of Commanse City of Demmanse	City of Delta City of Draper City of Ducksene City of East Carbon City of Est Ridge City of Elim City of Elim City of Elim City of Ennoch City of Enrica City of Epiraim City of Estalante City of Euroka City of Fairniew City of Fairniew City of Fairniew City of Fairnie City of Fourtain Green	City of Battle Ground City of Belleivue City of Belleivue City of Belleivue City of Belleivus City of Belleivus City of Bingen City of Bingen City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremetton City of Bremetton City of Bremetton City of Bremetton City of Bridgeport City of Bride City of Burlein City of Camas
	City of Athol City of Hamic City City of Bancroft City of Bancroft City of Blackfoot City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomington City of Boomers Ferry City of Bowil City of Bowil City of Bowil City of Burley City of Catdwell City of Catdwell City of Carey City of Carey City of Cascade City of Castelerod	City of Bandon City of Banks City of Bay City City of Bay City City of Beaverton City of Bend and City of Boardman City of Brookings City of Brookings City of Brookings City of Brookings City of Canby City of Canby City of Canby City of Canpon Beach City of Canyonville City of Carton City of Case Locks City of Cave Lonction City of Cave Lonction City of Caretal Point City of Clatkanie	City of Anderson City of Beaufort City of Beaufort City of Beaufort City of Beneufort City of Beneufort City of Beneufort City of Beneufort City of Camden City of Camden City of Caye City of Charleston City of Chesnee City of Chesnee City of Chesnee City of Chesneo City of City of Cinom City of Columbia City of Columbia City of Columbia City of Carlington City of Darlington City of Darlington City of Darlington City of Columbia	City of Delta City of Draper City of Duchesne City of East Carbon City of Eik Ridge City of Eik Ridge City of Eik Ridge City of Elmo City of Encch City of Encch City of Ench City of Entreprise City of Ephraim City of Estraine City of Estraine City of Fairniew City of Fairnie City of Forthie Heights	City of Battle Ground City of Bellevue City of Bellevue City of Bellingham City of Benton City City of Bingen City of Black Olimond City of Black City of Black City of Boney Lake City of Boney Lake City of Borney Lake City of Bremstron City of Bremstron City of Bremstron City of Bremstron City of Brier City of Brier City of Buckley City of Gamas City of Camasi City of Cama
	City of Athol City of Athol City of Bancroft City of Bellevue City of Bellevue City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomington City of Bloomington City of Boness Ferry City of Boness Ferry City of Boness Ferry City of Burley City of Burley City of Cambridge City of Cambridge City of Cascade City of Challis	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend City of Boardman City of Boardman City of Broardman City of Broardman City of Broardman City of Broardman City of Candon City of Cardon City of Control City of Colliquin City of Clotkanie City of Clotkanie City of Coburg	City of Anderson City of Banwell City of Beaufort City of Betanor City of Betanor City of Betanor City of Bishopwille City of Canden City of Canden City of Canden City of Charleston City of Charleston City of Charleston City of Chesnee City of Chesnee City of Chesner City of Cimmon City of Cimmon City of Cimmon City of Cimmon City of Comway City of Demmark City of Demmark City of Dillion City of Easley	City of Delta City of Draper City of Duckesne City of East Carbon City of Est Ridge City of Elim City of Elim City of Elim City of Enoch City of Enterprise City of Enterprise City of Estalante City of Estalante City of Estalante City of Farinievo City of Farinie City of Farinievo City of Farinievo City of Farinie City of Farinievo City of Farinievo City of Farinievo City of Fourtain Green City of Fourtain Green City of Fourtain Green City of Garland	City of Battle Ground City of Belleivue City of Bingen City of Black Diamond City of Black City of Bosine City of Bosine City of Bosine City of Bosine City of Brewster City of Brewster City of Briegoport City of Briege City of Busilei City of Camas City of Camas City of Camas City of Casambree
	City of Athol City of Hamic City City of Bancroft City of Bancroft City of Blackfoot City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomigaton City of Boomers Ferry City of Boomers Ferry City of Bowill City of Bowill City of Burley City of Cardwell City of Cardwell City of Cardwell City of Carey City of Carey City of Castedord City of C	City of Bandon City of Bay City City of Bay City City of Bay City City of Beaverton City of Bearden City of Bearden City of Boardman City of Brookings City of Brookings City of Brookings City of Canby City of Canby City of Canby City of Canbo City of Canon Beach City of Canyonville City of Caryonville City of Carton City of Cascade Locks City of Cave Lunction City of Claskanie City of Clatkanie City of Coburg City of Columbia City City of Columbia City of Colum	City of Anderson City of Benwell City of Benwell City of Benwell City of Benefor City of Dementsville City of Schopville City of Canden City of Canden City of Caye City of Charleston City of Chesnee City of Chesnee City of Chesnee City of Chesnee City of Columbia City of Caye City of Darlington City of Schoen City of Florence	City of Delta City of Draper City of Duchesne City of East Carbon City of Eik Ridge City of Eik Ridge City of Eik Ridge City of Elmo City of Emoch City of Emoch City of Ench City of Ench City of Establish City of Establish City of Establish City of Establish City of Farrindew City of Farrindew City of Farrindew City of Farrinden City of Fourtain Green City of Fourtain Green City of Gararhaud City of Garar	City of Battlet Ground City of Bellevue City of Bellevue City of Bellevue City of Bellevue City of Bellevie City of Benton City City of Bingen City of Blacke City of Blacke City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Bremetron City of Bremetron City of Bremetron City of Brewster City of Briefe City of Briefe City of Builington City of Builington City of Camation City of Camation City of Camation City of Camation City of Castle Rock
	City of Athol City of Athol City of Bancroft City of Bellevue City of Bellevue City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomington City of Bloomington City of Boness Ferry City of Boness Ferry City of Boness Ferry City of Burley City of Burley City of Cambridge City of Cambridge City of Cascade City of Challis	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend City of Boardman City of Boardman City of Broardman City of Broardman City of Broardman City of Broardman City of Candon City of Cardon City of Control City of Colliquin City of Clotkanie City of Clotkanie City of Coburg	City of Anderson City of Banwell City of Beaufort City of Betanor City of Betanor City of Betanor City of Bishopwille City of Canden City of Canden City of Canden City of Charleston City of Charleston City of Charleston City of Chesnee City of Chesnee City of Chesner City of Cimmon City of Cimmon City of Cimmon City of Cimmon City of Comway City of Demmark City of Demmark City of Dillion City of Easley	City of Delta City of Draper City of Duckesne City of East Carbon City of Est Ridge City of Elim City of Elim City of Elim City of Enoch City of Enterprise City of Enterprise City of Estalante City of Estalante City of Estalante City of Farinievo City of Farinie City of Farinievo City of Farinievo City of Farinie City of Farinievo City of Farinievo City of Farinievo City of Fourtain Green City of Fourtain Green City of Fourtain Green City of Garland	City of Battle Ground City of Bellewe City of Bellingham City of Bellingham City of Benton City City of Bingen City of Black Diamond City of Black City of Bosne City of Brewster City of Brewster City of Brewster City of Briegoport City of Brieg City of Busile City of Busile City of Busile City of Busile City of Gumas City of Camas City of Camas City of Camshere
	City of Athol City of Hamic City City of Bancroft City of Bancroft City of Blackfoot City of Blackfoot City of Blackfoot City of Blackfoot City of Bloomigaton City of Boomers Ferry City of Boomers Ferry City of Bowill City of Bowill City of Burley City of Cardwell City of Cardwell City of Cardwell City of Carey City of Carey City of Castedord City of C	City of Bandon City of Bay City City of Bay City City of Bay City City of Beaverton City of Bearden City of Bearden City of Boardman City of Brookings City of Brookings City of Brookings City of Canby City of Canby City of Canby City of Canbo City of Canon Beach City of Canyonville City of Caryonville City of Carton City of Cascade Locks City of Cave Lunction City of Claskanie City of Clatkanie City of Coburg City of Columbia City City of Columbia City of Colum	City of Anderson City of Benwell City of Benwell City of Benwell City of Benefor City of Dementsville City of Schopville City of Canden City of Canden City of Caye City of Charleston City of Chesnee City of Chesnee City of Chesnee City of Chesnee City of Columbia City of Caye City of Darlington City of Schoen City of Florence	City of Delta City of Draper City of Duchesne City of East Carbon City of Eik Ridge City of Eik Ridge City of Eik Ridge City of Elmo City of Emoch City of Emoch City of Ench City of Ench City of Establish City of Establish City of Establish City of Establish City of Farrindew City of Farrindew City of Farrindew City of Farrinden City of Fourtain Green City of Fourtain Green City of Gararhaud City of Garar	City of Battlet Ground City of Bellevue City of Bellingham City of Bellingham City of Berton City City of Bingen City of Black Diamond City of Black Diamond City of Black Diamond City of Bonney Lake City of Bonney Lake City of Bonney Lake City of Borney Lake City of Brewster City of Brewster City of Brewster City of Brewster City of Briefe City of Builegoort City of Camation City of Camation City of Camation City of Camation City of Castle Rock
	City of Athol City of Bancroft City of Bancroft City of Bancroft City of Bancroft City of Balcetor City of Blaskfoot City of Blaskfoot City of Blask City of Bloomington City of Bosie City of Bosie City of Bosie City of Bowil City of Bowil City of Burley City of Cambridge City of Cambridge City of Cambridge City of Castedroft City of Castedroft City of Castedroft City of Chubbuck City of Cithobuck City of Cithon City of C	City of Bandon City of Banks City of Bay City City of Beaverton City of Beaverton City of Beaverton City of Beard City of Boardman City of Browinsylle City of Burns City of Canby City of Canby City of Canby City of Canbo City of Canbo City of Carbo City of Cascade Locks City of Code United City City of Columba City City of Columba City City of Condon City of Codumba City City of Condon City of Coodon	City of Anderson City of Barnwell City of Beaufort City of Belaufort City of Belinon City of Sennettsville City of Camden City of Camden City of Camden City of Charleston City of Cheriston City of Cheriston City of Cheriston City of Cheriston City of Chesinee City of Cession City of Ciminon City of Comman City of Ciminon City of Comman City of Comman City of Comman City of Comman City of Darlington City of Darlington City of Torenec City of Florence City of Florence City of Forest Acres	City of Delta City of Draper City of Duckesne City of East Carbon City of East Carbon City of Eit Ridge City of Enoch City of Enoch City of Enoch City of Estrain City of Fariniew City of Fariniew City of Farinie City of Fortal Field City of Fortal Heights City of Garatad City of Garatad City of Garatad City of Garataville City of Garatsville City of Gumsion	City of Battlet Ground City of Bellewe City of Bellingham City of Bellingham City of Bellingham City of Bingen City of Bonney Lake City of Bonney Lake City of Bonney City of Bremeton City of Bremeton City of Bremeton City of Bremeton City of Briegoport City of Briegoport City of Busilen City of Busilen City of Busilen City of Busilen City of Camas City of Camas City of Camas City of Camas City of Camation City of Castlet Rock City of Castlet Rock City of Cestlet Rock City of Cestlet Rock City of Chehalis
	City of Athol City of Athol City of Bancroft City of Balceton City of Bellevue City of Blackfoot City of Blackfoot City of Bloomington City of Bloomington City of Bloomington City of Boness Ferry City of Boness Ferry City of Boness Ferry City of Burll City of Burll City of Cambridge City of Cambridge City of Cascade City of Cabuston City of Cityton	City of Bandon City of Banks City of Bay City City of Beaverton City of Bend City of Boardman City of Boardman City of Broadman City of Broadman City of Broadman City of Broadman City of Candy City of Candy City of Candy City of Candon City of Candon City of Candon City of Candon City of Carbon City of Colloquin City of Colloquin City of Colour City City of Colour City Colour City of Colour City Colour City of Colour City	City of Anderson City of Banwell City of Beaufort City of Betanor City of Betanor City of Betanor City of Bishopwille City of Bishopwille City of Canden City of Canden City of Canden City of Charleston City of Charleston City of Chesnee City of Chesnee City of Chesne City of Cimmon City of Cimmon City of Cimmon City of Commay City of Commay City of Demark City of Delmark City of Dillon City of Easley City of Folly Beach	City of Delta City of Draper City of Duckesne City of East Carbon City of Est Ridge City of Elim City of Elim City of Elim City of Enoch City of Enterprise City of Est Est City of Est Est City of Fairnies City of Fourtain Green City of Fourtain Green City of Garand City of Garand City of Garand City of Garanswille City of Green River	City of Battle Ground City of Bellevue City of Bellingham City of Bellingham City of Benton City City of Bingen City of Black Diamond City of Bingen City of Black Diamond City of Bonney Lake City of Sorbell City of Sorbell City of Streeton City of Brewster City of Brewster City of Briegoport City of Briegoport City of Burlen City of Camas City of Camas City of Camas City of Casahmere City of Casahmere City of Casahmere City of Casahmere

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Idah

Idaho	Oregon	South Carolina	Utah	Washington
City of Culdesac	City of Cottage Grove	City of Goose Creek	City of Herriman	City of Clarkston
City of Dalton Gardens	City of Cove	City of Greenville	City of Highland	City of Cle Elum
City of Dayton	City of Creswell	City of Greenwood	City of Hildale	City of Clyde Hill
City of Deary	City of Culver	City of Greer	City of Holladay	City of Colfax
City of Dietrich	City of Dallas	City of Hanahan	City of Honeyville	City of College Place
City of Donnelly	City of Damascus	City of Hardeeville	City of Hooper	City of Colville
City of Dover	City of Dayton	City of Hartsville	City of Huntington	City of Connell
City of Downey	City of Dayville	City of Inman	City of Hurricane	City of Cosmopolis
City of Driggs	City of Depoe Bay	City of Isle of Palms	City of Hyde Park	City of Covington
City of Dubois	City of Detroit	City of Johnsonville	City of Hyrum	City of Davenport
City of Eagle	City of Donald	City of Lake City	City of Ivins	City of Dayton
City of Eden	City of Donaid	City of Lancaster	City of Kamas	City of Deer Park
City of Elk River	City of Dundee	City of Landrum	City of Kanab	City of Des Moines
City of Emmett	City of Dundee City of Dunes City	City of Laurens	City of Kaysville	City of DuPont
City of Fairfield	City of Durham	City of Liberty	City of La Verkin	City of Duvall
City of Fernan Lake Village	City of Eagle Point	City of Liberty City of Loris	City of Layton	City of East Wenatchee
City of Filer	City of Eagle Point City of Echo	City of Manning	City of Lehi	City of Edgewood
City of Firth	City of Elein	City of Marining	City of Leviston	City of Edgewood City of Edmonds
City of Franklin	City of Enterprise	City of Mauldin	City of Lindon	City of Edmonds City of Electric City
City of Fruitland	City of Estacada	City of Mullins	City of Logan	City of Ellensburg
City of Fruitianu City of Garden City	City of Eugene	City of Myrtle Beach	City of Manti	City of Elma
City of Genesee	City of Fairview	City of New Ellenton	City of Mapleton	City of Entiat
City of Georgetown	City of Falls City	City of Newberry	City of Marriott-Slaterville	City of Enumclaw
City of Glenns Ferry	City of Florence	City of North Augusta	City of Mendon	City of Ephrata
City of Gooding	City of Forest Grove	City of North Charleston	City of Midvale	City of Everett
City of Grace	City of Fossil	City of North Myrtle Beach	City of Midway	City of Everson
City of Grand View	City of Garibaldi	City of Orangeburg	City of Milford	City of Federal Way
City of Grangeville	City of Gaston	City of Pickens	City of Millville	City of Ferndale
City of Greenleaf	City of Gates	City of Rock Hill	City of Moab	City of Fife
City of Hagerman	City of Gearhart	City of Seneca	City of Mona	City of Fircrest
City of Hailey	City of Gervais	City of Simpsonville	City of Monroe	City of Forks
City of Hansen	City of Gladstone	City of Spartanburg	City of Monticello	City of George
City of Harrison	City of Glendale	City of Sumter	City of Morgan	City of Gig Harbor
City of Hayden	City of Gold Beach	City of Tega Cay	City of Moroni	City of Gold Bar
City of Hazelton	City of Gold Hill	City of Travelers Rest	City of Mt. Pleasant City	City of Goldendale
City of Heyburn	City of Grants Pass	City of Union	City of Murray	City of Grand Coulee
City of Hollister	City of Greenhorn	City of Walhalla	City of Myton	City of Grandview
City of Homedale	City of Gresham	City of Walterboro	City of Naples	City of Granger
City of Hope	City of Haines	City of Wellford	City of Nephi	City of Granite Falls
City of Horseshoe Bend	City of Halfway	City of West Columbia	City of Nibley	City of Harrington
City of Huetter	City of Halsey	City of Westminster	City of North Logan	City of Hoquiam
City of Idaho City	City of Happy Valley	City of Woodruff	City of North Ogden	City of Ilwaco
City of Idaho Falls	City of Harrisburg	City of York	City of North Salt Lake	City of Issaguah
City of Inkom	City of Helix	Town of Allendale	City of Oakley	City of Kahlotus
City of Island Park	City of Heppner	Town of Andrews	City of Ogden	City of Kalama
City of Jerome	City of Hermiston	Town of Atlantic Beach	City of Orangeville	City of Kelso
City of Juliaetta	City of Hillsboro	Town of Awendaw	City of Orem	City of Kenmore
City of Kamiah	City of Hines	Town of Aynor	City of Panguitch	City of Kennewick
City of Kellogg	City of Hood River	Town of Batesburg-Leesville	City of Park City	City of Kent
City of Kendrick	City of Hubbard	Town of Bethune	City of Parowan	City of Kettle Falls
City of Ketchum	City of Hubbard City of Huntington	Town of Blacksburg	City of Payson	City of Kettle Falls City of Kirkland
City of Ketchum City of Kimberly	City of Idanha	Town of Blackville	City of Perry	City of Kittitas
City of Konskia	City of Indama	Town of Blenheim	City of Plain City	City of La Center
City of Kooskia City of Kuna	City of Independence	Town of Bluffton	City of Pleasant Grove	City of Lacey
City of Kuna City of Lapwai	City of Irrigon	Town of Blythewood	City of Pleasant Grove City of Pleasant View	City of Lacey City of Lake Forest Park
City of Lapwai City of Lava Hot Springs	City of Irrigon City of Island City	Town of Boyman	City of Price	City of Lake Forest Park City of Lake Stevens
City of Lava Hot Springs City of Lewiston	City of Jacksonville	Town of Branchville	City of Providence	City of Lake Stevens City of Lakewood
City of Lewiston City of Mackay	City of Jacksonville City of Jefferson	Town of Briarcliffe Acres	City of Providence	City of Lakewood City of Langley
City of Malad City	City of John Day	Town of Brunson	City of Richfield	City of Leavenworth
City of Marsing	City of Johnson City	Town of Calhoun Falls	City of Richmond	City of Liberty Lake
City of McCall	City of Joseph	Town of Cameron	City of River Heights	City of Long Beach
City of McCammon	City of Junction City	Town of Campobello	City of Riverdale	City of Longview
City of Melba	City of Keizer	Town of Central	City of Riverton	City of Lynden
City of Menan	City of King City	Town of Chapin	City of Roosevelt	City of Lynnwood
City of Meridian	City of Klamath Falls	Town of Cheraw	City of Roy	City of Mabton
City of Middleton	City of La Grande	Town of Chesterfield	City of Salem	City of Maple Valley
City of Midvale	City of La Pine	Town of Clio	City of Salina	City of Marysville
City of Moscow	City of Lafayette	Town of Clover	City of Salt Lake City	City of Mattawa
City of Mountain Home	City of Lake Oswego	Town of Cottageville	City of Sandy	City of McCleary
City of Mullan	City of Lakeside	Town of Coward	City of Santa Clara	City of Medical Lake
City of Murtaugh	City of Lebanon	Town of Cowpens	City of Santaquin	City of Medina
City of Nampa	City of Lincoln City	Town of Denmark	City of Saratoga Springs	City of Mercer Island
City of New Meadows	City of Lonerock	Town of Donalds	City of Smithfield City	City of Mesa
City of New Plymouth	City of Lostine	Town of Due West	City of South Jordan	City of Mill Creek
City of Newdale	City of Lowell	Town of Duncan	City of South Ogden	City of Milton
City of Nezperce	City of Lyons	Town of Eastover	City of South Salt Lake City	City of Monroe
City of Notus	City of Madras	Town of Edgefield	City of South Weber	City of Montesano
City of Orofino	City of Malin	Town of Edisto Beach	City of Spanish Fork	City of Morton
City of Osburn	City of Manzanita	Town of Ehrhardt	City of Spring City	City of Moses Lake
City of Parker	City of Maupin	Town of Elgin	City of Springville	City of Mossyrock
City of Parma	City of McMinnville	Town of Elloree	City of St. George	City of Mountlake Terrace
City of Paul	City of Medford	Town of Estill	City of Sunnyside	City of Moxee
City of Payette	City of Metolius	Town of Eutawville	City of Sunset	City of Mt. Vernon
City of Pierce	City of Mill City	Town of Fairfax	City of Syracuse	City of Mukilteo
City of Pinehurst	City of Millersburg	Town of Ft. Mill	City of Taylorsville	City of Napavine
City of Plummer	City of Milton-Freewater	Town of Furman	City of Tooele	City of Newcastle
City of Pocatello	City of Milwaukie	Town of Gaston	City of Toquerville	City of Newport
City of Ponderay	City of Molalla	Town of Gifford	City of Tremonton	City of Nooksack
City of Post Falls	City of Monmouth	Town of Gilbert	City of Tropic	City of Normandy Park
City of Potlatch	City of Monroe	Town of Govan	City of Uintah	City of North Bend
City of Preston	City of Monument	Town of Gray Court	City of Vernal	City of North Bonneville
City of Priest River	City of Moro	Town of Great Falls	City of Washington	City of Oak Harbor
City of Rathdrum	City of Mosier	Town of Greeleyville	City of Washington Terrace	City of Oakville
City of Reubens	City of Mt. Angel	Town of Hampton	City of Wellington	City of Ocean Shores
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Idaho	Oregon	South Carolina	Utah	Washington
City of Rexburg City of Richfield	City of Mt. Vernon City of Myrtle Creek	Town of Harleyville Town of Heath Springs	City of Wellsville	City of Okanogan
	City of Myrtle Creek City of Myrtle Point	Town of Heath Springs Town of Hemingway	City of Wendover City of West Bountiful	City of Olympia City of Omak
City of Rigby	City of Myrtle Point City of Nehalem	Town of Hemingway Town of Hilda	City of West Bountiful City of West Haven City	City of Omak City of Oroville
City of Riggins City of Ririe	City of Newberg	Town of Hilton Head Island	City of West Faven City	City of Orting
City of Roberts	City of Newberg	Town of Hodges	City of West Point	City of Othello
City of Rockland	City of North Bend	Town of Holly Hill	City of West Valley City	City of Pacific
City of Rupert	City of North Plains	Town of Hollywood	City of Willard	City of Palouse
City of Salmon	City of North Powder	Town of Honea Path	City of Woodland Hills	City of Pasco
City of Sandpoint	City of Nyssa	Town of Irmo	City of Woods Cross	City of Pateros
City of Shelley	City of Oakland	Town of Iva	Town of Alta	City of Pomeroy
City of Shoshone	City of Oakridge	Town of Jackson	Town of Altamont	City of Port Angeles
City of Smelterville	City of Ontario	Town of James Island	Town of Alton	City of Port Orchard
City of Soda Springs	City of Oregon City	Town of Jamestown	Town of Amalga	City of Port Townsend
City of Spirit Lake	City of Paisley	Town of Jefferson	Town of Annabella	City of Poulsbo
City of St. Anthony	City of Pendleton	Town of Jenkinsville	Town of Antimony	City of Prosser
City of St. Charles City of Stanley	City of Philomath City of Phoenix	Town of Johnston Town of Jonesville	Town of Apple Valley Town of Ballard	City of Pullman City of Puyallup
City of Stanley City of Star	City of Phoenix City of Pilot Rock	Town of Jonesville Town of Kershaw	Town of Ballard Town of Bear River City	City of Puyallup City of Quincy
City of Stites	City of Port Orford	Town of Kiawah Island	Town of Bicknell	City of Rainier
City of Sugar City	City of Portland	Town of Kingstree	Town of Big Water	City of Raymond
City of Sun Valley	City of Powers	Town of Lake View	Town of Boulder	City of Redmond
City of July Valley	City of Prairie City	Town of Lamar South Carolina	Town of Brian Head	City of Renton
City of Tetonia	City of Prineville	Town of Lane	Town of Bryce Canyon City	City of Republic
City of Troy	City of Rainier	Town of Latta	Town of Cannonville	City of Richland
City of Twin Falls	City of Redmond	Town of Lexington	Town of Castle Valley	City of Ridgefield
City of Ucon	City of Reedsport	Town of Lincolnville	Town of Cedar Fort	City of Ritzville
City of Victor	City of Richland	Town of Little Mountain	Town of Centerfield	City of Rock Island
City of Wallace	City of Riddle	Town of Lockhart	Town of Central Valley	City of Roslyn
City of Weippe	City of Rockaway Beach	Town of Lyman	Town of Circleville	City of Roy
City of Weiser	City of Rogue River	Town of Lynchburg	Town of Clarkston	City of Royal City
City of Wendell	City of Roseburg	Town of Mayesville	Town of Clawson	City of Sammamish
City of Weston	City of Rufus	Town of McBee	Town of Cleveland	City of SeaTac
City of White Bird	City of Salem	Town of McColl Town of McColl	Town of Cornish	City of Seattle
City of Wilder	City of Sandy		Town of Daniel	City of Sedro-Woolley
City of Winchester	City of Scappoose	Town of McCormick	Town of Deweyville	City of Selah
Higher Education Boise State University	City of Scio City of Scotts Mills	Town of Meggett Town of Moncks Corner	Town of Eagle Mountain Town of Elmo	City of Sequim City of Shelton
College of Southern Idaho	City of Scotts Mills City of Seaside	Town of Mt. Pleasant	Town of Elsinore	City of Shoreline
College of Western Idaho	City of Seneca	Town of Neeses	Town of Elwood	City of Snohomish
Eastern Idaho Technical College	City of Shady Cove	Town of New Ellenton	Town of Emery	City of Snoqualmie
Idaho Division of Professional Technical Education	City of Sheridan	Town of Nichols	Town of Enirfield	City of Soap Lake
Idaho State University	City of Sherwood	Town of Ninety Six	Town of Francis	City of South Bend
Lewis-Clark State College	City of Siletz	Town of Norris	Town of Garden City	City of Spokane
North Idaho College	City of Silverton	Town of North	Town of Genola	City of Spokane Valley
University of Idaho	City of Sisters	Town of Norway	Town of Glendale	City of Sprague
Education (K-12)	City of Sodaville	Town of Olanta	Town of Glenwood	City of Stanwood
Aberdeen School District No. 58	City of Spray	Town of Pacolet	Town of Goshen	City of Stevenson
Arbon Elementary School District No. 383	City of Springfield	Town of Pageland	Town of Hanksville	City of Sultan
Avery School District	City of St. Helens	Town of Pamplico	Town of Hatch	City of Sumas
Basin School District No. 72	City of St. Paul	Town of Patrick	Town of Henefer	City of Sumner
Bear Lake County School District No. 33	City of Stanfield	Town of Pawleys Island	Town of Henrieville	City of Sunnyside
Bear Lake School District No. 33 Blackfoot School District No. 55	City of Stayton City of Sublimity	Town of Pelion Town of Pelzer	Town of Hideout Town of Hinckley	City of Tacoma City of Tekoa
Blaine County School District No. 61	City of Sumpter	Town of Pendleton	Town of Holden	City of Textoa
Bliss Joint School District No. 234	City of Sutherlin	Town of Perry	Town of Howell	City of Terlino
Bonneville Joint School District No. 93	City of Sweet Home	Town of Port Royal	Town of Huntsville	City of Toledo
Boundary County School District No. 101	City of Talent	Town of Prosperity	Town of Joseph	City of Tonasket
Bruneau-Grand View Joint School District	City of Tangent	Town of Ravenel	Town of Junction	City of Toppenish
Buhl Joint School District No. 412	City of The Dalles	Town of Reidville	Town of Kanarraville	City of Tukwila
Butte County Joint School District No. 111	City of Tigard	Town of Ridge Spring	Town of Kanosh	City of Tumwater
Caldwell School District No. 132	City of Tillamook	Town of Ridgeland	Town of Kingston	City of Union Gap
Camas County School District No. 121	City of Toledo	Town of Ridgeville	Town of Koosharem	City of University Place
Cambridge School District	City of Troutdale	Town of Ridgeway	Town of Leeds	City of Vader
Cascade School District No. 422	City of Tualatin	Town of Saint Matthews	Town of Levan	City of Vancouver
Cassia County Joint School District No. 151	City of Turner	Town of Saint Stephen	Town of Loa	City of Waitsburg
Castleford Joint School District No. 417	City of Ukiah	Town of Salem	Town of Manila	City of Walla Walla
Challis Joint School District No. 181	City of Umatilla	Town of Salley	Town of Mantua	City of Wapato
Clark County School District No. 161	City of Union	Town of Saluda	Town of Marysvale	City of Warden
Coeur d'Alene School District No. 271	City of Unity	Town of Santee	Town of Meadow Town of Minersville	City of Washougal
Cottonwood Joint School District No. 242 Council School District No. 13	City of Vale City of Veneta	Town of Scranton Town of Seabrook Island	Town of Minersville Town of New Harmony	City of Wenatchee City of West Richland
Council School District No. 13 Culdesac Joint School District No. 342	City of Veneta City of Vernonia	Town of Seabrook Island Town of Sellers	Town of New Harmony Town of Newton	City of West Richland City of Westport
Culdesac Joint School District No. 342 Dietrich School District No. 314	City of Vernonia City of Waldport	Town of Sellers Town of Sharon	Town of Newton Town of Ophir	City of Westport City of White Salmon
Emmett Independent School District No. 221	City of Waldport City of Wallowa	Town of Sharon Town of Six Mile	Town of Ophir Town of Orderville	City of White Salmon City of Winlock
Filer School District No. 413	City of Warrenton	Town of Snelling	Town of Paradise	City of Woodinville
Firth School District No. 415	City of Wasco	Town of Society Hill	Town of Paragonah	City of Woodland
Fremont County School District No. 215	City of West Linn	Town of South Congaree	Town of Portage Utah	City of Yakima/Yakima County
			Town of Randolph	City of Yelm
Fruitland School District No. 373		Town of Springdale		City of Zillah
	City of Westfir City of Weston	Town of Springdale Town of St. George	Town of Redmond	City of Zillan
Fruitland School District No. 373 Garden Valley School District Genesee Joint School District No. 282	City of Westfir City of Weston City of Wheeler	Town of St. George Town of St. Matthews	Town of Rockville	Consolidated Borough of Quil Ceda Village
Fruitland School District No. 373 Garden Valley School District Genesee Joint School District No. 282 Glenns Ferry Joint School District No. 192	City of Westfir City of Weston City of Wheeler City of Willamina	Town of St. George Town of St. Matthews Town of Stuckey	Town of Rockville Town of Rocky Ridge	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments
Fruitland School District No. 373 Garden Valley School District Genesee Joint School District No. 282 Glenns Ferry Joint School District No. 192 Gooding Joint School District No. 231	City of Westfir City of Weston City of Wheeler City of Willamina City of Willamina City of Willsonville	Town of St. George Town of St. Matthews Town of Stuckey Town of Sullivans Island	Town of Rockville Town of Rocky Ridge Town of Rush Valley	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almira
Fruitland School District No. 373 Garden Valley School District Genesee Joint School District No. 282 Glenns Ferry Joint School District No. 192	City of Westfir City of Weston City of Wheeler City of Willamina City of Wilsonville City of Wilsonville City of Winston	Town of St. George Town of St. Matthews Town of Stuckey Town of Sullivans Island Town of Summerton	Town of Rockville Town of Rocky Ridge Town of Rush Valley Town of Scipio	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almira Town of Beaux Arts Village
Fruitland School District No. 373 Garden Valley School District Genesee Joint School District No. 282 Glems Ferry Joint School District No. 192 Gooding Joint School District No. 231 Grace Joint School District No. 231 Grace Joint School District No. 148 Hagerman Joint School District No. 143	City of Westfir City of Weston City of Willeamina City of Williamina City of Wilsonville City of Winsonville City of Winston City of Wood Village	Town of St. George Town of St. Matthews Town of Stuckey Town of Sulfivans Island Town of Summerton Town of Summerton	Town of Rockville Town of Rocky Ridge Town of Rush Valley Town of Scipio Town of Scofield	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almira Town of Beaux Arts Village Town of Bucoda
Fruilland School District No. 373 Garden Valley School District Genesee Joint School District No. 282 Glenns Ferry Joint School District No. 192 Gooding Joint School District No. 231 Grace Joint School District No. 231 Grace Joint School District No. 148 Hagerman Joint School District No. 233 Hansen School District No. 145	City of Westfir City of Weston City of Wheeler City of Wilamina City of Wilsowille City of Winston City of Wood Village City of Wood burn	Town of St. George Town of St. Matthews Town of Stuckey Town of Sutckey Town of Sullivans Island Town of Summerton Town of Summerville Town of Summit	Town of Rockville Town of Rocky Ridge Town of Rush Valley Town of Scipio Town of Scipio Town of Scofield Town of Scipurd	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almira Town of Beaux Arts Village Town of Becounce Town of Bucoda Town of Carbonado
Fruilland School District No. 373 Garden Valley School District Genesse Joint School District No. 282 Glenns Ferry Joint School District No. 192 Gooding Joint School District No. 193 Grace Joint School District No. 231 Grace Joint School District No. 148 Hagerman Joint School District No. 233 Hansen School District No. 415 Highland Joint School District No. 305	City of Westfir City of Weston City of Wiseber City of Willamina City of Wilsonville City of Winstonville City of Winston City of Wood Village City of Woodburn City of Woodburn City of Woodburn City of Wachats	Town of St. George Town of St. Matthews Town of Studkey Town of Sullivans Island Town of Sullivans Island Town of Summerton Town of Summerville Town of Summit Town of Summit	Town of Rockville Town of Rocky Ridge Town of Rush Valley Town of Scipio Town of Scipio Town of Scinied Town of Springdale Town of Springdale	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almira Town of Beaux Arts Village Town of Bocoda Town of Carbonado Town of Carbonado Town of Carbinamet
Fruilland School District No. 373 Garden Valley School District Genesee Joint School District No. 282 Glenns Ferry Joint School District No. 192 Gooding Joint School District No. 231 Grace Joint School District No. 231 Grace Joint School District No. 231 Hagerman Joint School District No. 384 Hagerman Joint School District No. 305 Highland Joint School District No. 305 Homedale School District No. 307	City of Westfir City of Weston City of Wheeler City of Williamina City of Wilsowille City of Winston City of Wood Village City of Woodburn City of Yachats City of Yachats City of Yachatis	Town of St. George Town of St. Matthews Town of Stuckey Town of Stullivans Island Town of Summerton Town of Summerville Town of Summit Town of Summit Town of Summit Town of Summit	Town of Rockville Town of Rocky Ridge Town of Rush Valley Town of Scipio Town of Scofiel Town of Scipiel Town of Sigurd Town of Sigurd Town of Springdale Town of Sprickton	Consolidated Borough of Quil Ceda Village Grays Harboc Council of Governments Town of Almira Town of Beaux Arts Village Town of Bucoda Town of Carbanado Town of Carbanade Town of Carbhanet Town of Carbinete
Fruilland School District No. 373 Garden Valley School District Genesse Joint School District No. 282 Glenns Ferry Joint School District No. 192 Gooding Joint School District No. 193 Grace Joint School District No. 231 Grace Joint School District No. 233 Hansen School District No. 233 Hansen School District No. 415 Highland Joint School District No. 305 Homedale School District No. 370 Horssebne Bend School District No. 73	City of Westfir City of Weston City of Wilseber City of Willamina City of Wilsonville City of Winston City of Wood Village City of Wood Village City of Wood burn City of Varbats City of Varbats City of Varbatls City of Varbatla	Town of St. George Town of St. Matthews Town of Stukey Town of Sullivars Island Town of Summerton Town of Summertin Town of Summertin Town of Summit Town of Summit Town of Summit Town of Summit	Town of Rockville Town of Rocky, Ridge Town of Rush Valley Town of Sciplo Town of Sciplo Town of Sciplid Town of Springdel Town of Springdele Town of Stockton Town of Sprougeville	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almira Town of Beaux Arts Village Town of Beaux Arts Village Town of Carbonado Town of Carthamet Town of Chithamet Town of Chyle Hill Town of Chylo
Fruitland School District No. 373 Garden Valley School District Genesee Joint School District No. 282 Glenns Ferry Joint School District No. 292 Glenns Ferry Joint School District No. 231 Grace Joint School District No. 231 Grace Joint School District No. 231 Hagerman Joint School District No. 384 Hagerman Joint School District No. 305 Homedale School District No. 307 Horseshoe Bend School District No. 370 Horseshoe Bend School District No. 31	City of Westfir City of Wheeler City of Wheeler City of Williamina City of Williamina City of Williamina City of Winston City of Wood Village City of Woodburn City of Wachats City of Vanhali City of Vanhali City of Vanhali City of Yoncalia Town of Bonanza	Town of St. George Town of St. Matthews Town of Stuckey Town of Stulivans Island Town of Summerton Town of Summertin Town of Summit Town of Town of Summit Town of	Town of Rockyille Town of Rocky Ridge Town of Rocky Ridge Town of Scipio Town of Scipio Town of Scipiel Town of Sigurd Town of Springdale Town of Springdale Town of Tockton Town of Toquerville Town of Toquerville	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almiria Town of Beaux Arts Village Town of Bood of Governments Town of Carbonado Town of Carbonado Town of Carbiamet Town of Cityde Hill Town of Cotton Town of Concountly
Fruitland School District No. 373 Garden Valley School District Genesse Joint School District No. 282 Gleinens Ferry Joint School District No. 192 Gooding Joint School District No. 193 Grace Joint School District No. 231 Grace Joint School District No. 233 Hansen School District No. 245 Hagerman Joint School District No. 333 Hansen School District No. 305 Homedale School District No. 370 Horseshoe Beard School District No. 73 Idaho Falls School District No. 73 Idaho Falls School District No. 91 Independent School District No. 91	City of Westfir City of Weston City of Willamina City of Willamina City of Wilsonville City of Winston City of Wood Village City of Wood Village City of Woodburn City of Vachats City of Varhall Town of Bonanza Town of Bonanza Town of Bute Falls	Town of St. George Town of St. Matthews Town of Stuckey Town of Stulkers Island Town of Summerton Town of Summertin Town of Summertin Town of Summit Town of Summit Town of Summit Town of Summit Town of Turnous Town of Tirenton Town of Trurbeville	Town of Rockville Town of Rocky Ridge Town of Rush Valley Town of Scipio Town of Scipio Town of Scipid Town of Sigurd Town of Springdale Town of Stockton Town of Jorgerville Town of Torrey Town of Torrey Town of Torreton	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almira Town of Beaux Arts Village Town of Carbonado Town of Carbonado Town of Carthamet Town of Chyle Hill Town of Colton Town of Contonully Town of Concorully
Fruitland School District No. 373 Garden Valley School District Genesee Joint School District Genesee Joint School District No. 282 Gleins Ferry Joint School District No. 292 Gooding Joint School District No. 231 Grace Joint School District No. 231 Hagerman Joint School District No. 233 Hansen School District No. 415 Highland Joint School District No. 305 Homedale School District No. 305 Homedale School District No. 370 Horseshoe Bend School District No. 73 Independent School District of Boise City Jefferson County School District No. 251	City of Westfir City of Wheeler City of Wheeler City of Wheeler City of Williamina City of Wilsowille City of Winston City of Wood Village City of Woodburn City of Wachats City of Yamhill City of Yoncalla Town of Bonanza Town of Butte Falls Town of Bonanza Town of Bonanza Town of Bonanza Town of Caryon City	Town of St. George Town of St. Matthews Town of Stuckey Town of Stuckey Town of Summer stand Town of Summer on Town of Summer on Town of Summit Town of Town of Summit Town of Tow	Town of Rockyille Town of Rocky Ridge Town of Rocky Ridge Town of Scipio Town of Scipio Town of Scipied Town of Sigurd Town of Springdale Town of Stringdale Town of Toquerville Town of Toquerville Town of Toquerville Town of Trety Town of Tretton Town of Torojic	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almiria Town of Beaux Arts Village Town of Boston Add Town of Carbonado Town of Carthamet Town of Cothamet Town of Concrete Town of Concrete Town of Concrete
Fruitland School District No. 373 Garden Valley School District Genesse Joint School District No. 282 Gleinens Ferry Joint School District No. 192 Gooding Joint School District No. 193 Grace Joint School District No. 231 Grace Joint School District No. 233 Hansen School District No. 245 Hagerman Joint School District No. 333 Hansen School District No. 305 Homedale School District No. 370 Horseshoe Beard School District No. 73 Idaho Falls School District No. 73 Idaho Falls School District No. 91 Independent School District No. 91 Independent School District No. 91 Independent School District No. 91	City of Westfir City of Weston City of Willamina City of Willamina City of Wilsonville City of Winston City of Wood Village City of Wood Village City of Woodburn City of Vachats City of Varhall Town of Bonanza Town of Bonanza Town of Bute Falls	Town of St. George Town of St. Matthews Town of Stuckey Town of Stulkers Island Town of Summerton Town of Summertin Town of Summertin Town of Summit Town of Summit Town of Summit Town of Summit Town of Turnous Town of Tirenton Town of Trurbeville	Town of Rockville Town of Rocky Ridge Town of Rush Valley Town of Scipio Town of Scipio Town of Scipid Town of Sigurd Town of Springdale Town of Stockton Town of Jorgerville Town of Torrey Town of Torrey Town of Torreton	Consolidated Borough of Quil Ceda Village Grays Harbor Council of Governments Town of Almira Town of Beaux Arts Village Town of Seaux Arts Village Town of Carbonado Town of Carthamet Town of Chyle Hill Town of Colton Town of Concorully Town of Concrete

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daho Kamiah School District No. 304	Oregon Higher Education	South Carolina Town of Ward	Utah Town of Vineyard	Washington Town of Creston
Kellogg Joint School District 391	Blue Mountain Community College	Town of Ware Shoals	Town of Virgin	Town of Cusick
Kendrick Joint School District No. 283		Town of West Pelzer	Town of Wales	Town of Darrington
	Central Oregon Community College			
Kimberly School District No. 414	Chemeketa Community College	Town of West Union	Town of Wallsburg	Town of Eatonville
Kootenai School District No. 274	Clackamas Community College	Town of Whitmire	Uintah Basin Association of Governments	Town of Elmer City
Kuna Joint School District No. 3	Clatsop Community College		Higher Education	Town of Endicott
Lake Pend Oreille School District No. 84	Columbia Gorge Community College	Town of Williston	College of Eastern Utah	Town of Fairfield
Lakeland School District No. 272	Eastern Oregon University	Town of Winnsboro	Davis Applied Technology College	Town of Farmington
Lapwai School District No. 341	Klamath Community College District	Town of Yemassee	Dixie Applied Technology College	Town of Friday Harbor
Lewiston Independent School District No. 1	Lane Community College	Higher Education	Dixie State University	Town of Garfield
Mackay School District No. 182	Linn-Benton Community College	Aiken Technical College	Mountainland Applied Technology College	Town of Hamilton
Madison School District No. 321	Mt. Hood Community College	Beaufort Jasper Higher Education Commission	Rocky Mountain University of Health Professions	Town of Harrah
Marsh Valley Joint School District No. 21	Oregon Coast Community College	Central Carolina Technical College	Salt Lake Community College	Town of Hatton
Marsing Joint School District No. 363	Oregon Department of Community Colleges and Workforce Development	Clemson University	Snow College	Town of Hunts Point
McCall-Donnelly Joint School District No. 421	Oregon Health and Science University	Coastal Carolina University	Southern Utah University	Town of Index
Meadows Valley School District No. 11	Oregon Institute of Technology	College of Charleston	Tooele Applied Technology College	Town of lone
Melha School District No. 136	Oregon State University	Denmark Technical College	Uintah Basin Applied Technology College	Town of La Conner
Middleton School District No. 134	Oregon State University Oregon State University, Oregon Agricultural Experiment Station	Florence-Darlington Technical College	University of Utah	Town of LaCrosse
		Francis Marion University		Town of Lamont
Midvale School District No. 433	Oregon University System		University of Utah Hospitals and Clinics	
Minidoka County School District No. 331	Portland Community College	Greenville Technical College	Utah State University	Town of Latah
Moscow School District No. 281	Portland State University	Horry-Georgetown Technical College	Utah System of Higher Education	Town of Lind
Mountain Home School District No. 193	Reed College	Lander University	Utah Valley University	Town of Lyman
Mountain View School District No. 244	Rogue Community College	Medical University of South Carolina	Weber State University	Town of Malden
Mullan School District 392	Southern Oregon University	Midlands Technical College	Education (K-12)	Town of Mansfield
Murtaugh Joint School District No. 418	Southern Oregon University Family Housing	Northeastern Technical College	Alpine School District	Town of Marcus
Namna Christian Schools Inc.	Southwestern Oregon Community College	Orangeburg-Calhoun Technical College	Beaver County School District	Town of Metaline
Nampa School District No. 131	Tillamook Bay Community College	Piedmont Technical College	Box Elder School District	Town of Millwood
Nampa School District No. 131 New Plymouth School District				Town of Naches
	Treasure Valley Community College	South Carolina State Board for Technical and Comprehensive Education	Cache County School District	Town of Naches Town of Nespelem
Nez Perce Joint School District No. 302	Umpqua Community College	South Carolina State University	Canyons School District	
North Gem School District No. 149	University of Oregon	South Carolina Technical College System	Carbon School District	Town of Northport
Notus School District	Western Oregon University	Spartanburg Community College	Centro De La Familia De Utah Head Start Program School District	Town of Oakesdale
Oneida County School District No. 351	Education (K-12)	Technical College of the Lowcountry	Daggett School District	Town of Odessa
Orofino Joint School District No. 171	Adel School District 21	The Citadel	Davis School District	Town of Pe EII
Parma School District No. 137	Adrian School District	Tri-County Technical College	Duchesne County School District	Town of Prescott
Pavette School District No. 371	Alsea School District No. 7J	Trident Technical College	Emery County School District	Town of Reardan
Plummer-Worley Joint School District No. 44	Amity School District 4J	University of South Carolina	Freedom Preparatory Academy School District	Town of Riverside
Pocatello-Chubbuck School District No. 25	Annex School District 29	University of South Carolina, Aiken	Garfield County School District	Town of Rockford
		University of South Carolina, Aiken	Garrield County School District	
Post Falls School District No. 273	Arlington School District No. 3	University of South Carolina, Upstate	Grand County School District	Town of Rosalia
Potlatch School District No. 285	Arock School District No. 81	Williamsburg Technical College	Granite School District	Town of Ruston
Preston Joint School District No. 201	Ashland School District No. 5	Winthrop University	Iron County School District	Town of Skykomish
Richfield School District No. 316	Ashwood School District	York Technical College	Jordan School District	Town of South Cle Elum
Ririe Joint School District No. 252		Education (K-12)	Juab School District	Town of South Prairie
Rockland School District No. 382	Athena-Weston School District No. 29RJ	Abbeville County School District	Kane County School District	Town of Spangle
Salmon River Joint School District No. 243	Baker School District No. 5J	Aiken County Public Schools	Logan City School District	Town of Springdale
Salmon School District No. 291	Bandon School District	Allendale County School District	Millard School District	Town of St. John
Shelley School District No. 60	Banks School District No. 13	Anderson County School Districts 1 and 2 Career and Technology Center	Morgan School District	Town of Steilacoom
Shoshone Joint School District No. 312	Beaverton School District No. 48	Anderson School District No. 1	Mountainland Head Start Program School District Office	Town of Twisp
Snake River School District	Bend-La Pine Public Schools	Anderson School District No. 2	Murray City School District	Town of Uniontown
Soda Springs Joint School District No. 150	Bethel School District No. 52	Anderson School District No. 3	Nebo School District	Town of Washtucna
South Lemhi School District No. 292	Blachly School District	Anderson School District No. 4	North Sanpete County School District	Town of Waterville
St. Maries Joint School District No. 41	Blachly School District 90	Anderson School District No. 5	North Sanpete School District	Town of Waverly
Sugar-Salem Joint District No. 322	Brookings Harbor School District	Bamberg School District No. 1	North Summit School District	Town of Wilbur
Swan Valley Elementary School District No. 33	Camas Valley School District	Bamberg School District No. 2	Ogden City School District	Town of Wilkeson
Swan Valley School District No. 92	Canby School District No. 86	Barnwell School District No. 45	Park City School District	Town of Wilson Creek
Teton County School District No. 401	Cascade School District No. 5	Beaufort County School District	Piute County School District	Town of Winthron
Three Creek Joint School District No. 416	Centennial School District No. 28J	Berkeley County School District	Provo City School District	Town of Woodway
Troy School District No. 287	Central Curry School District No. 1	Blackville-Hilda Public Schools	Rich County School District	Town of Yacolt
Twin Falls School District No. 411	Central Linn School District	Calhoun County School District	Rich School District	Town of Yarrow Point
Valley School District No. 262	Central Point School District No. 6	Charleston County School District	Rural Utah Child Development Head Start Program School District Office	
Vallivue School District No. 139	Central School District No. 13J	Cherokee County School District	Salt Lake City School District	Bates Technical College
Vision Charter School District # 463	Clackamas Education Service District	Chester County School District	San Juan School District	Bellevue Community College
Wallace School District No. 393	Clatskanie School District No. 6J	Chesterfield County School District	Sevier School District	Bellingham Technical College
Weiser School District No. 431	Colton School District No. 53	Clarendon County School District No. 1	South Sanpete School District	Big Bend Community College
Wendell School District No. 232	Columbia Gorge Education Service District	Clarendon County School District No. 2	South Summit School District	Cascadia Community College
West Bonner County School District No. 83	Condon School District No. 25J	Clarendon County School District No. 3	Suu Head Start Program School District	Central Washington University
West Jefferson School District No. 253	Coos Bay School District No. 9	Clover School District No. 2	Thomas Edison Charter Schools	Centralia College
West Side School District No. 202	Coguille School District No. 8	Colleton County School District	Tintic School District	Clark College
Whitepine Joint School District No. 288	Corbett School District No. 39	Darlington County School District	Tooele County School District	Clover Park Technical College
Whitepine Joint School District No. 288 Wilder School District No. 133		Darlington County School District Delta R-V School District	Flores Colonia District	
	Corvallis School District No. 509J		Uintah School District	Columbia Basin Community College
Special District	Cove School District No. 15	Dillon County School District No. 1	Wasatch County School District	Community Colleges of Spokane
Ada County Emergency Medical Services District	Crane Elementary School District	Dillon County School District No. 2	Washington County School District	Eastern Washington University
Ada County Highway District	Creswell School District No. 40	Dillon County School District No. 3	Wayne County School District	Edmonds Community College
Adams County Recreation District	Crook County School District	Dillon County School District No. 4	Weber School District	Everett Community College
Ahsahka Water and Sewer District	Crow-Applegate-Lorane School District No. 66	Diocese Of Charleston Schools	Special District	Evergreen State College
Albion Highway District	Culver School District No. 4	Dorchester School District No. 2	Ash Creek Special Service District	Grays Harbor College
Alpine Meadows Water and Sewer District	Dallas School District No. 2	Dorchester School District No. 4	Ashley Valley Water and Sewer Improvement District	Green River Community College
American Falls Free Library District	David Douglas School District No. 40	Edgefield County Schools	Ballard Water and Sewer Improvement District	Highline Community College
American Falls Housing Authority	Dayton School District No. 8	Fairfield County School District	Bear Lake Special Service District	Lake Washington Institute of Technology
Atlanta Highway District	Dayville School District No. 16J	Florence County School District No. 1	Bear River Water Conservancy District	Lower Columbia College
Avery Water and Sewer District	Douglas County School District	Florence County School District No. 2	Benchland Water District	Northwest Indian College
Avery Water and Sewer District Avondale Irrigation District	Douglas County School District Douglas County School District No. 4	Florence County School District No. 2 Florence County School District No. 3	Benson Culinary Water Improvement District	Olympic College
Avondale Irrigation District Ravview Water and Sewer District	Douglas County School District No. 4 Douglas Education Service District	Florence County School District No. 3 Florence County School District No. 4		Peninsula College
			Bona Vista Water Improvement District	
Bear Lake County Library District	Dufur School District No. 29	Florence County School District No. 5	Cache Mosquito Abatement District	Pierce College
Bench Sewer District	Eagle Point School District No. 9	Ft. Mill School District No. 4	Cache Valley Transit District	Renton Technical College
Benewah County Free Library District	Echo School District No. 5	Georgetown County School District	Canyonlands Health Care Special Service District	Seattle Community Colleges District VI
Big Canyon Fire District	Elgin School District	Greenville County School District	Carbon County Housing Authority	Shoreline Community College
Blaine County Housing Authority	Elkton School District No. 34	Greenwood School District No. 50	Carbon County Municipal Building Authority	Skagit Valley College
Blaine County Housing Authority Blaine County Recreation District	Enterprise School District No. 34 Enterprise School District No. 21	Greenwood School District No. 50 Greenwood School District No. 52	Carbon County Municipal Building Authority Carbon County Recreation Transportation Special Service District	South Puget Sound Community College
Bliss Fire District	Estacada School District No. 108	Hampton County School District No. 2	Carbon Water Conservancy District	Tacoma Community College
Boise Basin Library District	Eugene School District No. 4J	Hampton School District No. 1	Castle Valley Special Service District	University of Washington
Boise City/Ada County Housing Authority	Falls City School District	Horry County Schools	Cedar City Housing Authority	Walla Walla Community College
Boise-Kung Irrigation District	Fern Ridge School District No. 28J	Jasper County School District	Cedar Mountain Fire Protection District	Washington State Board for Community and Technical Colleges
Bonneville County Fire District No. 1	Forest Grove School District	John de la Howe School District	Cedarview-Montwell Special Service District	Washington State Higher Education Facilities Authority
Bruneau Valley District Library	Fossil School District 21J	Kershaw County School District	Central Davis County Sewer District	Washington State Student Achievement Council

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Idaho Oregon South Carolina Utah Washington

Idaho)regon	South Carolina		Jtah	,	Washington	
Bruneau Water and Sewer Distri	rict	Gaston School District 511 J	Lancaster County School District		Central Iron County Water Conservancy District		Washington State University	
Buhl Highway District		Gervais School District	Laurens County School District No. 55		Central Utah Water Conservancy District		Washington State University, Vancouver	
Buhl Rural Fire Protection Distric	ict	Gladstone School District	Laurens County School District No. 56		Central Weber Sewer Improvement District		Wenatchee Valley College	
Burley Highway District	ict	Glendale School District No. 77	Lee County School District		Charleston Water Conservancy District		Western Washington University	
Caldwell Housing Authority		Glide School District	Legacy Charter Schools		Copperton Improvement District		Whatcom Community College	
Canyon Highway District No. 4		Grant County Education Service District	Lexington County School District No. 1		Cottonwood Improvement District		Yakima Valley Community College	
Cascade Rural Fire District		Grant School District No. 3	Lexington County School District No. 2		Davis Community Housing Authority		Education (K-12)	
Castleford Rural Fire District		Grants Pass School District No. 7	Lexington County School District No. 3		Davis County Housing Authority	-	Aberdeen School District No. 5	
Central Fire District		Greater Albany Public School District 8J	Lexington County School District No. 4		Davis-Salt Lake Aerial Spray Authority		Adna School District No. 226	
Central Orchards Sewer District		Gresham-Barlow School District	Lexington-Richland Counties School District No. 5		Duchesne County Upper Country Water Improvement Distric	:t	Almira School District No. 17	
Central Shoshone County Water	r District	Harney County School District No. 3	Marion County School District		Duchesne County Water Conservancy District		Anacortes School District No. 103	
Clark County District Library		Harney Education Service District	Marion County School District No. 7		Emery County Housing Authority		Arlington Public Schools	
Clarkia Free Library District		Harper School District No. 66	Marlboro County School District		Emery County Municipal Building Authority		Asotin-Anatone School District	
Clarkia Highway District		Harrisburg School District No. 7	McCormick County School District		Emery County Special Service District No. 1		Auburn School District No. 408	
Clearwater Free Library District		Helix School District No. 1-R	Newberry County School District		Emery Water Conservancy District		Bainbridge Island School District No. 303	
Clearwater Highway District		Hermiston School District	Oconee County School District		Emigration Improvement District		Battle Ground School District No. 119	
Clearwater Soil and Water Cons	servation District	High Desert Education Service District	Orangeburg Consolidated School District Four		Fruitland Special Service District		Bellevue Christian School District	
Clearwater Water District		Hillsboro School District No. 1J	Orangeburg County Consolidated School District No. 3		Garden City Fire District		Bellevue School District No. 405	
Consolidated Free Library Distric	ict	Hood River County School District	Orangeburg County Consolidated School District No. 5		Grand County Housing Authority		Bellingham School District No. 501	
Cottonwood Highway District		Huntington School District No. 161	Pickens County School District		Granger-Hunter Improvement District		Benge School District No. 122	
Custer Soil and Water Conservat	ition District	Imbler School District No. 11	Richland County School District No. 1		Heber Valley Special Service District		Bethel School District No. 403	
Dietrich Fire District		InterMountain Education Service District	Richland County School District No. 2		Hooper Water Improvement District		Bickleton School District	
Dietrich Highway District		Ione School District R2	Rock Hill School District No. 3		Jensen Water Improvement District		Blaine School District No. 503	
Doumecq Highway District		Jackson County School District No. 9	Saluda School District No. 1		Johnson Water Improvement District		Boistfort School District No. 234	
Downey Swan Lake Highway Dis		Jackson Education Service District	South Carolina Public Charter School District		Jordan Valley Water Conservancy District		Bremerton School District	
Dry Creek Cemetery Maintenance		Jefferson County School District No. 509-J	Spartanburg County School District No. 1		Jordanelle Special Service District		Brewster School District No. 111	
	ice District							
Eagle Fire Protection District		Jefferson School District	Spartanburg County School District No. 2		Juab Special Service Fire District		Bridgeport School District No. 75	
Eagle Sewer District		Jewell School District No. 8	Spartanburg County School District No. 3		Kane County Water Conservancy District		Brinnon School District No. 46	
East Bonner County Free Library	v District	John Day School District No. 3	Spartanburg County School District No. 4		Kearns Improvement District		Burlington-Edison School District No. 100	
East Bonner County Library Distr		Jordan Valley School District No. 3	Spartanburg County School District No. 5		Lake Point Improvement District		Camas School District	
East Greenacres Irrigation Distri		Joseph School District No. 6	Spartanburg County School District No. 6		Logan-Cache Airport Authority		Cape Flattery School District No. 401	
							Cape Flattery School District No. 401	
Eastern Idaho Public Health Dist		Junction City School District No. 69	Spartanburg County School District No. 7		Maeser Water and Sewer Improvement District		Capital Region Educational Service District No. 11	13
Eastern Idaho Regional Wastewa	rater Authority	Klamath County School District	Sumter School District		Magna Mosquito Abatement District		Carbonado Historical School District No. 19	
Elk River Free Library District		Klamath Falls City Schools	Sumter School District No. 17		Magna Water District		Cascade Christian Schools	
Elmore Soil and Water Conserva	ation District	Knanna School District	Sumter School District No. 2		Metropolitan Water District of Salt Lake and Sandy		Cascade School District No. 228	
Fenn Highway District	ation District	La Grande School District No. 1	Union County School District		Midvalley Improvement District		Cashmere School District No. 222	
Ferdinand Highway District		Lake County School District No. 7	Ware Shoals School District No. 51		Midway Sanitation District		Castle Rock School District No. 401	
Fish Haven Mosquito Abatement	nt District	Lake Ed Service District	Williamsburg County Schools		Milford Area Healthcare Service District		Central Kitsap School District No. 401	
Fremont County District Library	,	Lake Oswego School District No. 7J	Williston School District No. 29		Moab Mosquito Abatement District		Central Valley School District No. 356	
Friedman Memorial Airport Auth		Lakeview School District No. 7	York School District No. 1		Moab Valley Fire Protection District		Centralia School District No. 401	
Garden Valley District Library	anonty	Lane Education Service District	Special District		Mountain Green Sewer Improvement District		Chehalis School District No. 302	
Garden valley District Library		Lebanon Community School District No. 9	Abbeville Housing Authority		Mountain Regional Water Special Service District		Cheney School District No. 362	
Garden Valley Fire Protection Di								
Garden Valley Recreation Distric		Lincoln County School District	Aiken Housing Authority		Mountain View Special Service District		Chewelah School District No. 36	
Gateway Fire Protection District	t	Linn-Benton-Lincoln Education Service District	Anderson Housing Authority		Mt. Olympus Improvement District		Chief Leschi School System	
Gem County Fire Protection Dist	trict	Long Creek School District No. 17	Atlantic Beach Housing Authority		North Davis County Sewer District		Chimacum School District No. 49	
Gem County Mosquito Abateme	ont District	Lowell School District No. 71	Beaufort Housing Authority		North Davis Fire District		Clarkston School District No. J250-185	
	ent District	Mapleton School District No. 72	Beaufort-Jasper Water and Sewer Authority		NOTHI DAVIS FIFE DISTRICT		Cle Elum-Roslyn School District	
Glenns Ferry Highway District					North Emery Water Users Special Service District			
Golden Gate Highway District No	lo. 3	Marcola School District No. 79J	Beech Island Rural Community Water District		North Fork Special Services District		Clover Park School District No. 400	
Gooding County Memorial Hosp	pital District	McKenzie School District	Belton-Honea Path Water Authority		North Pointe Solid Waste Special Service District		Colfax School District No. 300	
Grace District Library		McMinnville School District No. 40	Bennettsville Housing Authority		North Summit Fire District		College Place School District No. 250	
Grangeville Highway District		Medford School District No. 549C	Berea Public Service District		North Topele County Fire Protection District		Colton School District No. 306	
Granite Reeder Water and Sewe		Milton-Freewater School District No. 7	Berkeley County Water and Sanitation Authority		North Utah Water Conservancy District		Columbia School District No. 206	
Greater Boise Auditorium Distric		Mitchell School District No. 55	Big Creek Water and Sewerage District		North View Fire District		Columbia School District No. 206, Stevens County	У
Greater Middleton Parks and Re		Molalla River School District	Bluffton Township Fire District		Ogden Housing Authority		Columbia School District No. 400	
Greater Swan Valley Fire Protect	ction District No. 2	Monument School District	Boiling Springs Fire District, Greenville County		Ouray Park Water Improvement District		Colville School District No. 115	
Groveland Water and Sewer Dist		Morrow County School District	Broad Creek Public Service District		Park City Fire Service District		Concrete School District No. 11	
Harbor View Estates Water and		Mt. Angel School District					Conway Consolidated School District No. 317	
	Sewer District		Buffalo-Mt. Pisgah Fire Protection District		Price River Water Improvement District			
Hayden Lake Irrigation District		Multnomah Education Service District Consortium	Burton Fire District		Provo Housing Authority		Cosmopolis School District	
Hayden Lake Recreational Water	er and Sewer District	Myrtle Point School District	Central Midlands Regional Transit Authority		Rockville/Springdale Fire Protection District		Coulee-Hartline School District No. 151	
Hillsdale Highway District		Neah-Kah-Nie School District No. 56	Charleston Area Regional Transportation Authority		Roosevelt City Housing Authority		Coupeville School District No. 204	
Homedale Highway District		Nestucca Valley School District No. 101	Charleston County Aviation Authority		Salt Lake City Housing Authority		Crescent School District	
Hoo Doo Water and Sewer Distri	-1-4	New Hope Christian Schools	Charleston County Housing and Redevelopment Authority		Salt Lake City Mosquito Abatement District		Creston School District No. 73	
noo boo water and sewer bistri	rict			у	Sait Lake City Wosquito Abatement District		Creston School District No. 75	
Horseshoe Bend Fire Protection		Newberg School District No. 29J	Charleston Housing Authority		Salt Lake County Housing Authority		Curlew School District No- 50	
Idaho Soil and Water Conservati		North Bend School District No. 13	Charleston Naval Complex Redevelopment Authority		Sandy Suburban Improvement District		Cusick School District	
Indian Valley Rural Fire District		North Central Education Service District	Charleston Soil and Water Conservation District		Scofield Reservoir Special Service District		Darrington School District No. 330	
Iona-Bonneville Sewer District		North Clackamas School District No. 12	Cheraw Housing Authority		Sevier County Special Service District No. 1		Davenport School District No. 207	
Island Park Fire District		North Douglas School District No. 22	Chester Housing Authority		Skyline Mountain Special Service District		Dayton School District No. 2	
Jerome Highway District		North Lake School District	Chester Metropolitan District		Snyderville Basin Special Recreation District		Deer Park School District No. 414	
Jerome Recreation District		North Marion School District No. 15	Chester Sewer District		Snyderville Basin Water Reclamation District		Dieringer School District	
Jerome Rural Fire District No. 1		North Santiam School District No. 29	Coast Regional Transportation Authority		Solid Waste Special Service District No. 1		Dixie School District	
Kamiah Fire Protection District		North Wasco County School District No. 21	Columbia Housing Authority		South Davis Sewer District		East Valley School District No. 361	
Kamiah Highway District		Northwest Regional Education Service District	Conway Housing Authority		South Davis Water District		East Valley School District No. 361, Spokane Cour	ntu
							Last valley school district No. 301, Spokarie Cour	iity
Ketchum Rural Fire Protection D	District	Nyssa School District No. 26	Daniel Morgan Water District		South Ogden Conservation District		East Valley School District No. 90, Yakima County	У
Kidder Harris Highway District		Oakland School District	Darlington County Fire District		South Salt Lake Valley Mosquito Abatement District		Eastmont School District No. 206	
Kingston Water District		Oakridge School District No. 76	Darlington County Water and Sewer Authority		South Summit Fire Protection District		Eatonville School District No. 404	
Kootenai County Water District I	No. 1	Ontario School District No. 8C	Darlington Housing Authority		South Utah Valley Solid Waste District		Edmonds School District No. 15	
Kootenai Ponderay Sewer District		Oregon City School District No. 62	Donalds-Due West Water and Sewer Authority		South Valley Sewer District		Educational Service District No. 112	
Kootenai-Snoshone Soil and Wat	ner conservation District	Oregon Trail School District No. 46	Dorchester County Sales Tax Transportation Authority		Southeastern Utah Housing Authority		Ellensburg School District No. 401	
Kuna Library District		Paisley School District No. 11	Dorchester County Water Authority		Spanish Valley Water and Sewer Improvement District		Elma School District No. 68	
Laclede Water District		Parkrose School District No. 3	Duncan Chapel Fire District		St. George Housing Authority		Endicott School District No. 308	
Lakes Highway District		Pendleton School District No. 16	Easley Housing Authority		Stansbury Park Improvement District		Entiat School District No. 127	
Latah County Library District		Perrydale School District No. 21J	Easley-Central Water District		Strawberry Electric Service District		Enumclaw School District No. 216	
Latah Soil and Water Conservati	ina District	Philomath School District No. 17J	East Richland County Public Service District		Sugar House Park Authority		Ephrata School District No. 165	
Lemhi Soil and Water Conservati		Phoenix-Talent School District	Edgefield County Water and Sewer Authority		Tabby Valley Park Special Service District		Evaline School District No. 36	
Lewiston Orchards Irrigation Dis	strict	Pilot Rock School District No. 2	Florence Housing Authority		Taylorsville-Bennion Improvement District		Everett School District No. 2	
Lewiston-Nez Perce County Regi		Pine Eagle School District No. 61	Fort Mill Housing Authority		Thompson Special Service District		Evergreen School District No. 114, Clark County	
Lincoln County Recreation Distri	ict	Pinehurst School District	Fripp Island Public Service District		Timpanogos Special Service District		Evergreen School District No. 205	
							Every cen seriou district NO. 203	
Little Blacktail Ranch Water Dist		Pleasant Hill School District	Gaffney Housing Authority		Tooele County Housing Authority		Federal Way Public Schools	
Little Wood River Library District	ct	Plush School District 18	Gaston Rural Community Water District		Tooele County Recreation Special Service District		Ferndale School District No. 502	
Lizard Butte Library District		Port Orford-Langlois School District No. 2CJ	Georgetown County Water and Sewer District		Tridell-Lapoint Water Improvement District		Fife School District No. 417	
Lost River Highway District		Portland Public School District No. 1	Georgetown Housing Authority		Uintah Animal Control and Shelter Special Service District		Finley School District	
M&T Water and Sewer District		Powers School District No. 31	Gilbert-Summit Rural Water District		Uintah County Municipal Building Authority		Franklin Pierce School District No. 402	
		Prairie City School District No. 4	Grand Strand Water and Sewer Authority		Uintah Fire Suppression Special Service District		Freeman School District No. 402	
Mackay Free Library District								
Madison Library District		Prospect School District	Greenville Arena District		Uintah Health Care Special Service District		Garfield School District No. 302	

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Idaho	Oregon	South Carolina	Utah	Washington
Marsing Rural Fire District	Rainier School District No. 13	Greenville County Recreation District	Uintah Highlands Water and Sewer Improvement District	Glenwood School District
McCall Fire Protection District	Redmond School District No. 2J	Greenville County Redevelopment Authority	Uintah Mosquito Abatement District	Goldendale School District
McCall Memorial Hospital District	Reedsport School District No. 105	Greenville Housing Authority	Uintah Recreation District	Grand Coulee Dam School District
Meridian Cemetery Maintenance District	Region 9 Education Service District	Greenville Transit Authority	Uintah Transportation Special Service District	Grandview School District No. 200
Meridian Library District	Reynolds School District No. 7	Greenwood Metropolitan District	Uintah Water Conservancy District	Granger School District No. 200
Meridian Rural Fire Protection District	Riddle School District No. 70	Greer Housing Authority	Unified Fire Authority	Granite Falls School District No. 332
Mica Kidd Island Fire Protection District	Riverdale School District No. 70 Riverdale School District No. 51J	Hartsville Housing Authority	Utah County Housing Authority	Grapeview School District No. 54
Middleton Rural Fire District	Rogue River School District No. 35	Hilton Head No. 1 Public Service District	Utah Paiute Housing Authority	Great Northern School District
Midvale Fire Protection District	Roseburg Public Schools	Holly Springs Fire-Rescue District	Utah Transit Authority	Green Mountain School District No. 103
Minidoka County Fire Protection District	Salem-Keizer Public School District No. 24J	Homeland Park Water and Sewer District	Utah Valley Dispatch Special Service District	Griffin School District No. 324
Minidoka County Highway District	Santiam Canyon School District No. 129J	James Island Public Service District	Wasatch County Fire District	Harrington Public Schools
Moreland Water and Sewer District	Santiam Christian Schools	Kingstree Housing Authority	Wasatch Front Waste and Recycling District	Highland School District No. 203
Mountain Home Highway District	Scappoose School District No. 1J	Lady's Island-St. Helena Fire District	Wasatch Integrated Waste Management District	Highline School District No. 401
Mountain Rides Transportation Authority	Scio School District No. 95C	Lake City Housing Authority	Washington County Water Conservancy District	Hockinson School District
Nampa and Meridian Irrigation District	Seaside School District	Lancaster County Water and Sewer District	Waste Management Service District No. 5	Hood Canal School District No. 404
Nampa Highway District No. 1	Sheridan School District No. 48J	Lancaster Housing Authority	Weber Basin Water Conservancy District	Hoquiam School District No. 28
Nampa Housing Authority	Sherman County School District	Lancaster Soil and Water Conservation District	Weber Fire District	Inchelium School District No. 70
New Plymouth Fire District	Sherwood School District No. 88J	Laurens Housing Authority	Weber Mosquito Abatement District	Issaquah School District No. 411
North Bingham County District Library	Silver Falls School District No. 4J	Lexington County Health Services District, Inc.	Weber-Box Elder Conservation District	Kahlotus School District No. 56
North Custer Hospital District	Sisters School District No. 6	Liberty-Chesnee-Fingerville Water District	Wellsville-Mendon Conservancy District	Kalama School District No. 402
North Kootenai Water and Sewer District	Siuslaw School District No. 97J	Local Housing Authority	White City Water Improvement District	Keller School District No. 3
North Lake Recreational Sewer and Water District	South Coast Education Service District, Region No. 7	Lowcountry Regional Transportation Authority	Woodruff Fire District	Kelso School District No. 458
North Latah County Highway District	South Lane School District No. 4513	Lugoff-Elgin Water Authority	State	Kennewick School District No. 17
Northern Lakes Fire District	South Umpqua School District No. 19	Marion Housing Authority	State Of Litah	Kent School District No. 17
Northside Fire District	South Wasco County School District No. 1	Marlboro County Housing Authority	Utah Department of Administrative Services	Kettle Falls School District No. 212
Notus-Parma Highway District No. 2	Southern Oregon Education Service District	McColl Housing Authority	Utah Department of Health	Kiona-Benton City School District No. 52
Oakley Highway District	Spray School District No. 1	Medical University Hospital Authority	Utah State Legislature	Kittitas School District
Oakley Library District	Springfield School District No. 19	Metropolitan Sewer Sub-District	Utah State Treasurer	Klickitat School District No. 402
Ola District Library	St. Helens School District No. 502	Mitford Water and Sewer District	Tribal	La Center School District
Oneida County Fire District	St. Paul School District No. 45	Mullins Housing Authority	Confederated Tribes of the Goshute Reservation	La Conner School District No. 311
Oregon Trail Recreation District	Stanfield School District No. 61	Murrells Inlet-Garden City Fire District	Kanosh Band of the Paiute Indian Tribe of Utah	LaCrosse School District
Outlet Bay Water and Sewer District	Sutherlin School District No. 130	Myrtle Beach Air Force Base Redevelopment Authority	Koosharem Band of the Paiute Indian Tribe	Lake Chelan School District No. 129
Panhandle Health District	Sweet Home School District No. 55	Myrtle Beach Housing Authority	Northwestern Band of Shoshone Nation	Lake Quinault School District No. 97
Parma Rural Fire Protection District	Three Rivers School District	Newberry County Water and Sewer Authority	Northwestern Band of the Shoshone Nation Housing Authority	Lake Stevens School District No. 4
Parma Kurai Fire Protection District Pine Ridge Water and Sewer District	Tigard-Tualatin School District No. 23J		Paiute Indian Tribe of Utah	Lake Washington School District No. 4 Lake Washington School District No. 414
		Newberry Housing Authority		
Pinehurst Water District	Tillamook School District No. 9	North Charleston Housing Authority	Skull Valley Band of Goshute Indians	Lakewood School District No. 306
Pioneer Irrigation District	Ukiah School District 80 R	North Charleston Sewer District	Ute Indian Tribe	Lamont School District
Placerville Fire Protection District	Umatilla School District No. 6	North Greenville Fire District		Liberty School District No. 362
Pocatello Housing Authority	Union School District 5	Oconee County Joint Regional Sewer Authority		Lind School District
Pocatello-Chubbuck Auditorium District	Vale School District No. 84	Parker Sewer and Fire Subdistrict		Longview School District No. 122
Portneuf District Library	Vernonia School District No. 47J	Patriots Point Development Authority		Loon Lake School District No. 183
Post Falls Highway District	Wallowa School District No. 12	Pee Dee Regional Airport District		Lopez Island School District No. 144
Power County Highway District	Warrenton-Hammond School District No. 30	Pee Dee Regional Transportation Authority		Lyle School District No- 406
Prairie Highway District	West Linn-Wilsonville School District	Piedmont Public Service District		Lynden School District No. 504
Prairie-River Library District	Willamette Education Service District	Pioneer Rural Water District		Mahton School District No. 120
Progressive Irrigation District	Willamina School District No. 30J	Powdersville Water District		Mansfield School District No. 207
Raft River Highway District	Winston-Dillard School District No. 116	Richland-Lexington Airport District		Manson School District
Rapid River Water and Sewer District	Woodburn School District No. 103	Richland-Lexington Riverbanks Park District		Mary M. Knight School District
Richfield District Library	Yamhill-Carlton School District No. 1	Rock Hill Housing Authority		Mary Walker School District No. 207
Riverside Independent Water District	Yoncalla School District No. 32	Saluda County Water and Sewer Authority		Marysville School District No. 25
Rock Creek Fire District	Special District	Sandy Springs Water District		McCleary School District No. 65
Rockland Rural Fire District	Adair Rural Fire Protection District	Santee Fire Service District		Mead School District No. 354
Rogerson Water District	Amity Fire District	Santee Wateree Regional Transportation Authority		Medical Lake School District No. 326
Ross Point Water District	Applegate Valley Fire District No. 9	Sheldon Township Fire District		Mercer Island School District No. 400
Sagle Fire District	Arch Cape Sanitary District	Slater-Marietta Fire District		Meridian School District No. 505
Salmon River Clinic Hospital District	Arch Cape Water District	South Carolina Housing Authority Bond Council		Methow Valley School District
Sam Owen Fire District	Arnold Irrigation District	South Carolina Public Employee Benefit Authority		Monroe School District No. 103
Santa-Fernwood Water and Sewer District	Aumsville Rural Fire District	South Carolina Regional Housing Authority No. 1		Montesano School District No. 66
Schweitzer Fire-Rescue District	Baker County Library District	South Carolina Regional Housing Authority No. 3		Morton School District No. 214
Settlers Irrigation District	Baker Rural Fire Protection District	South Carolina State Education Assistance Authority		Moses Lake School District No. 161
Shelley/Firth Fire District	Baker Valley Soil and Water Conservation District	South Carolina State Fiscal Accountability Authority		Mossyrock School District No. 206
Shoshone City & Rural Fire District	Bandon Rural Fire Protection District	South Carolina State Housing Finance and Development Authority		Mt. Adams School District No. 209
Shoshone County Fire Protection District No. 2	Barlow Water Improvement District	South Carolina State Ports Authority		Mt. Baker School District No. 507
Shoshone Highway District No. 2	Bay Area Hospital District	South Greenville Fire District		Mt. Vernon School District No. 320
South Bannock Library District	Bend Parks and Recreation District	South Island Public Service District		Mukilteo School District No. 6
South Bingham Soil Conservation District	Beverly Beach Water District	Southside Rural Community Water District		Naches Valley School District No. 3
South Boundary Fire Protection District	Black Butte Ranch Rural Fire Protection District	Spartanburg Housing Authority		Napavine School District No. 14
South Custer Fire District	Blue Mountain Hospital District	Spartanburg Regional Health Services District		Naselle-Grays River Valley School District No.165
South Fork Coeur d'Alene River Sewer District	Blue River Water District	St. Andrews Public Service District South Carolina		Nespelem School District No. 14
South Latah Highway District	Boardman Park and Recreation District	St. John's Fire District		Newport School District No. 56-415
Southside Water and Sewer District	Boardman Rural Fire Protection District	Starr-Iva Water and Sewer District		Nine Mile Falls School District No. 36-415
Southwestern Idaho Cooperative Housing Authority	Boring Water District No. 24	Startex-Jackson-Wellford-Duncan Water District		Nooksack Valley School District No. 506
St. Maries Fire Protection District	Boulder Creek Retreat Special Road District	Sumter Housing Authority		North Beach School District No. 64
Star Joint Fire District	Brownsville Rural Fire District	Talatha Rural Community Water District		North Franklin School District No. 51
Star Sewer and Water District	Buell-Red Prairie Water District	Taylors Fire and Sewer District		North Kitsap School District No. 400
Sun Valley Water and Sewer District	Bunker Hill Sanitary District	Three Rivers Solid Waste Authority		North Mason School District
Sunset Heights Water District	Burlington Water District	Tigerville Fire District		North Thurston Public Schools
Targhee Regional Public Transit Authority	Camellia Park Sanitary District	Tri-County Solid Waste Authority		Northport School District No. 211
Targhee Regional Public Transportation Authority	Cannon Beach Rural Fire Protection District	Union Housing Authority		Northshore School District No. 417
Teton County Fire Protection District	Central Lincoln People's Utility District	Valley Public Service Authority		Oak Harbor School District No. 201
Three Creek Highway District	Central Oregon Irrigation District	Waccamaw Regional Transportation Authority		Oakesdale School District No. 324
Three Mile Water District	Central Oregon Park and Recreation District	Wedgefield Stateburg Water District		Oakville School District No. 324
Timberlake Fire Protection District	Central Oregon Regional Housing Authority	West Anderson Water District West Anderson Water District		Ocean Beach School District No. 101
Twin Falls Highway District	Charleston Fire District	Westview-Fairforest Fire District		Ocosta School District No. 172
Twin Falls Housing Authority	Charleston Sanitary District	Whitney Fire Protection District		Odessa School District No. 105
Twin Falls Rural Fire Protection District	Chehalem Park and Recreation District	Williamsburg County Transit Authority		Okanogan School District No. 105
Twin Ridge Rural Fire District	Chenowith Water Public Utility District	Williamsburg County Water and Sewer Authority		Olympia School District No. 111
Union Independent Highway District	Chiloquin-Agency Lake Rural Fire Protection District	Woodruff Housing Authority		Olympic Educational Service District
Upper Fords Creek Rural Fire District	Christmas Valley Domestic Water Supply District	Woodruff-Roebuck Water District		Omak School District No. 19
Warm Lake Recreational Water District	Christmas Valley Park and Recreation District	York County Natural Gas Authority		Onalaska School District No. 300
Wendell Highway District	Clackamas County Fire District No. 1	State		Onion Creek School District No. 30
West Boise Sewer District	Clackamas County Fire District No. 1	Santee-Lynches Regional Council of Governments	_	Orcas Island School District No. 137
West Bonner Library District	Clackamas County Flotising Authority Clackamas County Soil and Water Conservation District	South Carolina Department of Health and Environmental Control		Orchard Prairie School District No. 123
West Bonner Water and Sewer District	Clatskanie Park and Recreation District	South Carolina Department of Mental Health		Orient School District No. 65
	Cougnotific rain and necreation DISTICL	Journ Caronna Department of Welltal Reditil		Griefit Juliou District NO. 03
West bonner Water and Sewer bistrict				

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West Pend Oreille Fire District Classkanie People's Utility District South Carolina Department of Revenue Oroville School District No. 410

South Carolina West Pend Oreille Fire District Clatskanie People's Utility District South Carolina Department of Revenue Western Ada Recreation District Clatskanie Rural Fire Protection District South Carolina General Services Division Western Elmore County Recreation District Clatson Care Center Health District South Carolina Office of Regulatory Staff Clatsop County Housing Authority Wilder Irrigation District South Carolina State Treasurer's Office State Of South Carolina Wilder Public Library District Cloverdale Rural Fire Protection District Wilder Rural Fire Protection District Coburg Rural Fire Protection District Wilderness Ranch Fire Protection District Colton Fire District Township Township of Grand Meadow Winona Highway District Colton Water District Worley Fire District Columbia Corridor Drainage Districts Joint Contracting Authority Tribal Worley Highway District Columbia Health District Catawha Indian Nation Columbia Improvement District Idaho Department of Administration Columbia River People's Utility District Idaho Department of Health and Welfare Columbia Soil and Water Conservation District State Of Idaho Coos County Airport District Tribal Coos County Library Service District Coeur d'Alene Tribe Coquille Indian Housing Authority Kootenai Tribe of Idaho Coguille Valley Hospital District Nez Perce Tribal Enterprises Corbett Water District Nez Perce Tribe Corvallis Rural Fire Protection District Shoshone-Bannock Tribes Cove Rural Fire Protection District Crooked River Ranch Rural Fire Protection District Crooked River Ranch Special Road District Curry Health District Curry Public Library District Dallas Cemetery District No. 4 Dean Minard Water District Dee Rural Fire Protection District Deschutes County 911 Service District Deschutes County Rural Fire District No. 1

Deschutes Valley Water District

Douglas County Fire District No. 2

Douglas County Housing Authority

East Umatilla County Health District

Dufur Recreation District

East Fork Irrigation District

East Valley Water District

Devils Lake Water Improvement District

Douglas Soil and Water Conservation District

Drakes Crossing Rural Fire Protection District

Eagle Valley Soil and Water Conservation District

East Multnomah Soil and Water Conservation District

Orting School District No. 344 Othello School District South Carolina State Budget and Control Board Palisades School District No. 102 Palouse School District No. 301 Pasco School District No. 1 Pateros School District Paterson School District No. 50 Pe Ell School District No. 301 Peninsula School District Pioneer School District No. 402 Pomeroy School District No. 110 Port Angeles School District No. 121 Port Townsend School District No. 50 Presentt School District No. 402-37 Pride Prep Schools Prosser School District No. 116 Puget Sound Educational Service District Pullman School District No. 267 Puvallup School District No. 3 Queets-Clearwater School District No. 20 Quilcene School District No. 48 Quillayute Valley School District No. 402 Quincy School District No. 144 Rainier School District No. 307 Raymond School District No. 116 Reardan-Edwall School District Renton School District No. 403 Republic School District Richland School District No. 400 Ridgefield School District No. 122 Ritzville School District Riverside School District Riverview School District No. 407 Rochester School District Rosalia School District No. 320 Royal School District San Juan Island School District No. 149 Satsop School District No. 104 Seattle Public Schools Sedro-Woolley School District No. 101 Selah School District No. 119 Selkirk School District No. 70 Sequim School District No. 323 Shaw Island School District No. 10 Shelton School District No. 309 Shoreline School District No. 412 Skykomish School District Snohomish School District No. 201 Soap Lake School District No. 156 South Bend School District No. 118 South Kitsap School District No. 402 Southside School District Spokane Public Schools

Echo Rural Fire District Flsie-Vinemanle Rural Fire Protection District No. 11 Emerald People's Utility District Estacada Rural Fire District No. 69 Fairview Water District Falcon Cove Beach Water District Farmers Irrigation District Gardiner Sanitary District Gaston Rural Fire District Gates Rural Fire Protection District Gearhart Rural Fire Protection District Glendale Rural Fire Protection District Gleneden Sanitary District Goshen Fire District Government Camp Sanitary District Grand Ronde Sanitary District Grant County Transportation District Grant Soil and Water Conservation District Grants Pass Irrigation District Green Sanitary District Hahlen Road Special District Halsey-Shedd Rural Fire Protection District Hamlet Rural Fire Protection District Harbor Sanitary District Harbor Water Public Utility District Harney District Hospital Harney Soil and Water Conservation District Harriman Rural Fire Protection District Hazeldell Rural Fire Protection District Hebo Joint Water and Sewer Authority Heceta Water District Hermiston Cemetery District Hermiston Fire and Emergency Services District Hermiston Irrigation District Hood River County Library District Hood River County Transportation District Hood River Valley Parks and Recreation District Hoodland Fire District No. 74 **Hubbard Rural Fire Protection District** Ice Fountain Water District Illinois Valley Rural Fire Protection District Ione Rural Fire Protection District Irrigon Community Park and Recreation Maintenance District Jackson County Airport Authority Jackson County Fire District No. 3 Jackson County Fire District No. 5 Jackson County Housing Authority Jackson County Library District Jackson County Vector Control District Jackson Soil and Water Conservation District Jefferson Rural Fire Protection District

Snoqualmie Valley School District No. 410 South Whidhey School District No. 206 Sprague School District St. John School District No. 322 Stanwood-Camano School District No. 401 Steilacoom Historical School District No. 1 Steptoe School District No. 304 Stevenson-Carson School District No. 303 Sultan School District No. 311 Summit Valley School District 202 Sumner School District No. 320 Supposide School District No. 201 Tacoma School District No. 10 Taholah School District No. 77 Tahoma School District No. 409 Tekoa School District No. 265 Tenino School District No. 402 Thorp School District No. 400 Toledo School District No. 237 Tonasket School District Toppenish School District No. 202 Touchet School District No. 300 Toutle Lake School District No. 130 Trout Lake School District No. R-400 Tukwila School District No. 406 Tumwater School District No. 33 Union Gap School District No. 2 University Place School District No. 83 Valley School District Valley School District No. 70 Vancouver School District No. 37 Vashon Island School District No. 402 Wahkiakum School District No. 200 Wahluke School District No. 73 Waitsburg School District Walla Walla School District No. 140 Wapato School District No. 207 Warden School District No. 146-161 Washington Schools Risk Management Pool Washington State Educational Service District

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John Day/Canyon City Parks and Recreation District

Oregon South Carolin

Junction City Rural Fire Protection District Juniper Flat Rural Fire Protection District Keating Soil and Water Conservation District Keizer Rural Fire Protection District

Keno Fire Protection District

Kernville-Gleneden Beach-Lincoln Beach Water District

Klamath County Fire District No. 1 Klamath County Library Service District Klamath Housing Authority

Klamath Irrigation District Klamath Vector Control District

La Grande Rural Fire Protection District

La Pine Park and Recreation District La Pine Rural Fire Protection District

La Pine Water District

Lake District Hospital

Lake Grove Water District Lakeside Fire District No. 4

Lane County Fire District No. 1

Lane Library District

Lane Transit District

Langlois Water District

LaPine Special Sewer District

Lebanon Aquatic District Lehanon Fire District

Lewis and Clark Rural Fire Protection District

Libby Drainage District

Linn Benton Housing Authority

Lookingglass Rural Fire District

Lorane Rural Fire Protection District

Lowell Rural Fire Protection District

Lower Umpqua Hospital District Lusted Water District

Madras Aquatic Center District

Malheur County Housing Authority

Malin Rural Fire Protection District

Manleton Water District

Marion County Fire District No. 1

Marion Soil and Water Conservation District

Medford Irrigation District Merrill Rural Fire Protection District

Metro

McMinnville Water & Light

Mid-County Cemetery Maintenance District

Middle Fork Irrigation District

Miles Crossing Sanitary Sewer District Mill City Rural Fire Protection District

Milton-Freewater Water Control District Mist-Rickenfeld Rural Fire Protection District

Mohawk Valley Rural Fire District

Molalla River Improvement District

Molalla Rural Fire Protection District No. 73

Monroe Rural Fire Protection District Morrow County Health District

Mountain View Hospital District

Mt. Angel Fire District

Multnomah County Drainage District No. 1

Multnomah County Rural Fire Protection District No. 10

Multnomah County Rural Fire Protection District No. 14

Nesika Beach-Ophir Water District

Neskowin Regional Sanitary Authority

Neskowin Regional Water District

Nestucca Rural Fire Protection District Netarts Oceanside Sanitary District

Netarts-Oceanside Rural Fire Protection District

North Bay Rural Protection Fire District

North Bend City/Coos-Curry Housing Authority North Central Public Health District

North Clackamas Parks and Recreation District

North County Recreation District

North Gilliam Cemetery District

North Gilliam County Rural Fire Protection District North Lincoln Fire and Rescue District No. 1

North Powder Rural Fire Protection District North Sherman County Rural Fire Protection District

North Unit Irrigation District

Northeast Oregon Housing Authority Northern Wasco County Park and Recreation District

Northern Wasco County People's Utility District

Northwest Oregon Housing Authority Nyssa Road Assessment District No. 2

Nyssa Rural Fire Protection District

Oak Hill Sanitary District

Oak Lodge Sanitary District

Oak Lodge Water District

Oceanside Water District

Ochoco West Sanitary District Odell Sanitary District

Ontario Library District

Oregon Fire Districts Association Oregon Infrastructure Finance Authority

Oregon Trail Library District

Oregon Water Wonderland Unit II Sanitary District Owyhee Irrigation District

Washington Washougal School District

Washtucna School District

Waterville School District No. 209

Wellpinit School District Wenatchee School District No. 246

West Valley School District No. 208, Yakima County

West Valley School District No. 363, Spokane County

White Pass School District No. 303

White River School District No. 416

White Salmon Valley School District No. 405-17 Wilbur School District No. 200

Willapa Valley School District No. 160

Wilson Creek School District

Winlock School District No. 232

Wishkah Valley School District No. 117

Woodland School District No. 404

Yakima School District No. 7

Yelm Community School District No. 2 Zillah School District No. 205

Special District

Acme Water District No. 18

Adams County Fire Protection District No. 1

Adams County Mosquito Control District

Aeneas Lake Irrigation District

Alderwood Water and Wastewater District

Alpine Water District

Anacortes Housing Authority Annapolis Water District

Asotin County Cemetery District No. 1

Asotin County Conservation District Asotin County Fire District No. 1

Asotin County Housing Authority

Asotin County Public Utility District No. 1

Badger Mountain Irrigation District

Bainbridge Island Metropolitan Park and Recreation District Basin City Water/Sewer District

Rawiew Reach Water District

Beacon Hill Water and Sewer District

Beehive Irrigation District Belfair Water District No. 1

Bellevue Convention Center Authority

Bellingham Housing Authority

Bellingham Public Development Authority Benton County Diking District No. 1

Benton County Fire Protection District No. 1

Benton County Fire Protection District No. 2 Benton County Fire Protection District No. 4

Benton County Fire Protection District No. 5 Renton County Fire Protection District No. 6

Benton County Mosquito Control District Benton County Public Utility District No. 1

Benton Irrigation District

Benton-Franklin Health District Reverly Water District

Birch Bay Water and Sewer District

Black Diamond Water District

Bremerton Housing Authority Buckhannon-Upshur County Airport Authority

Burbank Irrigation District No. 4

Carnhope Irrigation District No 7 Cascadia Conservation District

Cedar River Water and Sewer District

Central Klickitat County Park and Recreation District

Central Pierce Fire and Rescue District No. 6

Central Puget Sound Regional Transit Authority

Central Valley Ambulance Authority Chelan County Fire District No. 1

Chelan County Fire District No. 3

Chelan County Fire District No. 5 Chelan County Fire District No. 6

Chelan County Fire District No. 7

Chelan County Fire District No. 8

Chelan County Fire District No. 9 Chelan County Public Hospital District No. 1

Chelan County Public Utility District No. 1

Chelan County/Wenatchee Housing Authority Chelan-Douglas Health District

Chinnok Water District

Chuckanut Community Forest Park District

Clallam Conservation Distric Clallam County Fire District No. 2

Clallam County Fire District No. 5

Clallam County Fire District No. 6

Clallam County Fire Protection District No. 1

Clallam County Fire Protection District No. 3 Clallam County Fire Protection District No. 4

Clallam County Hospital District No. 1 Clallam County Housing Authority

Clallam County Parks and Recreation District No. 1

Clallam County Public Hospital District No. 2 Clallam County Public Utility District No. 1

Clark County Fire District No. 10

Clark County Fire District No. 11 Clark County Fire District No. 13

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Pacific City Joint Water Sanitary Authority Pacific Communities Health District Palatine Hill Water District Peninsula Drainage District No. 1 Peninsula Drainage District No. 2 Pilot Rock Fire Protection District Pine Grove Rural Fire Protection District Pleasant Hill Rural Fire Protection District Pleasant Home Water District Polk County Fire District No- 1 Polk County Housing Authority Polk Soil and Water Conservation District Portland Metropolitan Area Water District Public Procurement Authority Rainhow Water District Raleigh Water District Redmond Area Park and Recreation District Riddle Rural Fire District River Forest Acres Special Road District River Road Park and Recreation District Rivergrove Water District Roads End Sanitary District Roberts Creek Water District Rockwood Water People's Utility District Rogue River Cemetery Maintenance District Rogue Valley Transportation District Roseburg Urban Sanitary Authority Sable Drive Road District Salem Area Mass Transit District Salem Housing Authority Salem-Keizer Transit District Santa Clara Rural Fire Protection District Santiam Water Control District Scappoose Rural Fire District Scio Rural Fire District Scottsburg Rural Fire District Seal Rock Fire District Seal Rock Water District Shangri-La Water District Shasta View Irrigation District Siletz Rural Fire Protection District Silverton Fire District Sisters-Camp Sherman Rural Fire Protection District Siuslaw Public Library District South Clackamas Transportation District South Suburban Sanitary District Southern Curry Cemetery Maintenance District Southwest Lincoln County Water District Spring River Special Road District Springfield Utility District Stanfield Fire District No. 7-402 Stayton Fire District Suburban East Salem Water District Sunrise Water Authority Sunset Empire Transportation District Swalley Irrigation District Sweet Home Fire and Ambulance District Talent Irrigation District Terrebonne Domestic Water District Three Sisters Irrigation District Tillamook County Transportation District Tillamook People's Utility District Tiller Rural Fire District Toledo Rural Fire Protection District Tri City Rural Fire District No. 4 Tri City Water District Tri-City Service District Tri-County Metropolitan Transportation District Tualatan Hills Park and Recreation District Tualatin Hills Park and Recreation District Tualatin Valley Irrigation District Tualatin Valley Water District Tumalo Irrigation District Twin Rocks Sanitary District Umatilla County Housing Authority Umatilla Hospital District Umatilla Land Redevelopment Authority Umatilla Morrow Radio and Data District Umatilla Reservation Housing Authority Umatilla Rural Fire Protection District Union Cemetery District Vale Oregon Irrigation District Valley View Water District Vandevert Acres Special Road District Vineyard Mountain Water and Improvement District Walla Walla River Irrigation District Wallowa County Health Care District Wamic Water and Sanitary Authority Warm Springs Housing Authority Wasco County Soil and Water Conservation District Washington County Fire District No. 2 Washington County Housing Authority Water Wonderland Improvement District

Clark County Fire District No. 5 Clark County Fire Protection District No. 3 Clark County Fire Protection District No. 6 Clark County Public Utility District No. 1 Clark Regional Wastewater District Cline Irrigation District Clinton Water District Coal Creek Utility District Columbia Conservation District Columbia County Fire District No. 3 Columbia County Public Hospital District No. 1 Columbia County Rural Library District Columbia Irrigation District Columbia Valley Water District Colville Indian Housing Authority Consolidated Irrigation District No. 14 Covington Water District Cowiche Sewer District Cowlitz County Cemetery District No. 2 Cowlitz County Fire District No. 6 Cowlitz County Public Utility District No. 1 Cowlitz Transit Authority Cross Valley Water District Dallesport Water District Douglas County Fire District No. 2 Douglas County Fire Protection District No. 5 Douglas County Public Utility District No. 1 Douglas County Sewer District No. 1 Douglas-Okanogan County Fire District No. 15 East Columbia Basin Irrigation District East Gig Harbor Water District East Lewis County Public Development Authority East Pierce Fire and Rescue District No. 22 East Spokane Water District No. 1 East Wenatchee Water District Eastmont Metropolitan Park District Fastsound Sower and Water District Edmonds Public Facilities District Ellensburg Business Development Authority Enterprise Cemetery District No. 7 Entiat Irrigation District Everett Housing Authority Everett Public Facilities District Evergreen Water-Sewer District No. 19 Fall City Water District Ferry County Public Utility District No. 1 Ferry/Okanogan County Fire Protection District No. 13 Fisherman Bay Sewer District Foster Creek Conservation Distric Four Lakes Water District No. 10 Franklin Conservation District Franklin County Cemetery District No. 2 Franklin County Fire District No. 1 Franklin County Fire Protection District No. 3 Franklin County Irrigation District No. 1 Franklin County Public Utility District No. 1 Freeland Water and Sewer District Ft. Worden Public Development Authority Gardena Farms Irrigation District No. 13 Goforth Special Utility District Grand Coulee Project Hydroelectric Authority Grandview Irrigation District Grant County Airport District No. 1 Grant County Fire District No. 10 Grant County Fire District No. 11 Grant County Fire District No. 3 Grant County Fire District No. 4 Grant County Fire District No. 7 Grant County Fire Protection District No. 5 Grant County Housing Authority Grant County Mosquito Control District No. 1 Grant County Mosquito District No. 2 Grant County Port District No. 4 Grant County Port District No. 6 Grant County Port District No. 7 Grant County Public Hospital District No. 1 Grant County Public Hospital District No. 2 Grant County Public Hospital District No. 3 Grant County Public Hospital District No. 4 Grant County Public Utility District No. 2 Grant Transit Authority Grays Harbor Conservation District Grays Harbor County Fire Protection District No. 1 Grays Harbor County Fire Protection District No. 12 Grays Harbor County Fire Protection District No. 14 Gravs Harbor County Fire Protection District No. 2 Grays Harbor County Fire Protection District No. 7 Gravs Harbor County Housing Authority Grays Harbor County Water District No. 1 Grays Harbor County Water District No. 2 Grays Harbor Drainage District No. 1 Grays Harbor Fire District No. 10 Gravs Harbor Historical Seaport Authority Grays Harbor Public Utility District No. 1

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Wedderburn Sanitary District

Oregon Washington West Slope Water District Grays Harbor Transportation Authority West Valley Housing Authority Greater Wenatchee Irrigation District Western Lane Ambulance District Greater Wenatchee Regional Events Center Public Facilities District Westport Wauna Rural Fire Protection District Green Tank Irrigation District No. 11 Westwood Hills Road District Wiard Memorial Park District Hartstene Pointe Water-Sewer District Highland Water District Wickiup Water District Highlands Sewer District Willamalane Park and Recreation District Highline Water District Williams Rural Fire Protection District Historic Seattle Preservation and Development Authority Willow Creek Park District Holmes Harbor Sewer District Winchester Bay Sanitary District Hunters Water District Winston-Dillard Fire District Hydro Irrigation District No. 9 Winston-Dillard Water District Icicle Irrigation District Woodburn Rural Fire Protection District Yamhill County Housing Authority Irvin Water District No. 6 Yamhill Fire Protection District Island County Fire District No. 3 Youngs River-Lewis and Clark Water District Island County Fire Protection District No. 1 Island County Housing Authority Oregon Department of Administrative Services Jefferson County Conservation District Oregon Department of Revenue Jefferson County Fire District No. 5 Oregon Health Licensing Agency Jefferson County Fire Protection District No. 1 Oregon Higher Education Coordinating Commission Jefferson County Fire Protection District No. 3 Jefferson County Public Utility District No. 1 Oregon Secretary of State Oregon State Board of Nursing Jefferson County Water District No. 3 State of Oregon Jefferson Transit Authority Juniper Beach Water District Burns Paiute Tribe Kapowsin Water District Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Kelso Housing Authority Confederated Tribes of Grand Ronde Community Kennewick Housing Authority Confederated Tribes of Siletz Indians Kennewick Irrigation District Confederated Tribes of the Umatilla Indian Reservation Kennewick Public Facilities District Confederated Tribes of the Warm Springs Kennewick Public Hospital District Coquille Indian Tribe Kent Fire Department Regional Fire Authority Klamath Tribes Key Peninsula Metro Parks District King County Airport District No. 1 King County Ferry District King County Fire Protection District No. 16 King County Fire Protection District No. 2 King County Fire Protection District No. 20 King County Fire Protection District No. 25 King County Fire Protection District No. 27 King County Fire Protection District No. 28 King County Fire Protection District No. 34 King County Fire Protection District No. 37 King County Fire Protection District No. 40 King County Fire Protection District No. 43 King County Fire Protection District No. 44 King County Fire Protection District No. 45 King County Fire Protection District No. 47 King County Fire Protection District No. 50 King County Flood Control District King County Hospital District No. 4 King County Housing Authority King County Public Hospital District No. 1 King County Public Hospital District No. 2 King County Water District No. 1 King County Water District No. 111 King County Water District No. 117 King County Water District No. 119 King County Water District No. 125 King County Water District No. 19 King County Water District No. 20 King County Water District No. 45 King County Water District No. 49 King County Water District No. 54 King County Water District No. 90 Kitsap Conservation District Kitsap County Consolidated Housing Authority Kitsap County Fire District No. 18 Kitsap County Public Utility District No. 1 Kitsap County Rural Library District Kitsap Public Health District Kittitas County Conservation District Kittitas County Fire District No. 2 Kittitas County Fire Protection District No. 7 Kittitas County Hospital District No. 2 Kittitas County Housing Authority Kittitas County Public Utility District No. 1 Kittitas County Water District No. 5 Kittitas County Water District No. 6 Kittitas County Water District No. 7 Klickitat County Fire District No. 14 Klickitat County Fire District No. 15 Klickitat County Fire District No.1 Klickitat County Fire Protection District No. 4 Klickitat County Fire Protection District No. 5 Klickitat County Port District No. 1 Klickitat County Public Hospital District No. 1 Klickitat County Public Hospital District No. 2

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Klickitat County Public Utility District No. 1 Lacey Fire District 3 Lake Chelan Reclamation District Lake Chelan Sewer District Lake Forest Park Water District Oregon South Carolina

Washington Lake Stevens Sewer District Lake Wenatchee Water District Lake Whatcom Water and Sewer District Lakehaven Utility District Lakewood Water District Lenora Water and Sewer District Lewis County Conservation District Lewis County Fire District No. 1 Lewis County Fire District No. 11 Lewis County Fire District No. 13 Lewis County Fire District No. 18 Lewis County Fire District No. 9 Lewis County Fire Protection District No. 14 Lewis County Fire Protection District No. 16 Lewis County Fire Protection District No. 2 Lewis County Fire Protection District No. 5 Lewis County Fire Protection District No. 6 Lewis County Fire Protection District No. 8 Lewis County Hospital District No. 1 Lewis County Public Facilities District Lewis County Public Utility District No. 1 Lewis County Water District No. 1 Lewis County Water District No. 3 Lewis Public Transportation Benefit Area Authority Liberty Lake Sewer and Water District Lincoln County Fire District No. 1 Lincoln County Fire District No. 4 Lincoln County Fire Protection District No. 5 Lincoln County Fire Protection District No. 6 Lincoln County Fire Protection District No. 8 Lincoln County Hospital District No. 3 Lincoln-Adams County Fire Protection District No. 3 Longview Housing Authority Lopez Island Library District Lower Elwha Housing Authority Lower Squilchuck Irrigation District Lummi Housing Authority Lummi Tribal Sewer and Water District Makah Housing Authority Malaga Water District Manchester Water District Manson Park and Recreation District Marshland Flood Control District Marysville Fire District Mason Conservation District Mason County Fire District No. 13 Mason County Fire District No. 17 Mason County Fire District No. 2 Mason County Fire District No. 4
Mason County Fire Protection District No. 5 Mason County Fire Protection District No. 8 Mason County Housing Authority Mason County Public Hospital District No. 1 Mason County Public Utility District No. 1 Mason County Public Utility District No. 3 Mason County Transit Authority Methow Valley Irrigation District Mid-Columbia Library District Midway Sewer District Moab Irrigation District No. 20 Moses Lake Irrigation and Rehabilitation District Mukilteo Water and Wastewater District Naches-Selah Irrigation District North Beach Water District North Central Washington Economic Development District North City Water District North County Regional Fire Authority North Highline Fire District North Perry Avenue Water District North Whidbey Park and Recreation District Northeast Sammamish Sewer and Water District Northshore Utility District Northwest Park and Recreation District No. 2 Okanogan Conservation District Okanogan County Cemetery District No. 4 Okanogan County Fire District No. 6 Okanogan County Fire Protection District No. 11 Okanogan County Housing Authority
Okanogan County Public Hospital District No. 3 Okanogan County Public Hospital District No. 4 Okanogan County Public Utility District No. 1 Okanogan Fire Protection District No. 16 Okanogan Irrigation District
Olympic View Water and Sewer District Olympus Terrace Sewer District Orcas Island Library District Orchard Avenue Irrigation District No. 6 Oroville Housing Authority Oroville-Tonasket Irrigation District Othello Housing Authority Pacific Conservation District

Pacific County Fire District No. 2 Pacific County Fire Protection District No. 1 Pacific County Fire Protection District No. 3

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Oregon South Carolina

Pacific County Public Healthcare Services District No. 3 Pacific County Public Utility District No. 2 Pacific Hospital Preservation and Development Authority Palouse Conservation District Pasco/Franklin County Housing Authority Pend Oreille County Fire District No. 2 Pend Oreille County Fire District No. 4 Pend Oreille County Fire District No. 5 Pend Oreille County Library District Pend Oreille County Public Hospital District No. 1 Pend Oreille County Public Utility District No. 1 Peninsula Housing Authority Peninsula Metropolitan Park District Peshastin Irrigation District Peshastin Water District Pierce Conservation District Pierce County Fire District No. 13 Pierce County Fire District No. 16 Pierce County Fire District No. 18 Pierce County Fire District No. 23 Pierce County Fire District No. 27 Pierce County Fire District No. 3 Pierce County Fire District No. 5 Pierce County Fire District No. 8 Pierce County Fire Protection District No. 14 Pierce County Fire Protection District No. 2 Pierce County Fire Protection District No. 21 Pierce County Housing Authority Pike Place Market Preservation and Development Authority Point Roberts Water District No. 4 Ponderay Shores Water and Sewer District Port Ludlow Drainage District
Prescott Joint Parks and Recreation District Prosser Fire District No. 3 Prosser Public Hospital District Public Hospital District No. 1 Public Hospital District No. 3 Public Utility District No- 1 Puyallup Tribal Health Authority Quileute Housing Authority Quinault Housing Authority Quincy-Columbia Basin Irrigation District Renton Housing Authority Richland Housing Authority Richland Public Facilities District Ronald Wastewater District Roza Irrigation District Sacheen Lake Sewer and Water District Sammamish Plateau Water and Sewer District San Juan Island Library District Saratoga Water District Scatchet Head Water District Seattle Chinatown International District Preservation and Development Authority Seattle Housing Authority Seattle Southside Regional Tourism Authority Selah-Moxee Irrigation District Si View Metropolitan Park District Silver Lake Flood Control District Silver Lake Water And Sewer District Silverdale Water District Skagit Conservation District Skagit County Cemetery District No. 2 Skagit County Fire District No. 10 Skagit County Fire District No. 11 Skagit County Fire District No. 15 Skagit County Fire District No. 9 Skagit County Fire Protection District No. 13 Skagit County Fire Protection District No. 14 Skagit County Fire Protection District No. 2 Skagit County Fire Protection District No. 3 Skagit County Fire Protection District No. 4 Skagit County Fire Protection District No. 5 Skagit County Fire Protection District No. 8 Skagit County Housing Authority
Skagit County Public Hospital District No. 1 Skagit County Public Hospital District No. 2 Skagit County Public Hospital District No. 304 Skagit County Public Utility District No. 1 Skagit County Sewer District No. 1 Skagit County Sewer District No. 2 Skagit Valley Public Hospital District No. 1 Skamania County Fire District No. 1 Skamania County Fire District No. 4 Skamania County Public Hospital District No. 1 Skamania County Public Utility District No. 1 Skamokawa Water and Sewer District Skyway Water and Sewer District Snohomish County Fire District No. 15 Snohomish County Fire District No. 16 Snohomish County Fire District No. 19 Snohomish County Fire District No. 26

Snohomish County Fire District No. 5 Snohomish County Fire Protection District No. 1 Snohomish County Fire Protection District No. 17

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Hawaii Idaho Oregon South Carolina Utah Washington

Snohomish County Fire Protection District No. 21 Snohomish County Fire Protection District No. 22 Snohomish County Fire Protection District No. 25 Snohomish County Fire Protection District No. 28 Snohomish County Fire Protection District No. 3 Snohomish County Fire Protection District No. 7 Snohomish County Housing Authority Snohomish County Public Hospital District No. 1 Snohomish County Public Hospital District No. 2 Snohomish County Public Utility District No. 1 Snohomish Health District Snohomish River Regional Water Authority Snoqualmie Valley Hospital District South Columbia Basin Irrigation District South Correctional Entity Public Development Authority South Naches Irrigation District South Whatcom Fire Authority South Whidbey Parks and Recreation District South Yakima Conservation District Southwest Suburban Sewer District Spokane Conservation District Spokane County Fire District No. 12 Spokane County Fire District No. 2 Spokane County Fire District No. 4 Spokane County Fire Protection District No. 10 Spokane County Fire Protection District No. 11 Spokane County Fire Protection District No. 13 Spokane County Fire Protection District No. 3 Spokane County Fire Protection District No. 5 Spokane County Fire Protection District No. 8 Spokane County Fire Protection District No. 9 Spokane County Library District Spokane County Water District No. 3 Spokane Housing Authority Spokane Indian Housing Authority Spokane Public Facilities District Spokane Regional Health District Spokane Transit Authority Startup Water District Steptoe Sewer District No. 1 Stevens County Fire District No. 2 Stevens County Fire District No. 6 Stevens County Fire Protection District No. 1 Stevens County Fire Protection District No. 10 Stevens County Fire Protection District No. 12 Stevens County Fire Protection District No. 5 Stevens County Public Utility District No. 1 Stevens County Rural Library District Stevens Pass Sewer District Sun Harbor Water District No. 3 Sunnyside Housing Authority Sunnyside Valley Irrigation District Sunnyslope Water District Swinomish Housing Authority
Tacoma Community Redevelopment Authority Tacoma Housing Authority
Tacoma Metropolitan Park District Terrace Heights Sewer District Thea Foss Waterway Development Authority Three Rivers Regional Wastewater Authority Thurston Conservation District Thurston County Fire District No. 12 Thurston County Fire District No. 4 Thurston County Fire District No. 9 Thurston County Fire Protection District No. 3 Thurston County Fire Protection District No. 5 Thurston County Fire Protection District No. 6 Thurston County Fire Protection District No. 8 Thurston County Housing Authority Thurston County Public Utility District No. 1 Tri-County Economic Development District Tukwila Metropolitan Park District Underwood Conservation District Union Gap Irrigation District Val Vue Sewer District Valley Regional Fire Authority Valley View Sewer District Valley Water District Vancouver Housing Authority Vashon Park District
Wahkiakum County Public Utility District No. 1 Wahkiakum Fire Protection District No. 1 Wahkiakum Port District No. 1 Walla Walla County Fire Protection District No. 1 Walla Walla County Fire Protection District No. 3 Walla Walla County Fire Protection District No. 4 Walla Walla County Fire Protection District No. 5 Walla Walla County Fire Protection District No. 8 Walla Walla County Rural Library District Walla Walla Housing Authority Wallula Water District No. 1 Washington State Convention Center Public Facilities District

Washington State Major League Baseball Stadium Public Facilities District

Washington State Tobacco Settlement Authority

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Oregon South Carolina Washington Water District 19

Wells Ranch Irrigation District Wenatchee Reclamation District
Wenatchee-Chiwawa Irrigation District West Sound Utility District Whatcom Conservation District Whatcom County Fire District No. 1 Whatcom County Fire District No. 11 Whatcom County Fire District No. 14 Whatcom County Fire District No. 16 Whatcom County Fire District No. 17 Whatcom County Fire District No. 4 Whatcom County Fire District No. 5 Whatcom County Fire District No. 7 Whatcom County Fire District No. 8 Whatcom County Public Utility District No. 1 Whatcom County Water District No. 12 Whatcom County Water District No. 13 Whatcom County Water District No. 2 Whatcom County Water District No. 7 Whatcom Transportation Authority Whidbey Island Public Hospital District Whitestone Reclamation District Whitman County Fire District No. 11 Whitman County Fire Protection District No. 12 Whitman County Fire Protection District No. 14 Whitman County Fire Protection District No. 7 Whitman County Public Hospital District No. 3 Whitman County Rural Library District Whitworth Water District No. 2 Willapa Valley Water District William Shore Memorial Pool District Williams Lake Sewer District No. 2 Wine Science Center Development Authority Wollochet Harbor Sewer District Woodinville Water District Yakima County Fire District No. 1 Yakima County Fire District No. 3 Yakima County Fire District No. 4 Yakima County Fire District No. 5 Yakima County Fire District No. 6 Yakima County Fire Protection District No. 12 Yakima County Fire Protection District No. 14 Yakima County Mosquito Control District Yakima Housing Authority Yakima Regional Clean Air Authority Yakima Rural County Library District Yakima-Tieton Irrigation District State

North Seattle Community College

Seattle Colleges State Of Washington Washington State Department of Enterprise Services Washington State Department of Health
Washington State Department of Social and Health Services

Washington State Health Care Authority Tribal Columbia River Inter-Tribal Fish Commission Confederated Tribes of the Chehalis Reservation Confederated Tribes of the Colville Reservation Confederated Tribes of the Yakama Nation Cowlitz Indian Tribe Hoh Indian Tribe Jamestown S'Klallam Tribe Kalispel Tribe of Indians Lower Elwha Klallam Tribe Lummi Indian Nation Makah Tribe Muckleshoot Indian Tribe Nisqually Indian Tribe Nooksack Indian Tribe Port Gamble S'Klallam Tribe Puyallup Tribe of Indians Quileute Indian Tribe Quinault Indian Nation Samish Indian Nation Sauk-Suiattle Indian Tribe Skokomish Indian Tribe Snoqualmie Indian Tribe Spokane Tribe Squaxin Island Tribe Stillaguamish Tribe of Indians Suquamish Tribe Swinomish Indian Tribal Community

Tulalip Tribes Upper Skagit Indian Tribe Yakama Nation Land Enterprise

Appendix B Page 14 of 14



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Appendix C - Political Subdivision List for City/Town City of Alexandria City of Bristol City of Buena Vista City of Charlottesville City of Chesapeake City of Colonial Heights City of Covington City of Danville City of Emporia City of Falls Church City of Franklin City of Fredericksburg City of Galax City of Hampton City of Harrisonburg City of Honewell City of Lexington

City of Lynchburg City of Manassa City of Manassas Park City of Martinsville City of Newport News City of Norfolk City of Norton City of Petersburg City of Poquoson City of Portsmouth City of Radford City of Richmond City of Roanoke

City of Salem City of Staunton City of Suffolk City of Virginia Beach City of Waynesboro City of Williamsburg City of Wincheste Town of Abingdon Town of Alberta

Town of Altavista Town of Amherst Town of Annalachia Town of Appomattox Town of Ashland Town of Redford Town of Berryville Town of Big Stone Gap

Town of Blacksburg Town of Bluefield Town of Boones Mill Town of Bowling Green Town of Boyce Town of Boydton

Town of Broadway Town of Brodnax Town of Brookneal Town of Buchanan Town of Burkeville Town of Cedar Bluff

Town of Charlotte Court House Town of Chase City Town of Chatham

Town of Chariton Town of Chilhowie Town of Chincoteague Town of Christiansburg Town of Claremont Town of Clarksville Town of Clifton Town of Clifton Forge

Town of Clinchco Town of Coeburn Town of Colonial Beach Town of Columbia Town of Courtland Town of Craigsville Town of Crewe

Town of Culpepe Town of Damascus Town of Dayton Town of Dendron Town of Dillwyn Town of Drakes Branch

Town of Dublin Town of Dungannon Special Distrricts

Accomack-Northampton Transportation District Albemarle County Service Authority Albemarle-Charlottesville Regional Jail Authority Alexandria Redevelopment and Housing Authority Appomattox River Water Authority Bath County Airport Authority

Bedford County Economic Develop Bedford Regional Water Authority Big Stone Gap Redevelopment and Housing Authority Blacksburg-Christiansburg-VPI Water Authority

Blacksburg-Virginia Polytechnic Institute Sanitation Authority

Blue Ridge Airport Authority
Blue Ridge Crossroads Economic Development Authority

Blue Ridge Regional Jail Authority Blue Ridge Soil and Water Conservation District Bristol Redevelopment and Housing Authority Brookneal-Campbell County Airport Authority

Brunswick County Industrial Development Authority Buchanan County Industrial Development Authority Buena Vista Public Service Authority Campbell County Utilities and Service Authority
Carroll County Industrial Development Authority Carroll-Grayson-Galax Solid Waste Authority

Castlewood Water and Sewage Authority Central Shenandoah Planning District Commission Central Virginia Regional Jail Authority Central Virginia Waste Management Authority Charlottesville Redevelopment and Housing Authority

Charlottesville-Albemarle Airport Authority
Chesapeake Airport Authority
Chesapeake Bay Bridge and Tunnel District

Chesapeake Hospital Authority
Chesapeake Redevelopment and Housing Authority

Coeburn-Norton-Wise Regional Wastewater Authority
Craig-New Castle Solid Waste Authority
Crater District Area Agency on Aging/Foster Grandparent Program, Inc. Culpener Soil and Water Conservation District

Cumberland Plateau Planning District Commission Cumberland Plateau Regional Housing Authority Cumberland Plateau Regional Waste Management Authority Danville Redevelopment and Housing Authority

Danville-Pittsylvania County Regional Industrial Facilities Authority Dickenson County Industrial Development Authority Dickenson County Public Service Authority

Dinwiddie Airport and Industrial Authority Dinwiddie County Water Authority District Three Governmental Cooperative Dryden Water Authority

Eastern Shore of Virginia Broadband Authority Essex County Industrial Development Authority Fairfax County Economic Development Authority

Fairfax County Park Authority
Fairfax County Redevelopment and Housing Authority

Fairfax County Water Authority
Fauquier County Water and Sanitation Authority
Floyd County Economic Development Authority
Floyd-Floyd County Public Service Authority Franklin Redevelopment and Housing Authority Frederick County Sanitation Authority

Frederickshurg Stafford Park Authority

Frederick-Winchester Service Authority Front Royal-Warren County Economic Development Authority

Ft. Monroe Authority Giles County Public Service Authority Greensville County Water and Sewer Authority Halifax County Industrial Development Authority Halifax County Service Authority Hampton Redevelopment and Housing Authority

Hampton Roads Planning District Commission Hampton Roads Regional Jail Authority Hampton Roads Sanitation District Harrisonburg Redevelopment and Housing Authority Harrisonburg-Rockingham Regional Sewer Authority Headwaters Soil and Water Conservation District

Hopewell Redevelopment and Housing Authority

James River Water Authority John Flannagan Water Authority Joint Public Service Authority Lee County Industrial Development Authority Lee County Public Service Authority LENOWISCO Planning District Commission

Lord Fairfax Soil and Water Conservation District Loudoun County Sanitation Authority Louisa County Water Authority Lynchburg Redevelopment and Housing Authority

Marion Redevelopment and Housing Authority Maury Service Authority Mecklenburg-Brunswick Regional Airport Authority

Meherrin River Regional Jail Authority Middle Peninsula Regional Airport Authority Public K-12

County Accomack County Public Schools Accomack County Albemarle County Albemarle County Public Schools Alexandria City Public Schools Alleghany County Alleghany County Public Schools Amelia County Public Schools Amherst County Amherst County Public Schools Appomattox County Appomattox County Public School Arlington County Arlington Public Schools Augusta County Bath County Bedford County Atlantic Shores Christian Schools

Augusta County Public Schools Bedford County Public Service Authority Bath County Public Schools Bedford County Public Schools Bland County Public Schools Bland County Botetourt County

Craig County

Culpeper County

Cumberland County Dickenson County

Dinwiddie County

Essex County Fairfax County

Fauguier County

Floyd County Fluvanna County

Franklin County

Giles County

Frederick County

Gloucester County Goochland County

Grayson County

Greensville County

Greene County

Halifax County

Hanover County

Henrico County

Highland County

Lancaster County

Loudoun County

Madison County

Mathews County

Middlesex County

New Kent County

Nottoway County Orange County

Page County

Patrick County

Powhatan County

Prince Edward County

Prince George County

Lunenburg County

Mecklenburg County

Montgomery County Nelson County

Northampton County

Northumberland County

Pittsylvania County
Pittsylvania County Service Authority

Louisa County

Henry County Public Service Authority

Henry County

Rotetourt County Public Schools Brunswick County Bristol Virginia Public Schools Brunswick County Public Schools Buchanan County Buchanan County Public Service Authority

Buchanan County Schools Buckingham County Buckingham County Public Schools Buena Vista City Public Schools Campbell County Campbell County Public Schools Caroline County

Caroline County Public Schools Carroll County Public Schools Charles City County School District Charlotte County Public Schools Charlottesville City Schools Chesapeake Public Schools

Chesterfield County Public Schools Clarke County School District Colonial Beach Schools Colonial Heights Public Schools Copper River School District Covington City Public Schools Craig County Public Schools Culnener County Public Schools

Cumberland County Public Schools Danville Public Schools Dickenson County Public Schools Dinwiddie County Public Schools Fairfax County Public Schools Falls Church City Public Schools Fauquier County Public Schools Floyd County Public Schools Fluvanna County Public Schools

Franklin City Schools Franklin County Public Schools Frederick County Public School Fredericksburg City Public Schools Galax City Public Schools

Giles County Public Schools Gloucester County Public Schools Goochland County Public Schools Grayson County Public Schools

Isle of Wight County James City County King and Queen County Greene County Schools Greensville County Public Schools King George County King George County Service Authority Halifax County Public Schools King William County

Hampton City Schools Hanover County Public Schools Harrisonburg City Public Schools Henrico County Public Schools Henry County Public Schools Highland County Public Schools Hopewell Public Schools Imagine Schools

Isle of Wight County Schools King and Queen County Public Schools King George County Public Schools King William County Public Schools Lancaster County Public School System Lee County Public Schools Lexington City Schools Loudoun County Public Schools Louisa County Public Schools Lynchburg City Schools

Madison County Public Schools Manassas City Public Schools Manassas Park City Schools Martinsville Public Schools

Mathews County School District Mecklenburg County Public Schools Middlesex County Public Schools Montgomery County Public Schools

Prince William County
Prince William County Service Authority Nelson County Public Schools Pulaski County New Kent County Schools Newport News Public Schools Rappahannock County Richmond County Norfolk Public Schools Roanoke County

Northampton County School District Northumberland County Public Schools Rockbridge County Rockbridge County Public Service Authority Norton City Public Schools Rockingham County

Nottoway County Public Schools Orange County Public Schools Scott County **Public Higher Education**

Blue Ridge Community College Central Virginia Community College Christopher Newport University College of William and Mary Dabney S. Lancaster Community College Danville Community College Eastern Shore Community College Eastern Virginia Medical School

George Mason University Germanna Community College J. Sargeant Reynolds Community College James Madison University John Tyler Community College Longwood University Lord Fairfax Community College Massanutten Technical Center

Mountain Empire Community College Buckingham County Board of Supervisors New College Institute New River Community College Norfolk State University Northern Virginia Community College

Carroll County Carroll County Public Service Authority Old Dominion University Charles City County Patrick Henry Community College Charlotte County Paul D. Camp Community College Chesterfield County Piedmont Virginia Community College Clarke County Radford University

Rappahannock Community College Richard Bland College Rowanty Technical Center Southern Virginia Higher Education Center

Southside Virginia Community College Southwest Virginia Community College State Council of Higher Education for Virginia Thomas Nelson Community College Tidewater Community College University of Mary Washington University of Virginia

University of Virginia Foundation University of Virginia Health System University of Virginia, Wise Virginia College Savings Plan Virginia Commonwealth University Virginia Community College System Virginia Highlands Community College

Virginia Military Institute Virginia Polytechnic Institute and State University

Virginia State University Virginia Western Community College Wytheville Community College

State

State of Virginia Virginia Department of Behavioral Health and Developmental Services

Virginia Department of General Services Virginia Department of Health

Virginia Department of Health Professions Virginia Department of Public Works

Townships enship of Green Ross County

City/Town Special Distrricts Town of Elkton Montgomery County Public Service Authority Town of Exmore Montgomery Regional Solid Waste Authority Town of Farmville Mt. Rogers Planning District Commission Town of Fincastle New River Regional Water Authority Town of Floyd New River Resource Authority Town of Fries New River Valley Planning District Commission New River Valley Regional Jail Authority Town of Front Royal Newport News Redevelopment and Housing Authority

Town of Gate City

Town of Glade Spring Nicholas County Solid Waste Authority Town of Glasgow Norfolk Airport Authority Norfolk Economic Development Authority Town of Glen Lvn Town of Gordonsvill Town of Goshen Norfolk Redevelopment and Housing Authority Northern Neck Planning District Commission Town of Gretna Northern Virginia Regional Park Authority Town of Grottoes Northern Virginia Transportation Authority Northwestern Regional Jail Authority Town of Halifax Town of Hamilton Town of Haymarket NRV Regional Water Authority Pamunkey Regional Jail Authority
Patrick County Economic Development Authority Town of Havsi

Pepper's Ferry Regional Wastewater Treatment Authority
Petersburg Redevelopment and Housing Authority Town of Herodon Town of Hillsville Peumansend Creek Regional Jail Authority Town of Honaker Town of Hurt Piedmont Soil and Water Conservation District Planning District One Behavioral Health Services Town of Independence Town of Iron Gate Portsmouth Redevelopment and Housing Authority Town of Irvington Prince William County Park Authority Pulaski County Public Service Authority Town of Jonesville Town of Kenbridge Pulaski County Sewerage Authority

Town of Keysville Town of Kilmarnock Radford Industrial Development Authority
Randolph County Water, Sewer and Fire Protection Authority

Town of La Crosse Rapidan Service Authority Town of Lawrenceville

Rappahannock Regional Jail Authority Rappahannock-Shenandoah-Warren Regional Jail Authority Town of Leesburg Town of Louisa Region 2000 Services Authority

Town of Lovettsville Richmond Behavioral Health Authorit Town of Luray Richmond Hospital Authority Town of Marion Town of Middleburg Richmond Metropolitan Authority Richmond Redevelopment and Housing Authority Town of Middletown Richmond Regional Planning District Commission Town of Mineral Town of Monterey Rivanna Solid Waste Authority Rivanna Water and Sewer Authority Town of Montross Riverside Regional Jail Authority

Town of Mt. Jackson Roanoke Redevelopment and Housing Authority Roanoke River Service Authority Town of Narrows Town of New Castle Roanoke Valley Broadband Authority Roanoke Valley Resource Authority Town of New Market

Town of Nickelsville Robert E. Lee Soil and Water Conservation District Town of Occopian Rockbridge Area Network Authority Town of Onancock Rockbridge County Solid Waste Authority Town of Orange Russell County Industrial Development Authority Town of Pamplin City Russell County Public Service Authority Town of Parksley Scott County Economic Development Authority Town of Pearisburg Scott County Redevelopment and Housing Authority Town of Pembroke Shenandoah Valley Soil and Water Conservation District

Smyth County Industrial Development Authority Town of Pennington Gap Town of Phenix Smyth Washington Regional Industrial Facilities Authority Town of Pocahontas Town of Pound South Central Wastewater Authority Southeastern Public Service Authority Town of Pulaski Southside Planning District Town of Purcellville Town of Quantico Southside Regional Jail Authority Southwest Regional Recreation Authority Town of Remineton Southwest Virginia Regional Jail Authority Suffolk Redevelopment and Housing Authority Tappahannock-Essex County Airport Authority Town of Rich Creek Town of Richlands Town of Ridgeway Tazewell County Airport Authority Tazewell County Industrial Development Authority Tazewell County Public Service Authority

Tazwell County Public Service Authority

Town of Saltville Thomas Jefferson Planning District Commission Town of Scottsville Thomas Jefferson Soil and Water Conservation District Town of Shenandoal Toms Brook-Maurertown Sanitary District Town of Smithfield Upper Occoquan Service Authority Town of South Boston Valley Municipal Utility District No. 2 Vint Hill Economic Development Authority
Virginia Beach Development Authority Town of South Hill Town of St. Paul Town of Stanley Virginia Commercial Space Flight Authority Town of Stephens City Town of Strasburg Virginia Highlands Airport Authority Virginia Housing Development Authority Town of Stuart Virginia Peninsulas Public Service Authority

Town of Tangier Town of Tappahannock Virginia Port Authority Virginia Resources Authority

Town of Tazewell Virginia Tech/Montgomery Regional Airport Authority Virginia/Carolina Water Authority Virginia's First Regional Industrial Facility Authority Town of Timberville Town of Troutville

Town of Urbanna Washington County Industrial Development Authority Town of Victoria Washington County Service Authority Town of Vienna Waynesboro Economic Development Authority

Town of Vintor Waynesboro Redevelopment and Housing Authority West Piedmont Planning District Town of Wakefield

Town of Warrenton Western Virginia Water Authority Town of Warsaw Town of Washington Williamsburg Area Transit Authority Winchester Regional Airport Authority Town of Waverly Wired Road Authority Town of West Point Wise County Public Service Authority

Town of White Stone Wise County Redevelopment and Housing Authority Town of Windsor Woodway Water and Sewer Authority

Town of Wise Town of Woodstock Town of Wytheville

Town of Round Hill

Town of Rural Retreat

Public K-12

County

Shenandoah County

Southampton County

Spotsylvania County

Smyth County

Stafford County

Surry County

Sussex County

Tazewell County

Warren County

Wise County

York County

Washington County Westmoreland County

Scott County Public Service Authority

Tri-County Lake Administrative Commission

Page County Public Schools Patrick County Public Schools Petersburg City Public Schools Pittsylvania County School District Poquoson City Public Schools Portsmouth Public Schools Powhatan County Public Schools Prince Edward County Schools Prince George County Public Schools Prince William County Schools Pulaski County Public Schools

Radford City Schools Rappahannock County Public Schools Richmond City Public Schools Richmond County Public Schools Roanoke City Public Schools Roanoke County Public Schools Rockbridge County Schools Rockingham County Public Schools

Russell County Public Schools Salem City Schools Scott County Public Schools Shenandoah County Public Schools Smyth County Public Schools Southampton County Public Schools Spotsylvania County Public Schools Stafford County Public Schools Staunton City Schools Suffolk Public Schools Surry County Public Schools Sussex County Public Schools

Tazewell County Public Schools Virginia Beach City Public Schools Warren County Public Schools Washington County School District Wavnesboro Public Schools West Point Public Schools Westmoreland County Public Schools

Williamsburg-James City County Public Schools

Winchester Public Schools Wise County Public Schools Wythe County Public Schools York County Public Schools

Public Higher Education

State

Townships

Appendix C Page 2 of 2 241

SOURCEWELLSM (Formerly NJPA) AWARDED VENDOR

REQUIRED FEMA TERMS AND CONDITIONS CERTIFICATION

Procurements by SourcewellSM (Formerly NJPA) or Sourcewell Members utilizing funds under a federal grant or contract funded all or in part by the Federal Emergency Management Agency (FEMA) may be subject to specific federal laws, regulations, and requirements in addition to those under other federal, state and local laws. This may include, but is not limited to, the procurement standards of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Title 44 of the Code of Federal Regulations, Part 13 (44 CFR Part 13).

The terms included in this section express Vendors willingness and ability to comply with certain requirements which may be applicable to specific Sourcewell Member purchases using FEMA grant or contract dollars. Sourcewell Members may also require Proposers to enter into ancillary agreements, in addition to the Sourcewell contract's general terms and conditions, to address a Member's specific contractual needs, including contract requirements for a procurement using FEMA grants or contracts. Sourcewell reserves the right at any time within a contract term to require an awarded Vendor to reaffirm or resubmit proper documentation relating to these requirements.

Note: The numbering and identification contained within this section is only for reference purposes and does not identify any actual Federal designation or location of the rule. Rules are located in 44 CFR Part 13.

(A) Pursuant to 44 CFR 13.36(i)(1), Sourcewell is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Vendor's compliance with the terms of the request for proposal and contract award, including but not limited to those remedies set forth at 44 CFR 13.43.

Vendor Agrees (YES or NO)

Initials of Authorized Representative

(B) Pursuant to 44 CFR 13.36(i)(2), Sourcewell may terminate the contract award for cause or convenience in accordance with the procedures set forth in the request for proposal and contract award and those provided by 44 CFR 13.44.

Vendor Agrees (YES or NO) Initials of Authorized Representative (C) Pursuant to 44 CFR 13.36(i)(3)-(6)(12), and (13), Vendor shall comply with the following federal laws during the term of an award for this contract by Sourcewell:

- a. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor ("DOL") regulations (41 CFR Ch. 60);
- b. Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in DOL regulations (29 CFR Part 3);
- c. Davis-Bacon Act (40 U.S.C. 276a-276a-7) as supplemented by DOL regulations (29 CFR Part 5);
- d. Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by DOL regulations (29 CFR Part 5);
- e. Section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and

f. 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 (Pub. L. 94-163, 89 Stat. 871).

Vendor Agrees (YES or NO)

Initials of Authorized Representative

(D) Pursuant to 44 CFR 13.36(i)(7), Vendor shall comply with FEMA requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41.

Vendor Agrees (YES or NO)

Initials of Authorized Representative

- (E) Pursuant to 44 CFR 13.36(i)(8), Vendor agrees to the following provisions regarding patents:
 - a. During the term of an award for this contract by Sourcewell, all rights to inventions and/or discoveries that arise or are developed, in the course of or under this request for proposal and contract award, shall belong to the Sourcewell Member and be disposed of in accordance with their policy. Sourcewell and Sourcewell members, at its own discretion, may file for patents in connection with all rights to any such inventions and/or discoveries.

Vendor Agrees (YES or NO)

Initials of Authorized Representative

- (F) Pursuant to 44 CFR 13.36(i)(9), Vendor agrees to the following provisions, regarding copyrights:
 - a. During the term of an award for this contract by Sourcewell, any copyrightable material or inventions, in accordance with 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for Federal Government purposes:
 - (1) The copyright in any work developed under a grant or contract; and
 - (2) Any rights of copyright to which a grantee or a contactor purchases ownership with grant support.

Vendor Agrees (YES or NO)

Initials of Authorized Representative

(G) Pursuant to 44 CFR 13.36(i)(10), Vendor shall maintain any books, documents, papers, and records of the Vendor which are directly pertinent to this request for proposal and contract award. At any time during normal business hours and as often as Sourcewell or Sourcewell Members deems necessary, Vendor shall permit Sourcewell or Sourcewell Member, FEMA, the Comptroller General of United States, or any of their duly authorized representatives to inspect and photocopy such records for the purpose of making audit, examination, excerpts, and transcriptions

Vendor Agrees (YES or NO)

Initials of Authorized Representative

(H) Pursuant to 44 CFR 13.36(i)(11), Vendor shall retain all required records for three years after FEMA or Sourcewell or Sourcewell Members makes final payments and all other pending matters are closed. In addition, Vendor shall comply with record retention requirements set forth in 44 CFR 13.42

Date:

Vendor Agrees (YES or NO)

Initials of Authorized Representative

Vendor agrees to comply with federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that Vendor certifies compliance with provisions, laws, acts, regulations, etc. as noted above.

above.	aor certifies compuance with provisions, taws, acts, regulatio	ns, etc. as notea
This certification shall be effec	tive through the term of the Vendor's Sourcewell awarded co	ntract.
Vendor:		
Contract number:		
Category:		
Maturity date:		
Address:		
City, state, zip code:		
Phone number:		
Printed name and title of authorized representative:		
Signature of authorized representative:		

2023 Sourcewell Caterpillar Cooperative Contract Discounts by Model

Machine Model*	New Equipment		
2023	Discount to Customer (Off List Price)		

AP300 AP355 AP400 AP455 AP500 AP555 AP600 AP655 AP1000 AP1055 18.00% 18.00% 18.00% 18.00% 18.00% 18.00% 18.00% 18.00%

Rollers	
CB1.7	19.00%
CB1.8	19.00%
CB7	19.00%
CB8	19.00%
CB10	19.00%
CB13	19.00%
CB15	19.00%
CB16	19.00%
CB2.5	19.00%
CB2.5GC	19.00%
CB2.7	19.00%
CB2.7GC	19.00%
CB2.9	19.00%
CB4.0	19.00%
CB4.4	19.00%
CC2.7	19.00%
CC2.7GC	19.00%
CC4.0	19.00%
CCS9	19.00%
CP11GC	19.00%
CP12GC	19.00%
CP34	19.00%
CP44	19.00%
CP54	19.00%
CP56	19.00%
CP68	19.00%
CP74	19.00%
CS10GC	19.00%
CS11GC	19.00%
CS12GC	19.00%
CS34	19.00%
CS44	19.00%
CS54	19.00%
CS56	19.00%
CS64	19.00%
CS68	19.00%
CS74	19.00%
CS78	19.00%
CW16	19.00%
CW34	19.00%

Track Type Tractors

D1	23.00%
D1 Fire Dozer	23.00%
D2	23.00%
D2 Fire Dozer	23.00%
D3	23.00%
D3 Fire Dozer	23.00%
D4	23.00%
D5	23.00%
D5 Fire Dozer	23.00%
D6	23.00%
D7	19.00%
D8	19.00%
D9	ОТО
D10	ОТО

Wheeled Excavators

M314	26.00%
M315	26.00%
M316	26.00%
M318	26.00%
M319	26.00%
M320	26.00%
M322	26.00%

Material Handlers

MH3022	26.00%
MH3024	26.00%
MH3026	26.00%
MH3040	26.00%

Cold Planers

PM310	20.00%
PM312	20.00%
PM313	20.00%
PM620	20.00%
PM622	20.00%
PM820	20.00%
PM822	20.00%
PM825	20.00%

Reciainers	
RM400	20.00%
RM500	20.00%

*Note: Base machines are listed. There may be several different base machine configurations available. The base machine discount will be applied to any model configuration plus any and all options listed on the Caterpillar Machine price list.

- NOTE: Due to global supply chain cost increases:
 1. All new machines are subject to a commodity surcharge of up to 20%. (In some cases, increased tire costs may cause this number to be greater)
 2. All new attachments are subject to a commodity surcharge of up to 25%.

Machine Model*	New Equipment
2023	Discount to Customer (Off List Price)

*Note: Base machines are listed. There may be several different base machine configurations available. The base machine discount will be applied to any model configuration plus any and all options listed on the Caterpillar Machine price list.

Telehandlers	
23.00%	
24.00%	
24.00%	
24.00%	
24.00%	
24.00%	

Motor Graders	
120	34.00%
140	30.00%
140GC	30.00%
150	30.00%
160	30.00%
14	19.00%

Skid Steer Loaders	
226	21.00%
232	21.00%
236	21.00%
242	21.00%
246	21.00%
262	21.00%
272	21.00%

Compact Track Loaders	
239	21.00%
249	21.00%
259	21.00%
279	21.00%
289	21.00%
299	21.00%
299XE Land Management	21.00%

Machine Model*	New Equipment
2023	Discount to Customer (Off List Price)
Excavators	
300.9	20.00%
301.5	20.00%
301.7	20.00%
301.8	20.00%
302	20.00%
302.7	20.00%
303	20.00%
303.5	20.00%
304	20.00%
305	20.00%
306	20.00%
307.5	20.00%
308	20.00%
309	20.00%
310	20.00%
313	15.00%
313GC	16.00%
315	19.00%
315GC	20.00%
317	19.00%
317GC	20.00%
320	15.00%
320GC	16.00%
323	15.00%
325	15.00%
326	15.00%
330	15.00%
330GC	16.00%
335	15.00%
336	15.00%
340	15.00%
350	10.00%
352	10.00%
374	10.00%

*Note: Base machines are listed. There may be several different base machine configurations available. The base machine discount will be applied to any model configuration plus any and all options listed on the Caterpillar Machine price list.

Forest Machines

538	15.00%
548	15.00%
558	15.00%
568	15.00%

Backhoe Loaders

415	22.00%
416	22.00%
420	22.00%
428 Side Shift	22.00%
430	22.00%
432 Side Shift	22.00%
434 Side Shift	22.00%
440	22.00%
450	22.00%

Wheel Tractor Scrapers

621	18.00%
623	18.00%
621 623 627 631 631 657 651	18.00%
631	18.00%
637	18.00%
651	18.00%
657	18.00%

Articulated Trucks

725	17.00%
730	17.00%
735	17.00%
740	17.00%
740GC	17.00%
745	17.00%

Rigid Frame Trucks

770	3.00%
772	3.00%
773	3.00%

Landfill Compactors

816	12.00%
826	12.00%
836	12.00%

Wheel Dozers and Soil Compactors

814	15.00%
815	13.00%
816	15.00%
824	15.00%
825	13.00%
834	15.00%

Wheel Loaders

903	23.00%
906	23.00%
907	23.00%
908	23.00%
910	23.00%
914	23.00%
920	24.00%
926	24.00%
930	24.00%
938	24.00%
950GC	20.00%
950M	18.00%
962	18.00%
966	15.00%

Machine Model*	New Equipment
2023	Discount to Customer (Off List Price)
966GC	20.00%
972	11.00%
980	11.00%
982	11.00%
988	11.00%

*Note: Base machines are listed. There may be several different base machine configurations available. The base machine discount will be applied to any model configuration plus any and all options listed on the Caterpillar Machine price list.

Trac	k Lo	ade	rs

953	19.00%
963	22.00%
973	23.00%

Aftermarket Worktools	15.00%

Caterpillar Safety Services	15.00%
Technology Enabled Safety	
Solutions	N/A

Used Equipment is discounted 20% from Original Customer List

Rental Equipment is offered under Sourcewell contract #062320-CAT

Parts & Service is discounted by the servicing dealer according to work order volume

Form C

$\frac{\text{EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS,}}{\text{AND SOLUTIONS REQUEST}}$



Company Name: _	Caterpillar Inc		
and included with	the Proposer's response sewell or included in the f	The Proposer acknowledg nal contract. Sourcewell w	es that the exceptions listed may or may not be will make reasonable efforts to accommodate the appropriate section below.
			Sourcewell

Section/page	Term, Condition, or Specification	Exception	Sourcewell ACCEPTS
8.11 / page 29	Assignment of Contract	Notwithstanding the Terms of Section 8.11, Caterpillar shall be permitted to subcontract certain of its duties to Cat dealers for performance. *	Sourcewell accept
Section Q / page 32	Provisions for non-federal entity procurements under federal awards or other awards; airport improvement program provisions	Section Q shall be deleted in its entirety. However, Caterpillar Dealers will review individual transactions that may implicate certain provisions within section Q on a case by case basis as required. *	Sourcewell accept

^{*}Please see page 2 of this form for comments regarding this exception request.

Saumanyall's alarifi	ation on exceptions listed above:	
Sourceweil's ciarini	ation on exceptions fisted above:	EGA
		HCP Initials
		May 3, 2019
		Date

Form C

Item 12.

EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS, AND SOLUTIONS REQUEST



Caterpillar Comments on Exception Requests:

Exception to 8.11

Because we rely on our dealer network to work closely with customers to execute the terms of this agreement, we want to clarify that we may subcontract these obligations to them. This is how we are operating today to the satisfaction of all involved and we intend for this strong, close, and effective relationship to continue.

Exception to Section Q

In many situations we will be willing to comply to these terms. However, it is impossible to provide a blanket acceptance as each transaction is unique. For example, the Buy American provision referenced in 8.43 will be acceptable for some products and not for others depending on the source of production. By looking at each transaction individually we can ensure careful consideration. It is our desire to earn this business and when we are able to comply we will honor the terms specific to the transaction.

Item 12.

Contract Award RFP #032019

FORM D



Formal Offering of Proposal

(To be completed only by the Proposer)

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

In compliance with the Request for Proposal (RFP) for HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES, the undersigned warrants that the Proposer has examined this RFP and, being familiar with all of the instructions, terms and conditions, general and technical specifications, sales and service expectations, and any special terms, agrees to furnish the defined products and related services in full compliance with all terms and conditions of this RFP, any applicable amendments of this RFP, and all Proposer's response documentation. The Proposer further understands that it accepts the full responsibility as the sole source of solutions proposed in this RFP response and that the Proposer accepts responsibility for any subcontractors used to fulfill this proposal.

Company Name:Caterpillar Inc	_ Date:	3/6/19
Company Address: 100 NE Adams Street		
City:Peoria	State:	ILZip:61629
CAGE Code/DUNS: 11083/944204924	_	
Contact Person:Patty Redpath	Title:	Governmental Account Manager
Authorized Signature:		Patrick Kearns

FORM E CONTRACT ACCEPTANCE AND AWARD



(Top portion of this form will be completed by Sourcewell if the vendor is awarded a contract. The vendor should complete the vendor authorized signatures as part of the RFP response.)

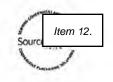
Sourcewell Contract #: 032119-CAT

Proposer's full legal name: Caterpillar Inc.

Based on Sourcewell's evaluation of your proposal, you have been awarded a contract. As an awarded vendor, you agree to provide the products and services contained in your proposal and to meet all the terms and conditions set forth in this RFP, in any amendments to this RFP, and in any exceptions that are accepted by Sourcewell.

The effective date of the Contract will be May 13, 2019 and will expire on May 13, 2023 (no later than the later of four years from the expiration date of the currently awarded contract or four years from the date that the Sourcewell Chief Procurement Officer awards the Contract). This Contract may be extended for a fifth year at Sourcewell's discretion.

Jurumy Sulwarty	Jeremy Schwartz			
SOURCEWELL DIRECTOR OF OPERATIONS AND PROCUREMENT/CPO SIGNATURE	(NAME PRINTED OR TYPED)			
Chad Coavette	Chad Coauette			
SOURCEWELL EXECUTIVE DIRECTOR/CEO SIGNATURE	(NAME PRINTED OR TYPED)			
Awarded on May 10, 2019 Sourcewell Contract # 032119-CAT				
Vendor Authorized Signatures:				
The Vendor hereby accepts this Contract award.	, including all accepted exceptions and amendments.			
Vendor Name Caterpullar Inc				
Authorized Signatory's Title North Auterion	Industry Manager			
Total	Patrick Keains			
VENDOR AUTHORIZED SIGNATURE	(NAME PRINTED OR TYPED)			
Executed on May 10 20 19	Sourcewell Contract # 032119-CAT			



Form F

PROPOSER ASSURANCE OF COMPLIANCE

Proposal Affidavit Signature Page

PROPOSER'S AFFIDAVIT

The undersigned, authorized representative of the entity submitting the foregoing proposal (the "Proposer"), swears that the following statements are true to the best of his or her knowledge.

- The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated
 and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering
 any products and related services, all applicable licenses necessary for such delivery to Sourcewell members
 agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer
 to the terms in this Contract.
- 2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of Sourcewell, or any person, firm, or corporation under contract with Sourcewell, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.
- The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted in writing and have been included with the Proposer's RFP response.
- 4. The Proposer will, if awarded a Contract, provide to Sourcewell Members the /products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.
- The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are
 acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and firstquality products and related services to Sourcewell Members under an awarded Contract.
- The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
- 7. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
- 8. The Proposer understands that it is the Proposer's duty to protect information that it considers nonpublic, and it agrees to defend and indemnify Sourcewell for reasonable measures that Sourcewell takes to uphold such a data designation.

The rest of this page has been left intentionally blank. Signature page below!

By signing below, Proposer is acknowledging that he or she has read, understands, and agrees to comply with the terms and conditions specified above.

Company Name:Ca	terpillar Inc.			
Address:10	NE Adams Street			
City/State/Zip:Peo	oria, IL 61629			
Telephone Number:309	9-675-1000			
E-mail Address:Cat				
Authorized Signature:	ated the			
Authorized Name (printed)	Patrick Kenn	N		-
Title: North America	a Industry Man	ager		
Date:	16/19			
Notarized				
JODY NOTARY PUBL	R. MCKENZIE IC, STATE OF ILLINOIS IN Expires Feb 2, 2020			
Subscribed and sworn to be	fore me this	day of	, 20	19
Notary Public in and for the				
My commission expires:	701	mary 2. 2010		
Signature:	Julyk	M'Kuzii		

Form P



PROPOSER QUESTIONNAIRE

Payment Terms, Warranty, Products and Services, Pricing and Delivery, and Industry-Specific Questions

Proposer Name:	Caterpillar Inc.	
Questionnaire completed by:	Patty Redpath	

Payment Terms and Financing Options

- 1) What are your payment terms (e.g., net 10, net 30)? Our dealers accept payment from members and their terms may vary. The most common term is net 30.
- 2) Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?
 - Yes. We offer both leasing and financing options to governmental members of Sourcewell at rates lower than available to the general public.
- 3) Briefly describe your proposed order process. Please include enough detail to support your ability to report quarterly sales to Sourcewell. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell Members' purchase orders.

Our simple order process has been and will continue to be well appreciated by Sourcewell and Sourcewell members:

- 1) When a member decides to purchase a new Cat machine, they simply include their Sourcewell member number on the Purchase Order they issue to the Cat dealer.
- 2) The Cat dealer then accepts the PO, issues the invoice, accepts payment, and delivers the machine.
- 3) After the machine has been delivered, the dealer, as part of their normal process, includes the member number when filing their sales claim with Caterpillar.
- 4) At month end, Caterpillar aggregates these reports and sends the sales information quarterly to Sourcewell along with the administration fee.
 - Important Note: Should a member wish to include additional terms and conditions to this contract, or to otherwise request a Participating Addendum, that agreement/PA should be executed between the member and the Cat dealer directly.
- 4) Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell Members for using this process?
 - Because Cat dealers will be receiving payments directly from members, accepting P-card procurement will be at their discretion. Many dealers do accept this method without additional fees. Some have limitations on the amount that can be processed.

Warranty

- 5) Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may include in your response a copy of your warranties, but at a minimum please also answer the following questions.
 - Do your warranties cover all products, parts, and labor?
 - Yes. Caterpillar has the most extensive warranty coverage in the industry. We cover all products, parts, and labor with fewer exclusions than our competitors. Please see **Attachment D** for details.
 - Do your warranties impose usage restrictions or other limitations that adversely affect coverage?
 - We do not impose usage restrictions. We are pleased to say that our warranties cover defects in material and workmanship for the time specified in the policy when the equipment is used as per design intent.
 - Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?
 - The Caterpillar warranties cover the cost of replacement parts and the labor to install them, they do not cover travel time and mileage. Dealer territories vary considerably from state to state as do their policies about travel time and mileage during the warranty period.
 - Are there any geographic regions of the United States for which you cannot provide a certified technician
 to perform warranty repairs? How will Sourcewell Members in these regions be provided service for
 warranty repair?
 - We have no restrictions on warranty repairs. One of our key differentiating strengths is our ability to service equipment regardless of where is it located.
 - Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?
 - Warranty service for on machines ordered from a Caterpillar facility is generally provided by Caterpillar and performed by Cat dealers. Some items, such as tires, are covered under their manufacturers' warranties.
 - What are your proposed exchange and return programs and policies?
 - We warrant that upon delivery our products will be free from defects in material and workmanship and will operate as intended. If they are not, we will make any necessary corrections.
- 6) Describe any service contract options for the items included in your proposal.
 - We have a large variety of service contract options which can all be customized according to customer needs. Below are just two examples. More solutions are available, and we encourage members and dealers to explore all options.
 - 1) Equipment Protection Plans (Extended Service Coverage/Cat Insurance)
 - After the initial warranty period ends, members may choose to purchase additional protection plans to reduce their exposure to unplanned costs. These policies are written based on months and hours of operation. There are four standard levels of coverage:
 - a) Powertrain
 - b) Powertrain + Hydraulics

- c) Powertrain + Hydraulics + Technology
- d) Premier

A description of all these options is included in Attachment E.

Important note: The purchase price for these Extended Service Coverage plans is **lower** for governmental agencies than it is for private buyers.

2) Customer Service Agreements (CSAs)

A member may choose to enter into an agreement with their Cat dealer to perform routine maintenance and/or repairs. These contracts are customizable based on member needs.

The selling Cat dealer can take responsibility for some or all the required service and maintenance needs to allow the agency to gain efficiency by focusing on the performance demands more than maintenance. CSAs are a useful tool to manage expenses. Most CSAs are bundled at the time of purchase; however, they may be added at any time.

Pricing, Delivery, Audits, and Administrative Fee

 Provide a general narrative description of the equipment/products and related services you are offering in your proposal.

We are offering the new machine and work tool product lines as set forth in this proposal. This includes nearly 200 machine choices and more than 200 types of work tools.

In addition to new machines and work tools, we are happy to offer members access to rental machines, used machines, parts, service, extended service coverage plans, CSAs, products from Cat Safety Services, sourced goods, and open market items.

We understand that each member's needs will vary, and we are proud to supply a complete solution from the industry's largest product line.

8) Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. (Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract. See the body of the RFP and the Price and Product Change Request Form for more detail.)

Our pricing model is simple. We offer a deep discount off the current machine and work tool list prices to all Sourcewell members.

We have provided base machine pricing in **Attachment F.** However, for execution of the agreement we will ask our dealers and Sourcewell members to use the Caterpillar price list that is current at the time of the quote. Dealers, in consultation with the member, will configure the machine to the desired specifications and apply the agreed upon stated minimum discount to that configured List Price amount. Dealers and members should remember to factor in any expected price increases if a machine will be built to order.

Attachment G shows the discount offered for each new machine.

Additionally, we are pleased to offer a discount of 15% off all products and consulting services under the Cat Safety Services Umbrella; and 5% off our Technology Enabled Safety Solutions.

9) Please quantify the discount range presented in this response. For example, indicate that the pricing in your response represents is a 50% percent discount from the MSRP or your published list.

Our discount range varies between 3% and 30%. It's important to note that discount comparisons between different machines cannot be considered an apple-to-apples comparison. Caterpillar product managers have broad leeway in product pricing, and there are some significant variations on pricing strategy. For example, a discount of 10% on Product A, may be equivalent to a 20% discount on Product B. The discounts offered to Sourcewell members are better than what is widely available to non-member/private purchasers.

	a. the same as the Proposer typically offers to an individual municipality, university, or school district.
	b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
	Xc. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
	d. other than what the Proposer typically offers (please describe).
11) Descri	be any quantity or volume discounts or rebate programs that you offer.
	alers are empowered to consider purchase order volume, repeat purchases, member responsiveness, ey may offer members additional discounts and/or services at their discretion.

12) Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.

Sourced goods / Open Market Items are available to members from our Cat dealers. The prices for these goods or services will represent fair market value and will be determined between the member and the selling dealer. We encourage our dealers and members to use this option as it facilitates complimentary products and streamlines the procurement process.

Customers and dealers are responsible for including their Sourcewell member numbers on all documentation related to these purchases. Caterpillar Inc. is not a party to these sales and is exempted from including them in the quarterly reports. For audits, inclusion of a customer's Sourcewell member number on the PO and/or invoice shall be deemed sufficient.

13) Identify any total cost of acquisition costs that are **NOT** included in the pricing submitted with your response. This cost includes all additional charges that are not directly identified as freight or shipping charges. For example, list costs for items like installation, set up, mandatory training, or initial/pre-delivery inspection. Identify any parties that impose such costs and their relationship to the Proposer.

Machines are unique in their requirements for preparation prior to use. Some may require local final assembly due to their large size, others may have locally installed options (fire suppression, beacons, auto lube systems for example). When a dealer issues a quote for a machine, any additional costs will be itemized separately and are not subject to the Sourcewell discount.

14) If travel expense, delivery or shipping is an additional cost to the Sourcewell Member, describe in detail the complete travel expense, shipping and delivery program.

There is no additional cost to members who choose to pick up their machine from the Cat dealer. Dealers may charge fees for delivery to the member's location.

- 15) Specifically describe those travel expense, shipping and delivery programs for Alaska, Hawaii, Canada, or any offshore delivery.
 - Just as for members in the 48 contiguous states, there is no additional cost to members who choose to pick up their machine from their Cat dealer. Dealers may charge fees for delivery to the member's location.
- 16) Describe any unique distribution and/or delivery methods or options offered in your proposal.
 - Machines are large purchases and if there are unique member requirements our dealers will be happy to discuss on a case by case basis.
- 17) Please specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.

We plan to continue our very robust process to ensure reporting speed, accuracy, and contract compliance.

Caterpillar and our Cat dealers have very close and trusting relationships. Our dealers are long-established, and the current process is working well.

- To ensure pricing accuracy, we maintain our current Sourcewell customer discount sheet on our dealerfacing pricing pages. Dealers integrate these numbers automatically in their quoting software.
- To ensure new machine and work tool sales are recorded properly, we use our post-sale credit system. In a nutshell, this means that we corporately support the pricing offered in this contract at a level below what's available to other customers. To receive this additional monetary support after the machine is delivered, dealers must supply the member's name, address, and member number. There is no additional burden or cost to our dealers to use the Sourcewell contract and this is part of the reason for their high engagement and our high reporting accuracy.
- After month end, we gather the new machine and work tool sales data attributed to Sourcewell and aggregate it for our reporting.
- After quarter end, we will send the quarterly sales report and administration fee payment to Sourcewell
 for all items that are subject to the administrative fee.
- 18) Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See RFP Section 6.29 and following for details.)

We would be pleased to offer an administration fee of 0.50% of net dealer revenue on the sales of new machines and work tools. Caterpillar will pay this fee and will not ask members or dealers to bear any additional burden.

Industry-Specific Questions

19) Describe any industry-specific quality management system certifications obtained by your organization.

Throughout the history of Caterpillar, we've produced reliable, durable products our customers have been able to count on for many years...if not decades. This reliability and durability is foundational to our brand. We measure ourselves on both defects and durability. Defects are issues that prevent a machine or any part of it from performing as intended within the first year of service. Durability is defined as the actual achieved life of a machine or component. We pride ourselves on leading the industry.

Page

Specifically, as it relates to this question, the below list shows our current quality certificates:

- 03 Thin Film Coating Center, Mossville (IL), USA CQMS / ISO9001:2015 Certificate (Exp date: 09-Mar-2019)
- 05 Caterpillar Global Machine Development Peoria Proving Ground, Peoria (IL), USA ISO17025:2005 (Expiry date 31-Jan-2021)
- 06 Caterpillar Inc., Cast Metals Organisation, Mapleton (IL), USA ISO9001:2015 (Expiry date 24-Apr-2021)
- 08 Caterpillar Inc., SOS Services Laboratory (Main Multi-site), Peoria, IL, USA ISO9001:2015 (Expiry date 29-Nov-2020)
- 12 Caterpillar Inc. Matl Handling & Underground Div. (Aurora), Montgomery IL, USA ISO9001:2015 Certificate. (Exp: 23-Feb-2020)
- 13 Caterpillar Inc.- Construction and Mining Equipment (HQ), Decatur (IL), USA ISO9001:2015 Certificate. (Exp date: 26-Oct-2021)
- 16 Caterpillar Inc. East Peoria (Multi-Site TTT), Tractor Drive, East Peoria (IL), USA ISO9001:2015 Certificate (Exp: 30-Nov-2019)
- 28 Caterpillar Brasil Limited, Campo Largo, Brasil ISO9001:2015 (Exp date: 23-Jul-2020)
- 28 Caterpillar Brasil Ltda., Piracicaba, Brasil ISO9001:2015 Certificate (Exp date: 19-Mar-2021)
- 29 Caterpillar Engine Systems Inc. (HQ), Pontiac (IL), USA ISO9001:2015 Certificate (Exp date: 06-Aug-2019)
- 40 Caterpillar Engine Systems Inc., Mossville (IL), USA ISO9001:2015 Certificate (Exp date: 06-Aug-2019)
- 40 Caterpillar Inc., Industrial Power Systems Division, Mossville (IL), USA ISO9001:2015 Certificate (Exp Date: 17-Feb-2019)
- 40 Caterpillar Inc., Industrial Power Systems Division, San Antonio (TX), USA ISO9001:2015 Certificate (Exp Date: 17-Feb-2019)
- 40 Caterpillar Inc., Industrial Power Systems Division, Schertz (TX), USA ISO9001:2015 Certificate (Exp Date: 17-Feb-2019)
- 41 Caterpillar Powertrain & Hydraulics Systems Development, Mossville (IL), USA ISO17025:2005 (Expiry date 31-Dec-2019)
- 41 Global Engine Development North America, Mossville, IL 61552, USA ISO17025:2005 (Exp Date: 31-Aug-2019)
- 68 Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Corinth (MS), USA ISO9001:2015 Certificate (Expiry date 19-Jun-2020)
- 68 Caterpillar Inc. Remanufacturing Services (HQ), Corinth, MS 38834, USA, ISO 9001:2015 (Exp Date: 19-Jun-2020)
- 7P Perkins Motores Do Brasil LTDA, Curitiba, BRASIL CQMS:2015 / ISO9001:2015 Certificate (Expiry date 05-Oct-2020)
- 88 Caterpillar Inc. Lafayette Engine Center, Lafayette (IN), USA ISO9001:2015 Certificate (Expiry date 04-Feb-2021)
- 89 Caterpillar Mexico S.A. de C.V. (Monterrey), Nuevo Leon, Mexico 66350 CQMS:2015/ISO 9001:2015 Certificate (Exp: 12-Jul-2019)
- 92 Caterpillar Midwest Logistics Center (Champaign), Illinois ISO 9001:2008 (Exp Date: 29-Jan-2018)
- CF Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Nuevo Laredo (FINSA 1), Mexico ISO 9001:2015 (Exp: 19-Jun-2020)
- CF Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Nuevo Laredo (FINSA 3), Mexico ISO9001:2015 Certificate (Exp: 19-Jun-2020)
- CF Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Nuevo Laredo (ORADEL), Mexico ISO9001:2015 Certificate (Exp. 19-Jun-2020)
- CP Caterpillar Global Machine Development Tucson Proving Ground, Tucson (AZ), USA ISO17025:2005 (Expiry date 31-Jan-2020)
- DQ Caterpillar Inc. Building Construction Products Division, Clayton (NC), USA ISO9001:2015 (Expiry date 06-Jul-2021)
- FJ Anchor Coupling (Menominee), Menominee (MI), USA ISO9001:2015 (Expiry date 22-Jan-2021)
- HL Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Prentiss (Boonville MS), USA ISO9001:2015 Certificate (Exp. 19-Jun-2020)
- HP Caterpillar Dyersburg, Tennessee ISO9001:2008 Certificate. (Expiry date 14-Sep-2018)
- HZ Caterpillar Inc., Industrial Power Systems Division, Sequin (TX), USA ISO9001:2015 Certificate (Exp Date: 17-Feb-2019)
- JA Caterpillar Inc. Building Construction Products Division, Sanford (NC), USA ISO9001:2015 (Expiry date 06-Jul-2021)
- JL Caterpillar Inc. Precision Pin Products Group, Sumter (SC), USA ISO9001:2015 (Expiry date 22-Oct-2018)
- JQ Caterpillar Inc. Building Construction Products Division, Athens (GA), USA ISO9001:2015 (Expiry date 06-Jul-2021)
- LE Caterpillar Inc., Griffin Generators, Griffin (GA), USA ISO9001:2015 Certificate. (Expiry date 03-Mar-2021)
- LS All Caterpillar Newberry LLC Facilities DNV ISO 9001:2008 (Exp Date: 15-Sep-2018)
- M5 Caterpillar Inc. Building Construction Products Division (HQ), Cary (NC), USA ISO9001:2015 (Expiry date 06-Jul-2021)
- MC Caterpillar Inc. Building Construction Products Division, Torreon, MEXICO ISO9001:2015 (Expiry date 06-Jul-2021)
- N4 Advanced Components and Technologies, Mossville (II), USA ISO 9001:2015 Certificate (Exp Date: 24-May-2019)
- PE Caterpillar Inc. (Remanufacturing Site Specific Certificate), West Fargo (ND), USA ISO9001:2015 Certificate (Exp: 19-Jun-2020)
- PV Perkins Shibaura Engines LLC, Griffin (GA), US ISO9001:2015 (Expiry date 31-Jan-2020)
- QR Caterpillar Global Mining Houston PA ISO 9001:2008 (Exp Date 15-Sep-2018)
- R8 Caterpillar Inc. / Paving Products / Minneapolis, (MN), USA ISO 9001:2015 Certificate (Exp Date: 27-Nov-2020)
- T3 Solar Turbines Europe S.A. Oil and Gas, Avenue de Finlande, Braine L'Alleud, Belgium ISO 9001:2015 Certificate (Exp. 22-Sep-2020)
- T3 Solar Turbines Inc. (Packaging Systems Operations), San Diego (CA), USA ISO9001:2015 (Expiry date 22-Sep-2020)
- T3 Solar Turbines Inc. (Power Generation), San Diego (CA), USA ISO9001:2015 (Expiry date 22-Sep-2020)
- T3 Solar Turbines Inc. Oil and Gas, 10203 Sam Houston Park Drive, Houston TX, USA ISO 9001:2015 Certificate (Exp: 22-Sep-2020)
- T3 Solar Turbines Inc. Oil and Gas, 9250 Sky Park Court, San Diego (CA), USA ISO 9001:2015 Certificate (Exp Date: 22-Sep-2020)
- T3 Solar Turbines Inc. Oil and Gas, 9280 Sky Park Court, San Diego (CA), USA ISO 9001:2015 Certificate (Exp Date: 22-Sep-2020)
- T3 Solar Turbines Inc. Oil and Gas, 9330 Sky Park Court, San Diego (CA), USA ISO 9001:2015 Certificate (Exp Date: 22-Sep-2020)
- T3 Solar Turbines Inc. Pkg Systems Operations (HQ), 4200 Ruffin Road, San Diego CA, USA ISO 9001:2015 Certificate (Exp: 22-Sep-2020)
- T3 Solar Turbines Inc. Pkg Systems Operations, Teran-Teran 20120 Int., Tijuana (BC), Mexico ISO 9001:2015 Certificate (Exp: 22-Sep-2020)
- T3 Solar Turbines Inc. Power Generation, 4180 Ruffin Road, San Diego (CA), USA ISO 9001:2015 Certificate (Exp: 22-Sep-2020)
- T3 Solar Turbines Inc. Turbofab, DeZavala Road, Channelview (TX), USA ISO9001:2015 Certificate (Expiry date 23-July-2021)
- T3 Solar Turbines Inc., Construction Services, Houston (TX), USA ISO9001:2015 Certificate (Exp Date: 07-Jul-2021)
- T3 Solar Turbines Inc., Desoto Overhaul Operations, Desoto (TX), USA ISO9001:2015 Certificate (Expiry date 24-Aug-2021)
- T3 Solar Turbines Inc., Turbomachinery Prod, W Seattle Street, Broken Arrow OK, USA ISO9001:2015 Certificate (Exp 03-May-2021)
- T3 Solar Turbines Inc., Turbomachinery Prod Gas Compressors, Ruffin Road, San Diego (CA), USA ISO9001:2015 Cert. (Exp 03-May-2021) T3 Solar Turbines Inc., Turbomachinery Prod Gas Compressors, Sky Park Ct, San Diego (CA), USA ISO9001:2015 Cert (Exp 03-May-2021)
- T3 Solar Turbines Inc., Turbomachinery Prod Gear Systems / Superior Gear, Gardena (CA), USA ISO9001:2015 Cert (Exp 03-May-2021)
- T3 Solar Turbines Inc., Turbomachinery Prod Turbotec Bldg 1, Chilpancingo, Tijuana, B.C. Mexico ISO9001:2015 Cert (Exp 03-May-2021)

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- T3 Solar Turbines Inc., Turbomachinery Prod Turbotec Bldg 2, Ciudad Ind Otay, Tijuana, B.C. Mexico ISO9001:2015 Cert (Exp 03-May-2021)
- T3 Solar Turbines Incorporated, Mabank (TX), USA ISO9001:2015 Certificate (Expiry date 04-Aug-2021)
- T3 Solar Turbines Switzerland Sagl, 6595 Riazzino, Switzerland ISO9001:2015 Certificate (Expiry date 08-May-2018)
- UD Denison, TX Caterpillar Global Mining LLC-ISO 9001:2008 (Exp Date: 03-Aug-2020)
- UH Caterpillar Acuna Construction and Mining Equipment, Ciudad Acuna, Coahuila, Mexico ISO9001:2015 Certificate. (Exp: 26-Oct-2021)
- UH Caterpillar Inc. Acuna, Coahuila, MEXICO ISO9001:2015 Certificate (Expiry date 26-Oct-2018)
- UJ Caterpillar North Little Rock, North Little Rock (AR), USA CQMS:2015 / ISO 9001:2015 Certificate (Exp Date: 05-Jun-2019)
- XO Anchor Coupling (Goldsboro), Goldsboro (NC), USA ISO 9001:2015 (Exp date: 20-Dec-2018)
- XY Caterpillar Reynosa S.A. de C.V., Reynosa, Tamaulipas, Mexico ISO9001:2015 Certificate (Exp date: 03-Oct-2020)
- YP Caterpillar Inc. (Remanufacturing Site-Specific Certificate), Franklin (IN), USA ISO9001:2015 Certificate (Expiry date 19-Jun-2020)
- YV Caterpillar Surface Mining and Technology, South Milwaukee (WI), USA ISO9001:2015 (Expiry date 04-Jun-2021)
- ZZ Caterpillar Inc. Advanced Components Manufacturing (Hydraulic Cylinders), Sumter (SC), USA ISO9001:2015 Cert (Exp: 28-Mar-2020)
- 20) Describe any environmental management system certifications obtained by your organization.

We described our "green initiatives" more completely in Form A, Question 29. To be specific regarding ISO standards, we are listing here the plants that are certified to ISO 14001:2004 Environmental Management System:

Plants certified with ISO 14001:2004 Environmental Management System

Anchor Coupling - Goldsboro, NC - ISO 14001:2004 - Sept 2018

Anchor Coupling - Menominee - ISO 14001:2015 - Jan. 2021

Gen Sets - Newberry - ISO 14001:2004 - Nov. 2017

Mapleton - 14001:2004 self-certification - issued January 2013

Reman Services - Corinth, MS - ISO 14001:2015 - Sept. 2021

Reman Services - Franklin - ISO 14001:2004 - May 2017

21) Describe any preventive maintenance programs that your organization offers for the solutions you are proposing in your response.

Caterpillar understands the value to the customer of a well-defined preventive maintenance plan. Each machine we sell has very clear and detailed instructions for routine maintenance. We find that some customers prefer to do the maintenance themselves, others want our dealers to track and perform the service.

For customers who retain maintenance responsibilities, we have several tools available to facilitate that. As an example, My.Cat.Com makes it easy for customers to access critical information about their fleet.

STARTER CONNECTIVITY: If the customer purchases a machine with a factory-installed Product Link device, the customer will receive Cat Daily connectivity at no cost (for seven years on Building Construction Products machines; 12 years on Global Construction & Infrastructure machines). Cat Daily provides basic information once per day via My.Cat.Com or via a mobile app as described below.

My.Cat.Com users have access to:

- Equipment location
- Diagnostic and operational events
- Fuel burn
- Dealer work orders
- Parts lists and Preventive Maintenance Checklists
- Parts ordering
- Safety service letters
- Rental documentation
- Warranty information

- Operation and maintenance manuals
- Preventive maintenance alerts and scheduling
- Cat Inspect outcomes
- S-O-S fluid analysis results

A subset of this information is also available in the Cat App: Fleet Management (IOS and Android).

In some situations, information available through My.Cat.Com provides an agency with sufficient data. But sometimes the equipment manager/public works director wants a more comprehensive view of their assets and/or the ability to manage an entire fleet. To meet that need, Caterpillar offers VisionLink—a powerful, flexible platform with enhanced capabilities, like customizable reports and notifications, that makes it easier to optimize productivity, manage assets and reduce costs.

ADVANCED CONNECTIVITY TRIAL: For any construction machine with a Product Link device, the customer will receive a six-month complimentary VisionLink Essentials trial. After the trial period ends, customers may elect to continue access at several different levels:

- VisionLink Daily offers convenient, affordable, once-a-day telematics information. Ideal for customers who only need once-per-day reporting
- VisionLink Basic provides basic asset management features including hour and location monitoring as well as geographic fencing and maintenance management. Recommended for machines that only report hours, where data updates and related features are needed more frequently than once per day.
- VisonLink Essentials includes all the features of Basic plus health, utilization, and productivity features with frequent data updates. Ideal for customers needing up-to-date information about site operations, productivity, asset location, and operator performance, as well as timely notification of issues as they occur.

Another free app we offer is designed to help customers focus on safety and preventive maintenance. The "Cat Inspect" app offers multiple features geared to make regular machine inspections simple and useful.

- Daily Walkaround inspections are designed primarily for operators who are guided where to look on their particular machine and allows them to document and report any abnormalities.
- Preventive Maintenance inspections are more in-depth and are designed for customer or dealer technicians to inspect components for signs of wear and to ensure that all recommended preventive maintenance procedures are completed and recorded.
- Technical Analysis inspections are the most in-depth and are normally used once per year or when a machine is at the end of a customer's ownership period.

This app includes the ability to take pictures, make notes and complete and share inspections electronically. Inspection reports are also integrated into both My.Cat.Com and VisionLink, providing visibility to overall fleet health.

For customers who intend to rely on dealers for maintenance, they can schedule the work themselves as needed, or we propose a variety of CSAs (Customer Support Agreements). These are completely customizable, but we offer starting points for several levels with corresponding price points which vary by product.

 Customer performed preventative maintenance – the Cat dealer will provide the necessary parts per the maintenance schedule; the customer will do the work.

- Dealer performed preventative maintenance the Cat dealer will handle basic preventative maintenance for any machine or group of machines to help keep scheduled downtime to a minimum.
- Component maintenance and repair agreement the Cat dealer will take care of maintaining and servicing systems such as engines, transmissions, etc. to extend service resources and equipment life.
- Total maintenance and repair agreement the Cat dealer covers service and maintenance for any one piece of equipment or the entire fleet. This agreement can include guaranteed availability and uptime.

Signature:	Pater	1_ Kedystts	Date: 3/13/19
	1		

AMENDMENT #1 TO **CONTRACT #032119-CAT**

THIS AMENDMENT is by and between **Sourcewell** and **Caterpillar Inc.** (Vendor).

Sourcewell awarded a contract to Vendor for Heavy Construction Equipment with Related Accessories, Attachments, and Supplies effective May 13, 2019, through May 13, 2023 (Contract). Vendor implemented changes to its dealer reporting system and now wishes to modify the Contract to accurately report Administrative Fee payment calculations.

The parties wish to amend the following terms within the Contract:

- 1. This Amendment is effective upon the date of the last signature below.
- 2. Any Contract term related to calculation of Administrative Fee that is paid to Sourcewell is deleted and replaced with the following:

"Vendor will pay to Sourcewell an Administration Fee calculated at 0.33% of Caterpillar's MSRP for each piece of equipment purchased by Sourcewell's Participating Entities. Caterpillar will pay the Administration Fee to Sourcewell on a quarterly basis."

Except as amended above, the Contract remains in full force and effect.

Sourcewell	Caterpillar Inc.
By: Jeremy Sawarty Jeremy Schwarty Jeremy Schwarty Jeremy Schwarty	By: Dawn Zink Dawn De50153CBFB0477
Date:	Caterpillar Governmental Marketing Manager
Approved:	Date: 7/12/2021 3:32 PM CDT
By: Chad Coautte Chad Coautte Director/CEO	
7/12/2021 8:38 PM CDT	

ADDITIONAL TERMS AND CONDITIONS UNDER COOPERATIVE SOURCEWELL CONTRACT 032119-CAT

AGREEMENT: This set of Additional Terms and Conditions is incorporated into Sourcewell's New & Used Construction & Paving Equipment, Parts & Service Contract number 032119-CAT in its entirety and, upon execution by New Braunfels Utilities, a Texas municipally owned utility ("NBU"), and Holt Texas, LTD., a Texas corporation ("Vendor"), constitutes the Parties' Agreement ("Agreement"). All other terms and conditions of the Sourcewell Contract number 032119-CAT, and all documents incorporated therein, not modified or amended by this set of Additional Terms and Conditions shall remain in full force and effect. No change, modification or revision to the Agreement shall be binding unless made in writing and signed by the Parties.

COMPLETION: Time is of the essence in the performance of this Agreement. If Vendor fails to effect delivery or performance of the associated goods or services required by NBU in accordance with the requirements of this Agreement, in addition to its other rights and remedies hereunder, NBU shall have the right to terminate this Agreement by notice effective when received by Vendor or after the expiration of five (5) days from the date of mailing of such notice, whichever occurs first. Such termination shall be effective as to goods not yet received by NBU or services not yet rendered, regardless of their transit status.

PRICES: Vendor warrants that the prices quoted to NBU in the following four (4) Quotes: 1) Holt Quote number 320736-1, titled Quote NBU 242 and Broom, dated June 7, 2023; 2) Holt Quote number 306613-01, titled Quote NBU 313, dated June 7, 2023; 3) Holt Quote number 320723-01, titled Quote NBU 420 and Hammer, dated June 7, 2023; and 4) Holt Quote number 320729-01, titled Quote NBU 420 Extend, dated June 7, 2023, at the time of sale includes all costs incurred by Vendor for shipment of all goods under this Agreement. In the event of any price reduction between execution of the Agreement and delivery of the goods, NBU shall be entitled to such reduction, which shall be reflected as a deduction on the next invoice or refunded to NBU within 30 days, whichever is sooner.

SHIPMENT AND DELIVERY: All goods made the subject hereof are to be suitably prepared and packaged for shipment in accordance with good commercial practice so as to effect safe delivery and freedom from weather or other damage and to meet the carrier's requirements. All damages to such goods occurring prior to delivery will be charged to Vendor. No charges will be allowed for packing, crating or carriage unless expressly stated in the Agreement. If, in order to comply with NBU's required delivery date, it becomes necessary for Vendor to ship by a more expensive way than specified in the Agreement any such increased transportation costs shall be solely borne and paid by Vendor, and Vendor shall not pass these increased transportation costs onto NBU. All deliveries shall be f.o.b. point designated in these Additional Terms and Conditions or as specified in writing by NBU. Cost of all return shipments, for whatever reason returned, shall be borne by Vendor with title and risk of loss passing at NBU's point of shipment, unless otherwise specified by NBU at the time of return.

INSPECTION: NBU shall have a reasonable time after delivery or performance to inspect the goods delivered or the services performed. All such items or services must conform to the

specifications, instructions, drawings and data set forth in the Agreement and the following four (4) Quotes: 1) Holt Quote number 320736-1, titled Quote NBU 242 and Broom, dated June 7, 2023; 2) Holt Quote number 306613-01, titled Quote NBU 313, dated June 7, 2023; 3) Holt Quote number 320723-01, titled Quote NBU 420 and Hammer, dated June 7, 2023; and 4) Holt Quote number 320729-01, titled Quote NBU 420 Extend, dated June 7, 2023. NBU may reject and refuse acceptance of any goods or services which do not so conform. NBU shall notify Vendor of such rejection by either written notice and by the return to Vendor of the rejected goods. Vendor shall be solely responsible for any risk and cost or expenses associated with return of rejected or nonconforming good.

REJECTION OF GOODS AND WORKMANSHIP: NBU shall have the right to reject furnished goods and workmanship that are defective or otherwise fail to meet the terms and conditions of the Agreement or require their correction. Rejected goods shall be satisfactorily replaced with proper goods without charge to NBU, and Vendor shall promptly segregate and remove rejected goods from the point designated. If Vendor does not correct defective workmanship or replace the rejected goods within a reasonable time, NBU may do so and charge all costs, damages, fees, and expenses to Vendor including, without limitation actual, consequential and incidental damages.

SHOP DRAWINGS, SUBMITTALS, QUALITY OF GOODS: Vendor shall confirm that all goods are in strict accordance with the Agreement and the following four (4) Quotes: 1) Holt Quote number 320736-1, titled Quote NBU 242 and Broom, dated June 7, 2023; 2) Holt Quote number 306613-01, titled Quote NBU 313, dated June 7, 2023; 3) Holt Quote number 320723-01, titled Quote NBU 420 and Hammer, dated June 7, 2023; and 4) Holt Quote number 320729-01, titled Quote NBU 420 Extend, dated June 7, 2023. Where required, prior to shipment, Vendor shall provide shop drawings or submittals sufficient to demonstrate compliance with the Agreement for NBU's review and approval. A failure of NBU to discover or reject goods not in accordance with the Agreement shall not be deemed an acceptance thereof or a waiver of defects therein. No payment or use of goods provided by Vendor shall be construed as an acceptance of goods which are not strictly in accordance with the Agreement.

WARRANTIES/GUARANTEES: Vendor expressly warrants that the goods and services covered hereunder shall be free of defects and all services shall be performed in a good and workmanlike manner consistent with industry standards ("Services Warranty"). A minimum of a ninety (90)-day product or service guaranty of the manufacturer's standard commercial warranty, whichever is greater, will apply to all goods and services provided under this Agreement. All warranties shall run to NBU, its customers and subsequent owners of goods or services covered hereunder.

Vendor warrants that all equipment, products, and services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Vendor warrants the equipment, products, and services are suitable for and will perform in accordance with the ordinary use for which they are intended. Vendor's dealers and distributors agree to assist NBU in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the Vendor's warranty will be passed on to NBU.

INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS NBU AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEY'S FEES, OR OTHER CONSULTANTS' FEES, OF ANY KIND RESULTING FROM VENDOR'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT, FAILURE OF GOODS, OR ACTS RESULTING IN BODILY INJURY OR PROPERTY DAMAGE, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF VENDOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.

NO DAMAGES FOR DELAY: Vendor shall have no right to claim any damages against NBU, including consequential or incidental damages, as a result of delay. Extension of time for Vendor's performance is conditioned upon NBU's approval of an extension of time to the contract or delays claimed by Vendor. Failure of Vendor to make a claim promptly shall be deemed a waiver of the right to a claim for an extension of time for the particular cause.

TERMINATION: NBU may terminate this Agreement without cause by providing 30 days' written notice to Vendor. NBU may terminate this Agreement or any part thereof for cause in the event of any default by Vendor, or if Vendor fails to comply with any of the terms and conditions of this Agreement. The Uniform Commercial Code of the State of Texas ("UCC") shall apply to NBU's rights and remedies under commercial transactions. NBU reserves all rights, remedies, and warranties, express and implied, under the UCC. Vendor may not terminate this Agreement unless NBU fails to provide payment for goods and/or associated services expressly accepted by NBU.

TAXES: NBU is exempted from all city, state, and federal excise taxes. DO NOT include tax on your invoice. NBU's Federal ID Number is 74-6001783.

INSURANCE: Per the Sourcewell Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the Sourcewell Contract. Promptly, upon execution of this Agreement and upon future request from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

PAYMENT: Invoices will be paid within 30 days after receipt of the items or completion of required services. Payment for the goods delivered under this Agreement shall not be acceptance of such goods. Goods shall only be deemed accepted when they have actually been counted, inspected, and tested by NBU and found to be in conformance with this Agreement. However, failure to inspect or test by NBU shall not relieve Vendor of any responsibility hereunder.

REMEDIES: The rights and remedies reserved to NBU herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other or further rights and remedies provided by law or equity. No waiver of any breach of these provisions shall be deemed to constitute a waiver of any other breach.

DISPUTE RESOLUTION: The Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws principles. In the event that a dispute arises between NBU and Vendor, the parties agree to submit said disputes to a court of competent jurisdiction in Comal County, Texas for resolution.

TEXAS PUBLIC INFORMATION ACT: Vendor recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations under this Agreement, Vendor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights.

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

Vendor must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of Vendor on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of Vendor; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Vendor agrees that the Agreement can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

ELECTRONIC SIGNATURES: Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures.

REPRESENTATIONS:

<u>Prohibition on Contracts with Companies Boycotting Israel</u>. Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene

applicable federal and State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited. Vendor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes Vendor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

<u>Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia</u>. To the extent this Agreement relates to critical infrastructure in the State of Texas, Vendor represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in Vendor is not held or controlled by:
 - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code, as amended ("designated country"); or
 - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2274 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable

federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

Prohibition on Contracts with Companies Boycotting Energy Companies. Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott energy companies" has the meaning used in Section 809.001 of the Texas Government Code, as amended. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

Executed and effective this day of	, 2023.
NBU:	VENDOR:
NEW BRAUNFELS UTILITIES,	HOLT TEXAS, LTD.,
a Texas municipally owned utility	a Texas corporation
	DocuSigned by:
By:	By: Bob Jordan
Name: Ryan Kelso	Name:- c162820776 Qf Jan
Title: Interim CEO	Title: SALES REP.



DATE: Jun 07, 2023 QUOTE #:320736-01

SOURCEWELL ID# 58904

NEW BRAUNFELS UTILITIES

Jordan, Robert 210.414.9252

PAUL MATA

PO BOX 310289 NEW BRAUNFELS, TEXAS 78131-0289

One (1) New Caterpillar Inc Model: 242D3-CL Compact Construction Equipment with all standard equipment in addition to the additional specifications listed below:

CATERPILLAR SOURCE WELL #032119-CAT

SALE PRICE TOTAL PRICE	\$57,985.00 \$57,985.00
SUB TOTAL TOTAL PURCHASE PRICE	\$57,985.00 \$57,985.00

WARRANTY

Standard Warranty: 24 Month/2000 Hour Total Machine Limited Warranty

CAT LIST PRICE 242 \$76,424.00 SOURCE WELL DISCOUNT (24.1%) -\$18,439.00 SALE PRICE \$57,985.00

BROOM, PICKUP, BP115C \$7,925.00

1990mm (78") overall width, 1524mm (60") working width

26" (660mm) brush diameter

Adjustable brush height. Volumizer increases material retention.

Brush material - 50% polypropylene / 50% steel wire INCLUDES: Hydraulic lines with 1/2" quick disconnects

BROOM, UTILITY, BU118, BOCE \$5,535.00

2115mm (83") overall width, 1865mm (73") sweeping width 660mm (26") brush diameter - brush material 100% polypropylene INCLUDES: bolt on cutting edge

DATE: Jun 07, 2023QUOTE #:Quote 320736-01

MACHINE SPECIFICATIONS

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DESCRIPTION	REF.#
QP1/D3/OROPS/STDFLW/MAN-QC/H2	512-4242
LANE 3 ORDER	0P-9003
CANOPY PACKAGE, PRO PLUS	588-9076
RIDE CONTROL, NONE	568-4637
REAR LIGHTS	356-6082
SEAT BELT, 2"	542-6994
INSTRUCTIONS, ANSI, USA	512-3759
SERIALIZED TECHNICAL MEDIA KIT	421-8926
CERTIFICATION ARR, P65	563-1163
PRODUCT LINK, CELLULAR PL243	566-7115
BATTERY,HD,DISCONNECT, 850 CCA	560-7824
SHIPPING/STORAGE PROTECTION	0P-2266
PACKING, ROLL ON - ROLL OFF	0P-0226
AXLES, STANDARD	528-0197
74IN EDGE BUCKET	
SOLID CUSHIONED TIRES	

STANDARD EQUIPMENT

POWERTRAIN

Cat C3.3B diesel engine

-Gross horsepower per SAE J1349

74.3 hp (55.4 kW) @ 2400 RPM

-Electric fuel priming pump

-Glow plugs starting aid

-Liquid cooled, direct injection Air cleaner, dual element, radial seal

S-O-S sampling valve, hydraulic oil

Filter, cartridge type, hydraulic

HYDRAULICS

ISO or H pattern controls:

Electro/hydraulic implement control

ELECTRICAL

12 volt electrical system

80 ampere alternator

Ignition key start / stop / aux switch

Lights:

-LED work lights (2 front, 2 rear)

OPERATOR ENVIRONMENT

Operator warning system indicators:

-Air filter restriction-Alternator output

-Armrest raised / operator out of seat

-Engine coolant temperature

-Engine oil pressure

-Glow plug activation

-Hydraulic filter restriction

-Hydraulic oil temperature

-Park brake engages

-Engine emission system

Gauges: fuel level and hour meter

Storage compartment with netting

Ergonomic contoured armrest

Adjustable joystick controls

FRAMES

Lift linkage, vertical path Chassis, one piece welded

Machine tie down points (6)

OTHER STANDARD EQUIPMENT

Filters, canister type, fuel and water separator Radiator / hydraulic oil

cooler (side-by-side)

Spring applied, hydraulically released,

parking brakes

Hydrostatic transmission

Four wheel chain drive

Electro/hydraulic hydrostatic

transmission control

-Gauge backlighting

-Two rear tail lights

-Dome light Backup alarm

Electrical outlet, beacon

Control interlock system, when operator

Leaves seat or armrest raised:

-Hydraulic system disables

-Hydrostatic transmission disables

-Parking brake engages

ROPS cab, open, tilt up

Anti-theft security system w/6-button

keypad

FOPS, Level I

Top and rear windows

Floormat

Interior rear view mirror

USB Charging port

Horn

Hand (dial) throttle, electronic

Belly pan cleanout Support, lift arm Rear bumper, welded

Engine enclosure - lockable Extended life antifreeze (-37C, -34F) Coupler, mechanical Hydraulic oil level sight gauge Radiator coolant level sight gauge Radiator expansion bottle Cat ToughGuard TM hose Heavy duty flat faced quick disconnects with integrated pressure release Split D-ring to route work tool hoses along side of left lift arm Hydraulic demand cooling fan Per SAE J818-2007 and EN 474-3:2006 and ISO 14397-1:2007



DATE: Jun 07, 2023 QUOTE #:306613-01

SOURCEWELL ID# 58904

NEW BRAUNFELS UTILITIESPAUL MATA

Jordan, Robert 210.414.9252

PO BOX 310289 NEW BRAUNFELS, TEXAS 78131-0289

One (1) New Caterpillar Inc Model: 313 TC Excavators with all standard equipment in addition to the additional specifications listed below:

CATERPILLAR SOURCE WELL #032119-CAT

STOCK NUMBER: HLK047984 SERIAL NUMBER: 0JHR30019 YEAR: 2023 HOURS: 6

SALE PRICE TOTAL PRICE	\$214,865.00 \$214,865.00
SUB TOTAL TOTAL PURCHASE PRICE	\$214,865.00 \$214,865.00

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine

CAT LIST PRICE 313	\$273,626.00
SOURCE WELL DISCOUNT (21.5%)	-\$58,761.00
TOTAL	\$214,865.00

MACHINE SPECIFICATIONS

STOCK NUMBER: HLK047984 **SERIAL NUMBER: 0JHR30019** YEAR: 2023 HOURS: 6 **DESCRIPTION** REF.# 313 07D HEX AM-N CFG1C 625-1773 **COMMON ARR** 557-9583 313 07 HEX 557-9569 COUNTERWEIGHT, 5,440 LB 578-8194 SWING FRAME, STD 562-5100 ENGINE HOOD, TAIL PIPE 624-7755 CAB, DELUXE 609-5071 LINES, AIR CONDITIONER 559-1086 MONITOR, 10" 511-9428 INTEGRATED RADIO, W/O DAB 502-7166 PEDAL, STRAIGHT TRAVEL 490-7715 RECEIVER, BLUETOOTH 524-8272 TRAVEL ALARM 557-9716 MACHINE ECM 525-7678 LIGHTS, CHASSIS 581-7319 GUARD, TRACK GUIDING, CENTER 437-9274 BOTTOM GUARD, STANDARD 556-6496 GUARD, TRAVEL MOTOR, HD 350-6401 GUARD, SWIVEL 137-2813 FINE SWING 558-2731 FAN, VARIABLE SPEED 559-9633 STORAGE BOX, TWO 560-5444 FILM, EMC 528-4738 FILM, OPERATING PATTERN, 2WAY 520-9418 0P-9003 LANE 3 ORDER BOOM 15'3" W/ EOU MOUNTS 558-2798 STICK, R9'10" W/ EOU MOUNT 558-2811 LINKAGE, BKT 312 GRADE W/O EYE 525-4932 CYLINDER, BOOM 563-1462 CYLINDER, STICK, W/O SLCV 524-2707 CYLINDER, BUCKET 524-2708 CYLINDER LINES, W/O BLCV 558-1423 UNDERCARRIAGE, LONG W/O BLADE 558-2786 TRACK, 28" TG, W/STEPS 559-0324 HYDRAULIC PKG, COMB, ONE SLIDER 589-6862 VALVE, HYDRAULICS, TCS 580-8618 CIRCUIT, COMBINED 559-1892 JOYSTICKS, VERTICAL SLIDER 528-6835 CAMERA, REAR & RH VIEW 594-5359 LIGHTS, BOOM RH 1P 582-6119 LIGHTS, CAB, W/O 360 577-3853 WASHER RADIAL WIPER 525-5166

DESCRIPTION	REF.#
CAT GRADE, 2D	624-7759
PROD LINK, PLE643/PLE743 RADIO	589-6846
RADIO MODULE, PL243 CELLULAR	589-1744
WIRING, PL243/PL083	580-9212
FILM, EXTERIOR, ANSI	558-2792
FILM, INTERIOR, ANSI	573-4351
FILM, ROPS	576-9654
FILM, STICK WARNING, ANSI	567-3815
INSTRUCTIONS, ENGLISH	0P-3380
LINES, HIGH PRESSURE BOOM	558-1443
LINES, HP, 9'10" STICK	558-1457
CONTROL, QC PIN GRABBER	559-1895
LINES, QUICK COUPLER BOOM	558-1447
LINES, QC, 9'10" STICK	558-1461
COUPLER, PIN GRABBER W/PINS	558-2818
HARNESS, CAT GRADE, 1PC BOOM	621-3562
HARNESS, GRADE, 9'10" STICK	621-3584
LIGHTS, BOOM LH 1P	582-6112
DRINK HOLDER	488-6534
BATTERIES, 2	506-5013
NETWORK MANAGER, STD	555-7286
STORAGE PROTECTION (EXPORT)	0G-4126
ROLL ON-ROLL OFF	0G-4201
SUPPORT, LINES AUXILIARY	565-1990
STORAGE PROTECTION (EXPORT)	0P-7563
LINES GP OIL W/ TCS	627-8017
BUCKET - JHR30019B 36IN	571-2943
TIP, PENETRATION PLUS ADVANSYS - JHR30019B	539-5673

STANDARD EQUIPMENT

POWERTRAIN

Diesel engine C3.6 (82wk) certified to EPA Tier 4 final, EU Stage V, Japan MLIT Step 5 Electric fuel priming pump Variable speed fan system (Viscous Clutch) Single fuel filtration system with water separator and indicator Sealed double element air filter with integrated precleaner Biodiesel capable (up to B20)

UNDERCARRIAGE

Grease lubricated track link
Tie down points on base frame

(ISO 15818 compliant)

HYDRAULICS

Electronic main control valve
Auto warm up
Single type Electronic main pump
Boom and stick regeneration circuits

Automatic two speed travel Boom and stick drift reduction valve Element type main hydraulic filter

ELECTRICAL

Maintenance free battery Centralized electrical disconnect switch CAT Product Link (Except the countries/ regions where the PL is not certified) After engine shut down programmable time delay
LED working lights
-One chassis mounted
-one LH boom mounted

OPERATOR ENVIRONMENT

Sound suppressed ROPS cab (ISO 12117-2 compliant) with viscous mount Increased rear window size as emergency exit
Openable tempered front upper windshield w/assist device and removable tempered lower windshield with in cab storage bracket
2 inch (51mm) orange seat belt

Upper radial wiper for 70/30
Automatic bi-level air conditioner
with pressurized function
Washable floor mat
Beacon ready
2 x 12V DC outlet and USB port
Dome and lower LED interior lights,
coat hook, cup holder, console storage

SAFETY AND SECURITY

Service platform with anti-skid plate and countersunk bolts Hydraulic lock out lever neutralizes all controls Ground level accessible secondary engine shutoff switch in cab Signaling / warning horn

OTHER STANDARD EQUIPMENT

Side entry to service platform Grouped location for engine oil and fuel filters Ground level 2nd dipstick for engine oil Sampling ports for Scheduled Oil Sampling (S.O.S)



DATE: Jun 07, 2023 QUOTE #:320723-01

SOURCEWELL ID# 58904

NEW BRAUNFELS UTILITIESPAUL MATA

Jordan, Robert 210.414.9252

PO BOX 310289 NEW BRAUNFELS, TEXAS 78131-0289

THREE (3) New Caterpillar Inc Model: 420 Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

CATERPILLAR SOURCE WELL #032119-CAT

SALE PRICE PER MACHINE X 3 MACHINES TOTAL PRICE	\$158,995.00 \$476,985.00
TOTAL PURCHASE PRICE	\$476,985.00

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine

PER MACHINE BREAKDOWN

420 CAT LIST PRICE \$186,535.00

SOURCE WELL DISCOUNT (27.6%) -\$51,512.00

420 SALE PRICE \$135,023.00

EPIROC HAMMER \$23,972.00

TOTAL \$158,995.00

MACHINE SPECIFICATIONS

DESCRIPTION	REF.#
LN3/ST/QP26/C4SX/QC	542-7992
LANE 3 ORDER	0P-9003
STICK, STANDARD, 14FT	543-4283
PT, 4WD/2WS, POWERSHIFT	544-1066
ENGINE, 82KW, C3.6 DITA, T4F	542-7780
HYDRAULICS, GP, 6FCN/8BNK, ST	542-7772
CAB, DELUXE	544-0883
DISPLAY, STANDARD	545-5047
WORKLIGHTS (8) HALOGEN LAMPS	491-6734
SEAT, DELUXE FABRIC	611-0339
BELT, SEAT, 2" SUSPENSION	206-1747
AIR CONDITIONER, T4F	542-7810
PRODUCT LINK, CELLULAR, PLE643	560-6797
TIRES, 12.5 80/19.5L-24, GY	379-2161
COUNTERWEIGHT, 1015 LBS	337-9696
STABILIZER PADS, FLIP-OVER	9R-6007
BUCKET-GP, 1.5 YD3, PO	337-7401
CUTTING EDGE, TWO PIECE, WIDE	9R-5320
BUCKET-HD, 24", 7.3 FT3, PL	247-1950
COUPLER, PIN LOCK, BL F	544-1901
INSTRUCTIONS, ANSI	559-0872
SERIALIZED TECHNICAL MEDIA KIT	421-8926
LINES, COMBINED AUX, STD STICK	548-1230
STANDARD RADIO (12V)	540-2298
FAN	387-6682
DISPLAY, SECURITY, ENABLED	573-0397
BATTERY, HEAVY DUTY	516-5913
AUTO-UP STABILIZERS	567-5090
PLATE GROUP - BOOM WEAR	423-7607
GUARD, STABILIZER	353-1389
PACK, DOMESTIC TRUCK	0P-0210
RUST PREVENTATIVE APPLICATOR	462-1033
LOADER BUCKET PINS	545-8548
SHIPPING/STORAGE PROTECTION	461-6839
RIDE CONTROL	551-6453
EPIROC SB552 HAMMER	

STANDARD EQUIPMENT

BOOMS, STICKS, AND LINKAGES

BACKHOE

- 14'4" Center pivot backhoe
- 4.3 Meters
- Boom and swing transport locks
- Pilot operated backhoe and electro hydraulic stabilizer controls
- Street type stabilizer shoes
- Anti-drift hydraulics (boom, stick, and E-stick)
- Cat Cushion Swing(tm) system

POWERTRAIN

- Water separator
- Thermal starting aid system
- Dry type axial seal air cleaner with integral precleaner
- Automatic dust ejection system
- Filter condition indicator
- Hydraulically boosted multi-plate wet disk brake with dual pedals & interlock
- Differential lock

HYDRAULICS

- Pilot hoe and mechanical loader controls
- Load sensing, variable flow system with 43 gpm (162 L/min) axial piston pump
- 6 micron hydraulic filter

ELECTRICAL

- 12 volt electrical start
- Horn, front and rear
- Backup alarm
- Hazard flashers/turn signals
- Halogen head lights (2)
- Halogen rear flood lights (2)
- Stop and tail lights

OPERATOR ENVIRONMENT

- Interior rearview mirror
- ROPS canopy, Rear Fenders
- 2-inch (50mm) retractable seat belt
- Tilt steering column

LOADER

- Single Tilt Loader
- Lift cylinder brace
- Self-leveling loader with single lever control
- Return-to-dig

(automatic bucket positioner)

- Transmission neutralizer switch
- Bucket level indicator
- Torque converter
- Transmission-four speed manual shift
- Neutral safety switch
- Spin-on filters for

Fuel

Engine oil

Transmission oil

- Outboard Planetary Rear Axles
- Diesel particulate filter
- Hydrostatic power steering
- Caterpillar XT-3 hose
- Hydraulic oil cooler
- Pilot control shutoff switch
- Flow-sharing hydraulic valves
- Hydraulic suction strainer
- Audible system fault alarm
- Key start/stop system
- 850 CCA maintenance free battery
- Battery disconnect switch
- External Power Receptacle (12v)
- Diagnostic ports for engine and machine Electronic Control Modules
- Automatic Engine Speed Control
- One Touch Low Idle
- Floor mat and Coat Strap
- Lockable storage area

Page 3

- Steering knob
- Hand and foot throttle

- Air suspension seat

FLUIDS

- Antifreeze - Extended Life Coolant

-20F (-30C)

OTHER STANDARD EQUIPMENT

- Standard Storage Box
- Transport tie-down points
- Ground line fill fuel tank with 42.3 gal (160L) capacity & 5 gal (19L)

diesel exhaust fluid

- Rubber impact strips on radiator

guard

- CD-ROM Parts Manual
- Safety Manual
- Operations and Maintenance Manual
- Lockable hood
- Tire Valve Stem Protection





DATE: Jun 07, 2023 QUOTE #:320729-01

SOURCEWELL ID# 58904

NEW BRAUNFELS UTILITIESPAUL MATA

Jordan, Robert 210.414.9252

\$189,925.00

PO BOX 310289 NEW BRAUNFELS, TEXAS 78131-0289

TWO (2) New Caterpillar Inc Model: 420 C4E Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

CATERPILLAR SOURCE WELL #032119-CAT

SALE PRICE PER MACHINE X 2 MACHINES	\$137,855.00
TOTAL PRICE	\$275,710.00
TOTAL PURCHASE PRICE	\$275,710.00

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine

PER MACHINE BREAKDOWN CAT LIST PRICE

SOURCE WELL DISCOUNT (27.4%) -\$52,070.00 SALE PRICE \$137,855.00

MACHINE SPECIFICATIONS

STOCK NUMBER: HCT014380

DESCRIPTION	REF.#
420 07A BACKHOE LOADER CFG2	542-7992
COUNTERWEIGHT, 1015 LBS	337-9696
WORKLIGHTS (8) HALOGEN LAMPS	491-6734
ENGINE, 74.5KW, C3.6 DITA, T4F	541-9540
HYDRAULICS, MP, 6FCN/8BNK, ST	542-7774
AIR CONDITIONER, T4F	542-7810
STICK, EXTENDABLE, 14FT	543-4284
CAB, DELUXE	544-0883
PT, 4WD/2WS, POWERSHIFT	544-1066
DISPLAY, STANDARD	545-5047
LOADER BUCKET PINS	545-8548
RIDE CONTROL	551-6453
COLD WEATHER PACKAGE, 120V	551-6940
PRODUCT LINK, CELLULAR, PLE643	560-6797
AUTO-UP STABILIZERS	567-5090
AUX READY, E-STICK	582-7395
SEAT, DELUXE FABRIC	611-0339
BUCKET-MP, 1.3 YD3, PO	337-7436
TIRES, 340 80-18/500 70-24, MX	533-0488
BUCKET-HD, 24", 7.3 FT3, PL	247-1950
COUPLER, PIN LOCK, BL F	544-1901
STABILIZER PADS, FLIP-OVER	9R-6007
CUTTING EDGE, TWO PIECE	9R-5321
SHIPPING/STORAGE PROTECTION	461-6839
RUST PREVENTATIVE APPLICATOR	462-1033
PACK, DOMESTIC TRUCK	0P-0210
SERIALIZED TECHNICAL MEDIA KIT	421-8926
INSTRUCTIONS, ANSI	559-0872
BELT, SEAT, 2" SUSPENSION	206-1747
LANE 3 ORDER	0P-9003
420 LANE 3 ZCON	626-9390

STANDARD EQUIPMENT

BOOMS, STICKS, AND LINKAGES

BACKHOE

- 14'4" Center pivot backhoe
- 4.3 Meters
- Boom and swing transport locks
- Pilot operated backhoe and electro hydraulic stabilizer controls
- Street type stabilizer shoes
- Anti-drift hydraulics (boom, stick, and E-stick)
- Cat Cushion Swing(tm) system

POWERTRAIN

- Water separator
- Thermal starting aid system
- Dry type axial seal air cleaner with integral precleaner
- Automatic dust ejection system
- Filter condition indicator
- Hydraulically boosted multi-plate wet disk brake with dual pedals & interlock
- Differential lock

HYDRAULICS

- Pilot hoe and mechanical loader controls
- Load sensing, variable flow system with 43 gpm (162 L/min) axial piston pump
- 6 micron hydraulic filter

ELECTRICAL

- 12 volt electrical start
- Horn, front and rear
- Backup alarm
- Hazard flashers/turn signals
- Halogen head lights (2)
- Halogen rear flood lights (2)
- Stop and tail lights

OPERATOR ENVIRONMENT

- Interior rearview mirror
- ROPS canopy, Rear Fenders
- 2-inch (50mm) retractable seat belt
- Tilt steering column

LOADER

- Single Tilt Loader
- Lift cylinder brace
- Self-leveling loader with single lever control
- Return-to-dig

(automatic bucket positioner)

- Transmission neutralizer switch
- Bucket level indicator
- Torque converter
- Transmission-four speed manual shift
- Neutral safety switch
- Spin-on filters for

Fuel

Engine oil

Transmission oil

- Outboard Planetary Rear Axles
- Diesel particulate filter
- Hydrostatic power steering
- Caterpillar XT-3 hose
- Hydraulic oil cooler
- Pilot control shutoff switch
- Flow-sharing hydraulic valves
- Hydraulic suction strainer
- Audible system fault alarm
- Key start/stop system
- 850 CCA maintenance free battery
- Battery disconnect switch
- External Power Receptacle (12v)
- Diagnostic ports for engine and machine Electronic Control Modules
- Automatic Engine Speed Control
- One Touch Low Idle
- Floor mat and Coat Strap
- Lockable storage area

- Steering knob
- Hand and foot throttle

- Air suspension seat

FLUIDS

- Antifreeze - Extended Life Coolant

-20F (-30C)

OTHER STANDARD EQUIPMENT

- Standard Storage Box
- Transport tie-down points
- Ground line fill fuel tank with 42.3 gal (160L) capacity & 5 gal (19L)

diesel exhaust fluid

- Rubber impact strips on radiator

guard

- CD-ROM Parts Manual
- Safety Manual
- Operations and Maintenance Manual
- Lockable hood
- Tire Valve Stem Protection





DATE: Jun 07, 2023 QUOTE #:320736-01

SOURCEWELL ID# 58904

NEW BRAUNFELS UTILITIES
PAUL MATA

Jordan, Robert 210.414.9252

PO BOX 310289 NEW BRAUNFELS, TEXAS 78131-0289

One (1) New Caterpillar Inc Model: 242D3-CL Compact Construction Equipment with all standard equipment in addition to the additional specifications listed below:

CATERPILLAR SOURCE WELL #032119-CAT

SALE PRICE TOTAL PRICE	\$57,985.00 \$57,985.00
SUB TOTAL TOTAL PURCHASE PRICE	\$57,985.00 \$57,985.00

WARRANTY

Standard Warranty: 24 Month/2000 Hour Total Machine Limited Warranty

CAT LIST PRICE 242 \$76,424.00 SOURCE WELL DISCOUNT (24.1%) -\$18,439.00 SALE PRICE \$57,985.00

1990mm (78") overall width, 1524mm (60") working width

26" (660mm) brush diameter

Adjustable brush height. Volumizer increases material retention.

Brush material - 50% polypropylene / 50% steel wire INCLUDES: Hydraulic lines with 1/2" quick disconnects

2115mm (83") overall width, 1865mm (73") sweeping width 660mm (26") brush diameter - brush material 100% polypropylene INCLUDES: bolt on cutting edge

DATE: Jun 07, 2023QUOTE #: Quote 320736-01

MACHINE SPECIFICATIONS

DESCRIPTION	REF.#
QP1/D3/OROPS/STDFLW/MAN-QC/H2	512-4242
LANE 3 ORDER	0P-9003
CANOPY PACKAGE, PRO PLUS	588-9076
RIDE CONTROL, NONE	568-4637
REAR LIGHTS	356-6082
SEAT BELT, 2"	542-6994
INSTRUCTIONS, ANSI, USA	512-3759
SERIALIZED TECHNICAL MEDIA KIT	421-8926
CERTIFICATION ARR, P65	563-1163
PRODUCT LINK, CELLULAR PL243	566-7115
BATTERY,HD,DISCONNECT, 850 CCA	560-7824
SHIPPING/STORAGE PROTECTION	0P-2266
PACKING, ROLL ON - ROLL OFF	0P-0226
AXLES, STANDARD	528-0197
74IN EDGE BUCKET	
SOLID CUSHIONED TIRES	

STANDARD EQUIPMENT

POWERTRAIN

Cat C3.3B diesel engine

-Gross horsepower per SAE J1349 74.3 hp (55.4 kW) @ 2400 RPM

-Electric fuel priming pump

-Glow plugs starting aid

-Liquid cooled, direct injection

Air cleaner, dual element, radial seal S-O-S sampling valve, hydraulic oil

Filter, cartridge type, hydraulic

Filters, canister type, fuel and water separator Radiator / hydraulic oil cooler (side-by-side)

Spring applied, hydraulically released,

parking brakes

Hydrostatic transmission Four wheel chain drive

HYDRAULICS

ISO or H pattern controls:

Electro/hydraulic implement control

Electro/hydraulic hydrostatic

transmission control

ELECTRICAL

12 volt electrical system 80 ampere alternator

Ignition key start / stop / aux switch

Liahts:

-LED work lights (2 front, 2 rear)

-Two rear tail lights

OPERATOR ENVIRONMENT

Operator warning system indicators:

-Air filter restriction -Alternator output

-Armrest raised / operator out of seat

-Engine coolant temperature

-Engine oil pressure

-Glow plug activation

-Hydraulic filter restriction

-Hydraulic oil temperature

-Park brake engages

-Engine emission system

Gauges: fuel level and hour meter Storage compartment with netting

Ergonomic contoured armrest

Adjustable joystick controls

-Gauge backlighting

-Dome light

Backup alarm

Electrical outlet, beacon

Control interlock system, when operator

Leaves seat or armrest raised:

-Hydraulic system disables

-Hydrostatic transmission disables

-Parking brake engages

ROPS cab, open, tilt up

Anti-theft security system w/6-button

keypad

FOPS, Level I

Top and rear windows

Floormat

Interior rear view mirror

USB Charging port

Horn

Hand (dial) throttle, electronic

FRAMES

Lift linkage, vertical path Chassis, one piece welded

Machine tie down points (6)

Belly pan cleanout Support, lift arm Rear bumper, welded

OTHER STANDARD EQUIPMENT

Engine enclosure - lockable Extended life antifreeze (-37C, -34F) Coupler, mechanical Hydraulic oil level sight gauge Radiator coolant level sight gauge Radiator expansion bottle Cat ToughGuard TM hose Heavy duty flat faced quick disconnects with integrated pressure release Split D-ring to route work tool hoses along side of left lift arm Hydraulic demand cooling fan Per SAE J818-2007 and EN 474-3:2006 and ISO 14397-1:2007



DATE: Jun 07, 2023 QUOTE #:306613-01

SOURCEWELL ID# 58904

NEW BRAUNFELS UTILITIESPAUL MATA

Jordan, Robert 210.414.9252

I AUL WATA

PO BOX 310289 NEW BRAUNFELS, TEXAS 78131-0289

One (1) New Caterpillar Inc Model: 313 TC Excavators with all standard equipment in addition to the additional specifications listed below:

CATERPILLAR SOURCE WELL #032119-CAT

STOCK NUMBER: HLK047984 SERIAL NUMBER: 0JHR30019 YEAR: 2023 HOURS: 6

SALE PRICE TOTAL PRICE	\$214,865.00 \$214,865.00
SUB TOTAL TOTAL PURCHASE PRICE	\$214,865.00 \$214,865.00

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine

CAT LIST PRICE 313	\$273,626.00
SOURCE WELL DISCOUNT (21.5%)	-\$58,761.00
TOTAL	\$214,865.00

MACHINE SPECIFICATIONS

STOCK NUMBER: HLK047984 **SERIAL NUMBER: 0JHR30019** YEAR: 2023 HOURS: 6 **DESCRIPTION** REF.# 313 07D HEX AM-N CFG1C 625-1773 **COMMON ARR** 557-9583 313 07 HEX 557-9569 COUNTERWEIGHT, 5,440 LB 578-8194 SWING FRAME, STD 562-5100 ENGINE HOOD, TAIL PIPE 624-7755 CAB, DELUXE 609-5071 LINES, AIR CONDITIONER 559-1086 MONITOR, 10" 511-9428 INTEGRATED RADIO, W/O DAB 502-7166 PEDAL, STRAIGHT TRAVEL 490-7715 RECEIVER, BLUETOOTH 524-8272 TRAVEL ALARM 557-9716 MACHINE ECM 525-7678 LIGHTS, CHASSIS 581-7319 GUARD, TRACK GUIDING, CENTER 437-9274 BOTTOM GUARD, STANDARD 556-6496 GUARD, TRAVEL MOTOR, HD 350-6401 GUARD, SWIVEL 137-2813 FINE SWING 558-2731 FAN, VARIABLE SPEED 559-9633 STORAGE BOX, TWO 560-5444 FILM, EMC 528-4738 FILM, OPERATING PATTERN, 2WAY 520-9418 0P-9003 LANE 3 ORDER BOOM 15'3" W/ EOU MOUNTS 558-2798 STICK, R9'10" W/ EOU MOUNT 558-2811 LINKAGE, BKT 312 GRADE W/O EYE 525-4932 CYLINDER, BOOM 563-1462 CYLINDER, STICK, W/O SLCV 524-2707 CYLINDER, BUCKET 524-2708 CYLINDER LINES, W/O BLCV 558-1423 UNDERCARRIAGE, LONG W/O BLADE 558-2786 TRACK, 28" TG, W/STEPS 559-0324 HYDRAULIC PKG, COMB, ONE SLIDER 589-6862 VALVE, HYDRAULICS, TCS 580-8618 CIRCUIT, COMBINED 559-1892 JOYSTICKS, VERTICAL SLIDER 528-6835 CAMERA, REAR & RH VIEW 594-5359 LIGHTS, BOOM RH 1P 582-6119 LIGHTS, CAB, W/O 360 577-3853 WASHER RADIAL WIPER 525-5166

DESCRIPTION	REF.#
CAT GRADE, 2D	624-7759
PROD LINK, PLE643/PLE743 RADIO	589-6846
RADIO MODULE, PL243 CELLULAR	589-1744
WIRING, PL243/PL083	580-9212
FILM, EXTERIOR, ANSI	558-2792
FILM, INTERIOR, ANSI	573-4351
FILM, ROPS	576-9654
FILM, STICK WARNING, ANSI	567-3815
INSTRUCTIONS, ENGLISH	0P-3380
LINES, HIGH PRESSURE BOOM	558-1443
LINES, HP, 9'10" STICK	558-1457
CONTROL, QC PIN GRABBER	559-1895
LINES, QUICK COUPLER BOOM	558-1447
LINES, QC, 9'10" STICK	558-1461
COUPLER, PIN GRABBER W/PINS	558-2818
HARNESS, CAT GRADE, 1PC BOOM	621-3562
HARNESS, GRADE, 9'10" STICK	621-3584
LIGHTS, BOOM LH 1P	582-6112
DRINK HOLDER	488-6534
BATTERIES, 2	506-5013
NETWORK MANAGER, STD	555-7286
STORAGE PROTECTION (EXPORT)	0G-4126
ROLL ON-ROLL OFF	0G-4201
SUPPORT, LINES AUXILIARY	565-1990
STORAGE PROTECTION (EXPORT)	0P-7563
LINES GP OIL W/ TCS	627-8017
BUCKET - JHR30019B 36IN	571-2943
TIP, PENETRATION PLUS ADVANSYS - JHR30019B	539-5673

STANDARD EQUIPMENT

POWERTRAIN

Diesel engine C3.6 (82wk) certified to EPA Tier 4 final, EU Stage V, Japan MLIT Step 5 Electric fuel priming pump Variable speed fan system (Viscous Clutch) Single fuel filtration system with water separator and indicator Sealed double element air filter with integrated precleaner Biodiesel capable (up to B20)

UNDERCARRIAGE

Grease lubricated track link
Tie down points on base frame

(ISO 15818 compliant)

HYDRAULICS

Electronic main control valve
Auto warm up
Single type Electronic main pump
Boom and stick regeneration circuits

Automatic two speed travel Boom and stick drift reduction valve Element type main hydraulic filter

ELECTRICAL

Maintenance free battery Centralized electrical disconnect switch CAT Product Link (Except the countries/ regions where the PL is not certified) After engine shut down programmable time delay
LED working lights
-One chassis mounted
-one LH boom mounted

OPERATOR ENVIRONMENT

Sound suppressed ROPS cab (ISO 12117-2 compliant) with viscous mount Increased rear window size as emergency exit
Openable tempered front upper windshield w/assist device and removable tempered lower windshield with in cab storage bracket
2 inch (51mm) orange seat belt

Upper radial wiper for 70/30
Automatic bi-level air conditioner
with pressurized function
Washable floor mat
Beacon ready
2 x 12V DC outlet and USB port
Dome and lower LED interior lights,
coat hook, cup holder, console storage

SAFETY AND SECURITY

Service platform with anti-skid plate and countersunk bolts Hydraulic lock out lever neutralizes all controls Ground level accessible secondary engine shutoff switch in cab Signaling / warning horn

OTHER STANDARD EQUIPMENT

Side entry to service platform Grouped location for engine oil and fuel filters Ground level 2nd dipstick for engine oil Sampling ports for Scheduled Oil Sampling (S.O.S)



DATE: Jun 07, 2023 QUOTE #:320723-01

SOURCEWELL ID# 58904

NEW BRAUNFELS UTILITIESPAUL MATA

Jordan, Robert 210.414.9252

PO BOX 310289 NEW BRAUNFELS, TEXAS 78131-0289

THREE (3) New Caterpillar Inc Model: 420 Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

CATERPILLAR SOURCE WELL #032119-CAT

SALE PRICE PER MACHINE X 3 MACHINES TOTAL PRICE	\$158,995.00 \$476,985.00
TOTAL PURCHASE PRICE	\$476,985.00

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine

PER MACHINE BREAKDOWN

420 CAT LIST PRICE \$186,535.00

SOURCE WELL DISCOUNT (27.6%) -\$51,512.00

420 SALE PRICE \$135,023.00

EPIROC HAMMER \$23,972.00

TOTAL \$158,995.00

MACHINE SPECIFICATIONS

DESCRIPTION	REF.#
LN3/ST/QP26/C4SX/QC	542-7992
LANE 3 ORDER	0P-9003
STICK, STANDARD, 14FT	543-4283
PT, 4WD/2WS, POWERSHIFT	544-1066
ENGINE, 82KW, C3.6 DITA, T4F	542-7780
HYDRAULICS, GP, 6FCN/8BNK, ST	542-7772
CAB, DELUXE	544-0883
DISPLAY, STANDARD	545-5047
WORKLIGHTS (8) HALOGEN LAMPS	491-6734
SEAT, DELUXE FABRIC	611-0339
BELT, SEAT, 2" SUSPENSION	206-1747
AIR CONDITIONER, T4F	542-7810
PRODUCT LINK, CELLULAR, PLE643	560-6797
TIRES, 12.5 80/19.5L-24, GY	379-2161
COUNTERWEIGHT, 1015 LBS	337-9696
STABILIZER PADS, FLIP-OVER	9R-6007
BUCKET-GP, 1.5 YD3, PO	337-7401
CUTTING EDGE, TWO PIECE, WIDE	9R-5320
BUCKET-HD, 24", 7.3 FT3, PL	247-1950
COUPLER, PIN LOCK, BL F	544-1901
INSTRUCTIONS, ANSI	559-0872
SERIALIZED TECHNICAL MEDIA KIT	421-8926
LINES, COMBINED AUX, STD STICK	548-1230
STANDARD RADIO (12V)	540-2298
FAN	387-6682
DISPLAY, SECURITY, ENABLED	573-0397
BATTERY, HEAVY DUTY	516-5913
AUTO-UP STABILIZERS	567-5090
PLATE GROUP - BOOM WEAR	423-7607
GUARD, STABILIZER	353-1389
PACK, DOMESTIC TRUCK	0P-0210
RUST PREVENTATIVE APPLICATOR	462-1033
LOADER BUCKET PINS	545-8548
SHIPPING/STORAGE PROTECTION	461-6839
RIDE CONTROL	551-6453
EPIROC SB552 HAMMER	

STANDARD EQUIPMENT

BOOMS, STICKS, AND LINKAGES

BACKHOE

- 14'4" Center pivot backhoe
- 4.3 Meters
- Boom and swing transport locks
- Pilot operated backhoe and electro hydraulic stabilizer controls
- Street type stabilizer shoes
- Anti-drift hydraulics (boom, stick, and E-stick)
- Cat Cushion Swing(tm) system

POWERTRAIN

- Water separator
- Thermal starting aid system
- Dry type axial seal air cleaner with integral precleaner
- Automatic dust ejection system
- Filter condition indicator
- Hydraulically boosted multi-plate wet disk brake with dual pedals & interlock
- Differential lock

HYDRAULICS

- Pilot hoe and mechanical loader controls
- Load sensing, variable flow system with 43 gpm (162 L/min) axial piston pump
- 6 micron hydraulic filter

ELECTRICAL

- 12 volt electrical start
- Horn, front and rear
- Backup alarm
- Hazard flashers/turn signals
- Halogen head lights (2)
- Halogen rear flood lights (2)
- Stop and tail lights

OPERATOR ENVIRONMENT

- Interior rearview mirror
- ROPS canopy, Rear Fenders
- 2-inch (50mm) retractable seat belt
- Tilt steering column

LOADER

- Single Tilt Loader
- Lift cylinder brace
- Self-leveling loader with single lever control
- Return-to-dig

(automatic bucket positioner)

- Transmission neutralizer switch
- Bucket level indicator
- Torque converter
- Transmission-four speed manual shift
- Neutral safety switch
- Spin-on filters for

Fuel

Engine oil

Transmission oil

- Outboard Planetary Rear Axles
- Diesel particulate filter
- Hydrostatic power steering
- Caterpillar XT-3 hose
- Hydraulic oil cooler
- Pilot control shutoff switch
- Flow-sharing hydraulic valves
- Hydraulic suction strainer
- Audible system fault alarm
- Key start/stop system
- 850 CCA maintenance free battery
- Battery disconnect switch
- External Power Receptacle (12v)
- Diagnostic ports for engine and machine Electronic Control Modules
- Automatic Engine Speed Control
- One Touch Low Idle
- Floor mat and Coat Strap
- Lockable storage area

Page 3

- Steering knob
- Hand and foot throttle

- Air suspension seat

FLUIDS

- Antifreeze - Extended Life Coolant

-20F (-30C)

OTHER STANDARD EQUIPMENT

- Standard Storage Box
- Transport tie-down points
- Ground line fill fuel tank with 42.3 gal (160L) capacity & 5 gal (19L)

diesel exhaust fluid

- Rubber impact strips on radiator

guard

- CD-ROM Parts Manual
- Safety Manual
- Operations and Maintenance Manual
- Lockable hood
- Tire Valve Stem Protection





DATE: Jun 07, 2023 QUOTE #:320729-01

SOURCEWELL ID# 58904

NEW BRAUNFELS UTILITIESPAUL MATA

Jordan, Robert 210.414.9252

\$189,925.00

PO BOX 310289 NEW BRAUNFELS, TEXAS 78131-0289

TWO (2) New Caterpillar Inc Model: 420 C4E Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

CATERPILLAR SOURCE WELL #032119-CAT

SALE PRICE PER MACHINE X 2 MACHINES	\$137,855.00
TOTAL PRICE	\$275,710.00
TOTAL PURCHASE PRICE	\$275,710.00

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine

PER MACHINE BREAKDOWN CAT LIST PRICE

SOURCE WELL DISCOUNT (27.4%) -\$52,070.00 SALE PRICE \$137,855.00

MACHINE SPECIFICATIONS

STOCK NUMBER: HCT014380

DESCRIPTION	REF.#
420 07A BACKHOE LOADER CFG2	542-7992
COUNTERWEIGHT, 1015 LBS	337-9696
WORKLIGHTS (8) HALOGEN LAMPS	491-6734
ENGINE, 74.5KW, C3.6 DITA, T4F	541-9540
HYDRAULICS, MP, 6FCN/8BNK, ST	542-7774
AIR CONDITIONER, T4F	542-7810
STICK, EXTENDABLE, 14FT	543-4284
CAB, DELUXE	544-0883
PT, 4WD/2WS, POWERSHIFT	544-1066
DISPLAY, STANDARD	545-5047
LOADER BUCKET PINS	545-8548
RIDE CONTROL	551-6453
COLD WEATHER PACKAGE, 120V	551-6940
PRODUCT LINK, CELLULAR, PLE643	560-6797
AUTO-UP STABILIZERS	567-5090
AUX READY, E-STICK	582-7395
SEAT, DELUXE FABRIC	611-0339
BUCKET-MP, 1.3 YD3, PO	337-7436
TIRES, 340 80-18/500 70-24, MX	533-0488
BUCKET-HD, 24", 7.3 FT3, PL	247-1950
COUPLER, PIN LOCK, BL F	544-1901
STABILIZER PADS, FLIP-OVER	9R-6007
CUTTING EDGE, TWO PIECE	9R-5321
SHIPPING/STORAGE PROTECTION	461-6839
RUST PREVENTATIVE APPLICATOR	462-1033
PACK, DOMESTIC TRUCK	0P-0210
SERIALIZED TECHNICAL MEDIA KIT	421-8926
INSTRUCTIONS, ANSI	559-0872
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420 LANE 3 ZCON	626-9390

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- 6 micron hydraulic filter

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- External Power Receptacle (12v)
- Diagnostic ports for engine and machine Electronic Control Modules
- Automatic Engine Speed Control
- One Touch Low Idle
- Floor mat and Coat Strap
- Lockable storage area

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-20F (-30C)

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diesel exhaust fluid

- Rubber impact strips on radiator

guard

- CD-ROM Parts Manual
- Safety Manual
- Operations and Maintenance Manual
- Lockable hood
- Tire Valve Stem Protection





Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Kenneth Allen Reviewed by: Shawn Schorn

Fleet and Facilities Manager Director of Business Planning

Submitted by: Shawn Schorn Approved by: Ryan Kelso

Director of Business Planning Interim Chief Executive Officer

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Cooperative Contract with Reliance Truck and Equipment, LLC. for

One (1) Prebuilt 1050 TVO 2024 Closed Circuit TV Truck

BACKGROUND

In order to modernize the fleet's sewer inspection equipment, New Braunfels Utilities ("NBU") identified the need to purchase one (1) Prebuilt 1050 TVO 2024 CCTV Truck.

As a result, NBU has selected to purchase the equipment from Reliance Truck and Equipment, LLC. through the Buy Board contract number 676-22 (the "Contract"). NBU's use of the Buy Board contract satisfies the competitive bidding requirements under Texas law.

NBU staff requests that the Board of Trustees approve the Contract with Reliance Truck and Equipment, LLC. for the sewer inspection equipment.

This item is being presented to the Board because the total amount of the contract exceeds \$250,000.

FINANCIAL IMPACT

The total financial impact of the Contract for the equipment is \$388,120.00. The purchase of the equipment is budgeted in the fiscal year 2024 Capital Equipment Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

- 1. Buy Board Contract Number 676-22
- 2. Reliance Environmental Quote
- 3. Buy Board Renewal Contract
- 4. Buy Board Additional Terms and Conditions

5. Reliance Environmental Quote Updated



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Responding vendors must read all sections of this Proposal Invitation carefully.

Even if your company has submitted proposals on previous BuyBoard proposal invitations, terms and requirements may have changed.

NOTICE OF PROPOSAL INVITATION

The Local Government Purchasing Cooperative d/b/a BuyBoard[®] (Cooperative), 12007 Research Blvd., Austin, Texas 78759 is a statewide purchasing cooperative for school districts, junior colleges, cities, counties, and other political subdivisions. The Texas Association of School Boards, Inc. (TASB), a Texas nonprofit corporation, 12007 Research Blvd., Austin, Texas 78759, serves as the Cooperative's administrator. The Cooperative is endorsed by TASB, the Texas Municipal League (TML), a Texas unincorporated nonprofit association, 1821 Rutherford Lane, Austin, Texas 78754, and the Texas Association of Counties (TAC), a Texas nonprofit association, 1204 San Antonio, Austin, Texas 78701.

The Cooperative's contracts for commodities and services are available to the members of TASB, TML, and TAC, and other local governmental entities that are members of the Cooperative and eligible to purchase through a government purchasing cooperative or interlocal contract. TASB, the Cooperative administrator, provides an online marketplace to the Cooperative known as the BuyBoard which enables members to review available contracts and make purchases of awarded commodities and services electronically.

The Cooperative is soliciting sealed proposals for products, supplies, services and/or equipment as set forth in this Proposal Invitation on behalf of all present and future members of the Cooperative. There may be over 1,000 Texas public school districts and junior colleges, over 900 municipalities, 400 counties, and numerous other political subdivisions (i.e. river authorities, special districts, public housing authorities, etc.) participating in the Cooperative at any given time. Awarded products and services may also be available to the administrator's nonprofit entity BuyBoard subscribers and, in the event of a piggyback award, members of the National Purchasing Cooperative located throughout the United States as further explained in the Proposal Invitation.

Completed sealed proposals for **Proposal No. 676-22 for Sewer Inspection and Cleaning Products must be received on or before 4:00 PM March 24, 2022,** either by submitting the Proposal electronically through the Cooperative's designated website or by hard copy submission as set out in the Instructions to Proposers. **Late proposals will not be accepted.**

Unless a different time period is stated in the General Information document for this Proposal Invitation, questions, requests for information or clarification, or comments regarding this Proposal Invitation, including the specifications, must be submitted in writing, addressed as indicated below, and received by the Cooperative administrator no later than the 10th business day before the Proposal Due Date. The Cooperative will respond only to written questions.

The Local Government Purchasing Cooperative

Attn: TASB Asst. Division Director, Cooperative Procurement

12007 Research Blvd.

Austin, TX 78759

E-Mail: bids@buyboard.com



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INSTRUCTIONS TO PROPOSERS

Electronic Proposal Submission

The Cooperative requests that Vendors submit Proposals electronically in accordance with the instructions herein via the link available on the following website:

buyboard.com/vendor

There is no cost to the Vendor to register or use the electronic proposal submission option. To the extent a vendor is unable to submit a Proposal electronically through the proposal website, instructions for hard copy submissions are provided below.

Before you submit

- In order to submit a Proposal electronically, you must have a working registered vendor username and password to login. If you do not have a registered vendor username and password, you may obtain one by registering at buyboard.com/vendor. Note to existing BuyBoard vendors: The registered vendor login used for electronic proposal submission is NOT the same as your existing login used to check purchase orders or similar vendor information under awarded contracts. Vendors are highly encouraged to ensure you have a working vendor login well in advance of the submission deadline.
- Vendor is responsible for ensuring it has the technical capability to submit its Proposal via electronic submission.
- Browser requirements can be found at https://buyboard.ionwave.net/BrowserCompatibility.html.
- VENDOR SHALL BE SOLELY RESPONSIBLE FOR ENSURING TIMELY SUBMISSION OF VENDOR'S PROPOSAL. Neither the Cooperative nor the Cooperative administrator shall be responsible for equipment or software failure, internet or website downtime, corrupt or unreadable data, or other technical issues that may cause delay or non-delivery of a Proposal or inaccessibility of the submitted data. Accordingly, Vendors are highly encouraged to prepare and allow for sufficient time to familiarize itself with the electronic submission requirements and to address any technical or data issues prior to the Proposal Due Date.

How to submit Proposal electronically

- Login using your registered vendor login at <u>buyboard.com/vendor</u> under the "Register/Login/Submit Proposal" link.
- The page will open to the list of "Available Bids."
- Click on the applicable Proposal Invitation number under the "My Invitations" or "Other Bid Opportunities" section to view this Proposal Invitation request.
- Review and follow all instructions on the webpage.
- **VENDOR INFORMATION** Select the "Attributes" tab to locate the Vendor Contact Information fields required to be completed and submitted.
 - Vendors must respond to each item by providing the information requested. If you fail to complete any of the line items, you will receive an error and will be unable to submit your Proposal.
- **PROPOSAL SPECIFICATIONS** Select the "Line Items" tab to locate the Proposal Specifications.
 - Input all required proposal pricing information (discount (%) off catalog/pricelist, line item pricing, hourly labor rates, and/or other related pricing information) as specified.



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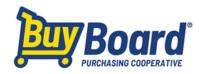
- Vendors must respond to each line item by either providing the information requested in the specifications, adding alternates to provide additional information (as necessary), or by indicating no bid. If you fail to complete any of the line items, you will receive an error and will be unable to submit your Proposal.
- Vendors proposing various manufacturer product lines per line item on the Proposal Specification Form must submit the information as follows or the Proposal may not be considered:
 - i. Manufacturers shall be listed in alphabetical order
 - ii. Vendor must list one specific percentage discount for each manufacturer listed. Use the "Add Alternates" option as needed to add additional manufacturers.
- PROPOSAL DOCUMENTS To upload your Proposal documents, select the "Response Attachments" tab and upload
 a signed, complete copy of your Proposal in searchable PDF format, including all required proposal documents
 (Proposal Forms, and any other documents required by the Proposal Invitation). Electronic Catalogs/Pricelists
 must be submitted with the Proposal in the format required by these Instructions to Proposers or it will
 not be considered.
- **PROPOSAL SUBMISSION** Select the "Response Submission" tab to submit the Proposal.
 - If an error or multiple errors occur, the system will display the location of the error(s).
 - Go to the problem area and correct the errors. You must go to the specific tab(s) that contain(s) the error(s) to review the error detail and correct the error(s). Your submission will not be submitted until all errors are corrected.
 - Once all errors are corrected, proceed to the "Response Submission" tab to submit the response.

How to submit hard copy Proposal – Paper copies will NOT be accepted

While the Cooperative requests electronic submission of Proposals through the designated website, any Vendor without the technical capability or wishing to submit a hard copy Proposal may do so in accordance with the following instructions:

- Contact BuyBoard staff at bids@buyboard.com to request a copy of the Proposal Specification Form and other forms not included in this packet in hard copy form at least five (5) business days prior to the Proposal Due Date.
- Submit the signed, completed Proposal in a sealed envelope or carton properly marked with the Proposal Invitation number and Proposal submittal date and time and containing all required proposal documents (including forms, completed Proposal Specification Form, and any other documents required by the Proposal Invitation). The Proposal must be submitted in <u>electronic</u>, searchable PDF format on a USB flash drive, CD or DVD. <u>Paper copies will</u> NOT be accepted.
- The Proposal Specification Form and Electronic Catalogs/Pricelists must be submitted with the Proposal in the format required by these Instructions to Proposers or it will not be considered.
 - Vendors proposing various manufacturer product lines per line item on the Proposal Specification
 Form must submit the information as follows or the Proposal may not be considered:
 - a. Manufacturers shall be listed in alphabetical order
 - b. Vendor must list one specific percentage discount for each manufacturer listed.
- Any hard copy electronic Proposals must be delivered via hand delivery or U.S. Mail to the address below so as to be received on or before the Proposal Due Date and time:

The Local Government Purchasing Cooperative 12007 Research Blvd. Austin, TX 78759



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VENDOR SHALL BE SOLELY RESPONSIBLE FOR ENSURING TIMELY SUBMISSION OF VENDOR'S PROPOSAL.

Neither the Cooperative nor the Cooperative administrator shall be responsible for Proposals delivered late by the United States Postal Service or any other delivery or courier service. Further, neither the Cooperative nor the Cooperative administrator shall be responsible for Proposals delivered in a corrupt or unreadable electronic format.

Faxed and/or emailed Proposals will NOT be accepted.

REQUIREMENTS FOR VENDOR CATALOGS/PRICELISTS IN PROPOSALS

<u>Note</u>: The following instructions set forth the requirements for Vendor catalogs/pricelists submitted with Proposals for proposal evaluation purposes. If awarded a Contract, Vendor may be required to resubmit catalogs/pricelists in the format described in the BuyBoard Technical Requirements as detailed further in the Proposal Invitation.

Electronic catalogs/pricelists must be submitted with Vendor's Proposal in the required format (whether submitted electronically through the designated website or in hard copy format via mail or hand delivery) or the Proposal will not be considered. The following is required of all Vendor catalog(s)/pricelist(s) submitted to the Cooperative for evaluation with the Proposal:

Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with **Excel or searchable PDF** preferred. No paper catalogs or manufacturer/vendor websites will be accepted.

Below is a sample chart, with examples of data for each field, showing the data fields that Vendors MUST include in each submitted pricelist/catalog with the Proposal:

BuyBoard Specification Item No. Category	Part/Item Number	Item Description	MSRP/List Price (before BuyBoard Discount)
1	1234	Desk	\$50.00
2	1235	Chair	\$20.00

The catalogs/pricelists must include all listed data fields (BuyBoard specification category, part/item number, item description, and list price) or the Proposal will not be considered. Catalogs and pricelists should contain only items that relate to the items requested in the specifications. Vendors are discouraged from including irrelevant or non-responsive information with their Proposal. The Cooperative reserves the right to deem a Proposal non-responsive if the Proposal, including catalogs or pricelists submitted with the Proposal, do not specifically relate to the intent of the Proposal Invitation or contain what the Cooperative deems to be, in its sole discretion, excessive irrelevant or non-responsive information, including information which makes it burdensome or impractical for the Cooperative to identify responsive products and pricing.

WITHDRAWAL OR MODIFICATION OF PROPOSALS

Proposals may be withdrawn or modified prior to the Proposal Due Date and time, but only in accordance with section B.11 (Withdrawal or Modification of Proposal) of the General Terms and Conditions in this Proposal Invitation.



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GENERAL INFORMATION

Proposal Invitation No. 676-22 Sewer Inspection and Cleaning Products

*Please make sure that you have reviewed and completed all sections of this Proposal Invitation.

- 1. Notice of Proposal Invitation and Instructions to Proposers
- 2. General Information
- 3. Proposal Forms
- 4. Proposal Specifications
- 5. General Terms and Conditions
- 6. BuyBoard Technical Requirements
- 7. Additional Terms and Conditions for BuyBoard Self-Reporting

PROPOSAL SUBMISSION INSTRUCTIONS

Proposal responses (including completed and signed Proposal Invitation forms, completed Proposal specifications, and pricelists/catalogs) <u>must</u> be submitted in electronic format in the manner prescribed in the Instructions to Proposers.

INTENT AND PURPOSE OF THE CONTRACT

The intent of this Proposal Invitation is to solicit sealed Proposals to establish a contract for various types of Sewer Inspection and Cleaning Products that may be procured by Cooperative members. Because individual members require different equipment, supplies, and/or services, this Proposal Invitation is a request for a discount off of catalog or price list for supplies, materials and equipment and an hourly not-to-exceed labor rate for installation and repair. Purchases can be made by a Cooperative member at any time during the Contract term. Except as provided in section E.4 of the General Terms and Conditions or otherwise in this Proposal Invitation, Vendor shall hold its Awarded Pricing firm during the Contract term. In the event of price decreases, such price decreases shall be allowed for all products.

TERM OF CONTRACT

The term of this contract will be from October 1, 2022, through September 30, 2023, with two possible one-year renewals.

As set forth in the General Terms and Conditions, an awarded Vendor has no right to or vested interest in contract renewal. The determination as to whether to renew or non-renew any Vendor Contract, in whole or in part, shall be in the sole discretion of the Cooperative.

For purposes of this Proposal Invitation, a Vendor must generate a minimum of \$15,000 through the Contract during an annual contract term or may not be offered a renewal. A Vendor's failure to generate this minimum amount may also be considered by the Cooperative as part of Vendor's past performance evaluation on future proposal invitations.

VALUE OF CONTRACT

The estimated value of this contract is \$2,805,604; however, this estimate is based on prior contracts for similar types of products and services and should not be construed to be a guaranty of either a minimum or maximum amount since usage may be dependent upon multiple factors including Cooperative members' actual needs and available funding.



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SERVICE FEE

An awarded Vendor under this Proposal Invitation must pay the Cooperative a service fee in the amount of 2% per Purchase Order generated from any contract awarded under this Proposal Invitation, and the service fee is to be included in the Awarded Pricing. Vendor agrees to pay this service fee and remit the fee to the Cooperative in Austin, Texas, promptly upon payment by the Cooperative member for any Purchase Order(s) and within 30 days of the date of each service fee invoice. As set forth in more detail in the General Terms and Conditions, an awarded Vendor will be required to provide the Cooperative with copies and/or reports of all Purchase Orders generated from Vendor's Contract(s) that Vendor receives directly from Cooperative members, Vendor Invoices, and/or such other documentation regarding Cooperative member purchases under any awarded Contract as the Cooperative administrator may require in its reasonable discretion. The Cooperative shall have the right, upon reasonable written notice, to review records of awarded Vendors pertaining to purchases under any awarded Contract to verify purchase activity under the Contract, the accuracy of service fees payable by Vendor, or as otherwise reasonably necessary for the administration of the Contract or when required by law.

CONFIDENTIAL INFORMATION

Any information submitted by Proposer that Proposer considers to be confidential must be clearly identified as such on the Confidential/Proprietary Information Form.

AWARD AND EVALUATION

All information required by this Proposal Invitation, including catalogs/pricelists where required by the Proposal Specifications, must be submitted with the Proposal or your Proposal will be deemed nonresponsive. Responsive Proposals will be evaluated, and any Contracts will be awarded based on the evaluation and award criteria as set out in Section C.2 of the General Terms and Conditions determined to provide best value to Cooperative members.

COMPLIANCE WITH APPLICABLE LAWS

By submitting a Proposal, the Proposer certifies that Proposer has provided its valid, proper and correct business entity name and information in its Proposal, that such entity is operating in good standing with the proper authority from whatever state or local jurisdiction is required, and Proposer has obtained, and, if awarded, will continue to maintain during the entire term of this Contract, all permits, approvals, and/or licenses necessary for lawful performance of its obligations under this Contract. Proposer further certifies that, if awarded, Proposer will comply with all applicable state, federal, and local laws, rules, and regulations in regard to awarded products and/or services.

BUYBOARD WEBSITE AND TECHNICAL REQUIREMENTS

Information on awarded Contracts, including awarded products and services under this Proposal Invitation, will be available to Cooperative members on the online marketplace platform utilized by the Cooperative: the BuyBoard. Vendors should review and confirm Vendor's ability to meet the BuyBoard Technical Requirements contained in Appendix I of this Proposal Invitation. The BuyBoard Technical Requirements may be updated from time to time as set forth in the General Terms and Conditions. To the extent a Vendor is awarded a Contract under this Proposal Invitation but is unable to meet the applicable BuyBoard Technical Requirements and provide the information in the format required by those requirements, Vendor acknowledges that the information available on the BuyBoard for Vendor's awarded products or services may be limited. This may place Vendor at a disadvantage and impact the ability of Cooperative members to search, find, review, and purchase Vendor's awarded products and services through the BuyBoard website.



12007 Research Boulevard * Austin, Texas 78759-2439 * PH: 800-695-2919 * * buyboard.com

To improve and enhance the experience of Cooperative members seeking to procure goods and services, the Cooperative may also, in its sole discretion, provide Vendors with an opportunity to have Vendor's logo, product images, and similar brand and trademark information included in the BuyBoard online marketplace in relation to Awarded Items. Vendors shall review the BuyBoard Vendor Consent for Name Brand Use included with the Proposal Forms in this Proposal Invitation.

PROFESSIONAL ENGINEERING AND OTHER PROFESSIONAL SERVICES EXCLUDED

The scope of services in this Proposal Invitation and any resulting contract award do not include services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), including without limitation architecture and professional engineering services.

ADDITIONAL REQUIREMENTS FOR PURCHASES USING FEDERAL GRANT FUNDS (2 C.F.R. 200 Uniform Guidance / EDGAR):

When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting a Proposal must complete the EDGAR Vendor Certification Form contained in the Proposal Forms regarding their willingness and ability to comply with certain requirements which may be applicable to specific Cooperative member purchases using federal grant funds. This information will not be used for evaluation purposes but will be made available to Cooperative members for their use while considering their purchasing options when using federal grant funds. Cooperative members may also require Vendors to enter into ancillary agreements, in addition to the BuyBoard contract's general terms and conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.



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PROPOSER'S ACCEPTANCE AND AGREEMENT

<u>Proposal Invitation Name</u>: Sewer Inspection and Cleaning Products

Proposal Due Date/Opening Date and Time:

March 24, 2022, at 4:00 PM

Location of Proposal Opening:

Texas Association of School Boards, Inc. BuyBoard Department 12007 Research Blvd. Austin, TX 78759

Proposal Invitation Number: 676-22

Anticipated Cooperative Board Meeting Date:

August 2022

By signature below, the undersigned acknowledges and agrees that you are authorized to submit this Proposal, including making all acknowledgements, consents, and certifications herein, on behalf of Proposer

Contract Term: October 1, 2022, through September 30, 2023, with two possible one-year renewals.

and, to the best of your knowledge, the inform	nation provided is true, accurate, and complete.
Name of Proposing Company	Date
Street Address	Signature of Authorized Company Official
City, State, Zip	Printed Name of Authorized Company Official
Telephone Number of Authorized Company Official	Position or Title of Authorized Company Official
Fax Number of Authorized Company Official	Federal ID Number



PROPOSAL FORMS PART 1: COMPLIANCE FORMS

INSTRUCTIONS:

Proposer must review and complete all forms in this Proposal Forms Part 1:

- Proposal Acknowledgements
- Felony Conviction Disclosure
- Resident/Nonresident Certification
- Debarment Certification
- Vendor Employment Certification
- No Boycott Verification
- No Excluded Nation or Foreign Terrorist Organization Certification
- Historically Underutilized Business Certification
- Acknowledgement of BuyBoard Technical Requirements
- Construction-Related Goods and Services Affirmation
- Deviation and Compliance
- Vendor Consent for Name Brand Use
- Confidential/Proprietary Information
- EDGAR Vendor Certification
- Compliance Forms Signature Page

An authorized representative of Proposer <u>must initial in the bottom right corner of each page</u> where indicated and complete and sign the Compliance Forms Signature Page. Proposer's failure to fully complete, initial, and sign forms as required may result in your Proposal being rejected as non-responsive.

PROPOSAL ACKNOWLEDGEMENTS

The proposing company ("you" or "your") hereby acknowledges and agrees as follows:

- 1. You have carefully examined and understand all information and documentation associated with this Proposal Invitation, including the Instructions to Proposers, General Information, General Terms and Conditions, attachments/forms, appendices, item specifications, and line items (collectively "Requirements");
- 2. By your response ("Proposal") to this Proposal Invitation, you propose to supply the products or services submitted at the pricing quoted in your Proposal and in strict compliance with the Requirements, unless specific deviations or exceptions are noted in the Proposal;
- 3. By your Proposal, you acknowledge and certify all items set forth in the General Terms and Conditions, Section B.12 (Certifications), including all non-collusion certifications and certifications regarding legal, ethical, and other matters set forth therein.
- 4. Any and all deviations and exceptions to the Requirements have been noted in your Proposal on the required form and no others will be claimed;

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- 5. If the Cooperative accepts any part of your Proposal and awards you a Contract, you will furnish all awarded products or services at the pricing quoted and in strict compliance with the Requirements (unless specific deviations or exceptions are noted on the required form and accepted by the Cooperative), including without limitation the Requirements related to:
 - a. conducting business with Cooperative members, including offering pricing to members that is the best you offer compared to similarly situated customers in similar circumstances;
 - b. payment of a service fee in the amount specified and as provided for in this Proposal Invitation;
 - c. the **possible** award of a piggy-back contract by the National Purchasing Cooperative or nonprofit entity, in which event you will offer the awarded products and services in accordance with the Requirements; and
 - d. submitting price sheets or catalogs in the proper format as required by the Cooperative as a prerequisite to activation of your Contract;
- 6. You have clearly identified on the included form any information in your Proposal that you believe to be confidential or proprietary or that you do not consider to be public information subject to public disclosure under the Texas Public Information Act or similar public information law;
- 7. The individual submitting this Proposal is duly authorized to enter into the contractual relationship represented by this Proposal Invitation on your behalf and bind you to the Requirements, and such individual (and any individual signing a form or Proposal document) is authorized and has the requisite knowledge to provide the information and make the representations and certifications required in the Requirements;
- 8. You have carefully reviewed your Proposal, and certify that all information provided is true, complete, and accurate to the best of your knowledge, and you authorize the Cooperative to take such action as it deems appropriate to verify such information; and
- 9. Any misstatement, falsification, or omission in your Proposal, whenever or however discovered, will be grounds for disqualifying you from consideration for a contract award under this Proposal Invitation, termination of a contract award, or any other remedy or action provided for in the General Terms and Conditions or by law.

FELONY CONVICTION DISCLOSURE

Subsection (a) of Section 44.034 of the Texas Education Code (Notification of Criminal History of Contractor) states: "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Section 44.034 further states in Subsection (b): "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

Please check ($$) one of the following:
 My company is a publicly-held corporation. (Advance notice requirement does not apply to publicly-held corporation.) My company is not owned or operated by anyone who has been convicted of a felony. My company is owned/operated by the following individual(s) who has/have been convicted of a felony:
Name of Felon(s):
Details of Conviction(s):



RESIDENT/NONRESIDENT CERTIFICATION

Chapter 2252, Subchapter A, of the Texas Government Code establishes certain requirements applicable to proposers who are not Texas residents. Under the statute, a "resident" proposer is a person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas. A "nonresident" proposer is a person who is not a Texas resident. Please indicate the status of your company as a "resident" proposer or a "nonresident" proposer under these definitions.

Please	e check (√) one o	f the fo	llowing:						
			ompany is a Resident Pr ompany is a Nonresiden						
			lent Proposer, you must p al place of business is loca		he following in	formation	for your residen	nt state (the s	tate in
Comp	any Name			-	Address				
City				_	State		Zip Code		
A.			ate require a proposer wh s the same as yours by a No						
В.	What is the pre	escribed	d amount or percentage?	\$	(or	%		
			<u>Debarmen</u>	NT CE	RTIFICAT	<u>ION</u>			
compa Execu Neithed debarr My co to pur	any has been deb tive Order 12549 or my company no red, suspended, o mpany agrees to rchase from my co or is debarred, su	parred, so or an own or other immed ompany	ce Forms Signature Page, suspended or otherwise marment and Suspension," wher or principal of my corwise excluded by agencial intelly notify the Cooperation or an owed, or otherwise excluded	ade ine as des mpany i es or de ve and vner or p	ligible for parti scribed in the s currently listed clared ineligible all Cooperative principal is late	cipation in Federal Red on the ge under are members risted on	Federal Assistant egister and Rule government-wide my statutory or restricted by the government with government of the government with pending particles.	nce programs es and Regula e exclusions in egulatory aut urchases or so t-wide exclusi	under ations. SAM, hority. eeking ions in
			VENDOR EMPLO	YME	NT CERTI	FICATI	<u>ON</u>		
deterr	mining to whom t	to awar	xas Education Code estand a contract. Among the rner (i) has its principal pla	criteria	for certain co	ntracts is	whether the ven	dor or the ve	ndor's
			ne ultimate parent compan t company, or majority ow					iness in Texas	, does
Please	e check (√) one of	f the fo	llowing:						
	Yes		No					Initial:	- 007

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No Boycott Verification

A Texas governmental entity may not enter into a contract with a value of \$100,000 or more that is to be paid wholly or partly from public funds with a company (excluding a sole proprietorship) that has 10 or more full-time employees for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel and will not boycott Israel during the term of the contract (Tex. Gov'T Code Ch. 2271), (2) does not boycott energy companies and will not boycott energy companies during the term of the contract (Tex. Gov'T Code Ch. 2274 effective September 1, 2021), and (3) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association (Tex. Gov'T Code Ch. 2274 effective September 1, 2021). Accordingly, this certification form is included to the extent required by law.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Tex. Gov't Code §808.001(1).

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A). Tex. Gov'T Code §809.001(1) (effective September 1, 2021).

"Discriminate against a firearm entity or firearm trade association" means, (A) with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. Tex. Gov'T Code §2274.001(3) (effective September 1, 2021).

By signature on the Compliance Forms Signature Page, to the extent applicable, I certify and verify that Vendor does not boycott Israel, boycott energy companies, or discriminate against a firearm entity or firearm trade association and will not do so during the term of any contract awarded under this Proposal Invitation, that this certification is true, complete and accurate, and that I am authorized by my company to make this certification.



NO EXCLUDED NATION OR FOREIGN TERRORIST ORGANIZATION CERTIFICATION

Chapter 2252 of the Texas Government Code provides that a Texas governmental entity may not enter into a contract with a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

By signature on the Compliance Forms Signature Page, I certify and verify that Vendor is not on the Texas Comptroller's list identified above; that this certification is true, complete and accurate; and that I am authorized by my company to make this certification.

HISTORICALLY UNDERUTILIZED BUSINESS CERTIFICATION

A Proposer that has been certified as a Historically Underutilized Business (also known as a Minority/Women Business Enterprise or "MWBE" and all referred to in this form as a "HUB") is encouraged to indicate its HUB certification status when

	this Proposal Invitation. The BuyBoard website will indicate HUB certifications for awarded Vendors that and document their HUB certification on this form. Please check ($$) all that apply:
I certi	fy that my company has been certified as a HUB in the following categories:
	Minority Owned Business Service-Disabled Veteran Owned Business (veteran defined by 38 U.S.C. §101(2), who has a service-connected disability as defined by 38 U.S.C. § 101(16), and who has a disability rating of 20% or more as determined by the U.S. Department of Veterans Affairs or Department of Defense)
Certif	fication Number:
Name	e of Certifying Agency:
Му со	mpany has NOT been certified as a HUB.

ACKNOWLEDGEMENT OF BUYBOARD TECHNICAL REQUIREMENTS

Vendor shall review the BuyBoard Technical Requirements included in this Proposal Invitation. By signature on the Compliance Forms Signature Page, the undersigned affirms that Proposer has obtained a copy of the BuyBoard Technical Requirements, has read and understands the requirements, and certifies that Vendor is able to meet and will comply with those requirements except as follows: [List and explain BuyBoard Technical Requirements, if any, to which your company cannot or will not comply.]

Note: In accordance with the General Terms and Conditions of the Contract, to the extent Vendor is awarded a Contract under this Proposal Invitation but is unable or unwilling to meet the applicable BuyBoard Technical Requirements, the information available on the BuyBoard for Vendor's awarded products or services may be limited, potentially placing Vendor at a disadvantage and impacting the ability of Cooperative members to search, find, review, and purchase Vendor's awarded products and services on the BuyBoard website. Further, to the extent Vendor has acknowledged ability to meet and comply with the BuyBoard Technical Requirements, any subsequent failure or refusal by Vendor to promptly provide information upon request to the Cooperative administrator in accordance with those technical requirements may be deemed an event of default under the Contract.

Initial:



CONSTRUCTION-RELATED GOODS AND SERVICES AFFIRMATION

The Cooperative issued the BuyBoard Procurement and Construction-Related Goods and Services Advisory for Texas Members ("Advisory"), which provides information specifically relevant to the procurement of construction-related goods and services by Texas Cooperative members. The Advisory, available at buyboard.com/Vendor/Resources.aspx, provides an overview of certain legal requirements that are potentially relevant to a Cooperative member's procurement of construction or construction-related goods and services, including those for projects that may involve or require architecture, engineering or independent testing services. A copy of the Advisory can also be provided upon request. Because many BuyBoard contracts include goods or installation services that might be considered construction-related, Proposer must make this Construction Related-Goods and Services Affirmation regardless of type of goods or services associated with this Proposal Invitation.

A contract awarded under this Proposal Invitation covers only the specific goods and/or services awarded by the Cooperative. As explained in the Advisory ("Advisory"), Texas law prohibits the procurement of architecture or engineering services through a purchasing cooperative. This Proposal Invitation and any Contract awarded thereunder does not include such services. Architecture or engineering services must be procured by a Cooperative member separately, in accordance with the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) and other applicable law and local policy.

By signature on the Compliance Forms Signature Page, Proposer affirms that Proposer has obtained a copy of the Advisory, has read and understands the Advisory, and is authorized by Proposer to make this affirmation. If Proposer sells construction-related goods or services to a Cooperative member under a Contract awarded under this Proposal Invitation, Proposer will comply with the Advisory and applicable legal requirements, make a good faith effort to make its Cooperative member customers or potential Cooperative member customers aware of such requirements, and provide a Cooperative member with a copy of the Advisory before accepting the member's Purchase Order or other agreement for construction-related goods or services.



DEVIATION AND COMPLIANCE

If your company intends to deviate from the General Terms and Conditions, Proposal Specifications or other requirements associated with this Proposal Invitation, you MUST list all such deviations on this form, and provide complete and detailed information regarding the deviations on this form or an attachment to this form. **Prior to completing this form, Vendor shall review the General Terms and Conditions section B.4** (Deviations from Item Specifications and General Terms and Conditions). Please note that, as provided in section B.4, certain provisions of the General Terms and Conditions are NOT subject to deviation, and certain deviations will be deemed rejected without further action by the Cooperative. Any attempted deviation, whether directly or indirectly, to provisions identified in this Proposal Invitation as not subject to deviation shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety.

The Cooperative will consider any deviations in its contract award decision and reserves the right to accept or reject a proposal based upon any submitted deviation.

In the absence of any deviation identified and described in accordance with the above, your company must fully comply with the General Terms and Conditions, Proposal Specifications and all other requirements associated with this Proposal Invitation if awarded a Contract under this Proposal Invitation. A deviation will not be effective unless accepted by the Cooperative. The Cooperative, by and through the Cooperative administrator, may, in its sole discretion, seek clarification from and/or communicate with Proposer(s) regarding any submitted deviation, consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a Proposal based upon any submitted deviation.

Please check ($$) one of the following:
No; Deviations Yes; Deviations
List and fully explain any deviations you are submitting:



VENDOR CONSENT FOR NAME BRAND USE

BuyBoard members seeking to make purchases using a Contract awarded under this Proposal Invitation may view information regarding awarded Vendors, including but not limited to product catalogs, pricelists, pricing, and Proposals, through the BuyBoard website. To improve and enhance the experience of BuyBoard members seeking to procure goods and services under the Contract utilizing the BuyBoard website, any Vendor logo, product images, and similar brand and trademark information provided by Vendor for purposes of the Contract ("Vendor Information") may be posted on the BuyBoard website.

You acknowledge that, by submitting your Proposal, unless you specifically opt out below, you consent to use of your company's Vendor Information on the BuyBoard website if awarded a Contract. You further acknowledge that whether, where, and when to include the Vendor Information on the BuyBoard website shall be at the sole discretion of the BuyBoard Administrator. Vendor retains, however, the right of general quality control over the BuyBoard Administrator's authorized display of proprietary Vendor Information. Neither the BuyBoard nor its administrator will be responsible for the use or distribution of Vendor Information by BuyBoard members or any other third party using the BuyBoard website. This Vendor Consent shall be effective for the full term of the Contract, including renewals, unless Vendor provides a signed, written notice revoking consent to contractadmin@buyboard.com. BuyBoard shall have up to thirty days from the date of receipt of a termination or revocation of a Vendor Consent to remove Vendor information from the BuyBoard website.

This Vendor Consent is subject to the Terms and Conditions of the Contract, including, but not limited to, those terms pertaining to Disclaimer of Warranty and Limitation of Liability, Indemnification, and Intellectual Property Infringement.

Vendor logo files must be submitted in one of the formats set forth in the BuyBoard Technical Requirements. Proposers are requested to submit this information with Vendor's Proposal. (This consent shall not authorize use of your company's Vendor Information by BuyBoard if your company is not awarded a Contract.)

OPT OUT:

If your company wishes to opt out of the Vendor (Consent for Name Brand Use, you must check the opt out box below. DO
NOT select this box unless your company is	opting out of this Vendor Consent for Name Brand Use.

By checking this box, Vendor hereby declines to provide consent for use of Vendor Information (as defined herein) on the BuyBoard website. By opting out, Vendor acknowledges and agrees that, if Vendor is awarded a Contract under this Proposal Invitation, information available on the BuyBoard for Vendor's awarded products or services may be limited, potentially placing Vendor at a disadvantage and impacting the ability of Cooperative members to search, find, review, and purchase Vendor's awarded products and services on the BuyBoard website.



CONFIDENTIAL/PROPRIETARY INFORMATION

A. Public Disclosure Laws

All Proposals, forms, documentation, catalogs, pricelists, or other materials submitted by Vendor to the Cooperative in response to this Proposal Invitation, may be subject to the disclosure requirements of the Texas Public Information Act (Texas Government Code chapter 552.001, et. seq.) or similar disclosure law. Proposer must clearly identify on this form any information in its Proposal (including forms, documentation, or other materials submitted with the Proposal) that Proposer considers proprietary or confidential. If Proposer fails to properly identify the information, the Cooperative shall have no obligation to notify Vendor or seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure law. When required by the Texas Public Information Act or other disclosure law, Proposer may be notified of any third-party request for information in a Proposal that Proposer has identified in this form as proprietary or confidential.

Does your Proposal (including forms, documentation, catalogs, pricelists, or other materials submitted with the Proposal) contain information which Vendor considers proprietary or confidential?

Please check $()$ one of the following:
riease check (y) one or the following.
NO , I certify that none of the information included with this Proposal is considered confidential or proprietary.
YES , I certify that this Proposal contains information considered confidential or proprietary and all such information is specifically identified on this form.
If you responded "YES", you must clearly identify below the specific information you consider confidential or proprietary. List each page number, form number, or other information sufficient to make the information readily identifiable. The Cooperative and Cooperative administrator shall not be responsible for a Proposer's failure to clearly identify information considered confidential or proprietary. Further, by submitting a Proposal, Proposer acknowledges that the Cooperative and Cooperative administrator will disclose information when required by law, even if such information has been identified herein as information Vendor considers confidential or proprietary.
Confidential / Proprietary Information:
(Attach additional sheets if needed.)



B. Copyright Information

Does your Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) contain copyright information?

Please check ($$) one of the following:			
NO, Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) does not contain copyright information.			
YES, Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) does contain copyright information.			
If you responded "YES", clearly identify below the specific documents or pages containing copyright information.			
Copyright Information:			
(Attach additional cheets if needed.)			

(Attach additional sheets if heeded.)

C. Consent to Release Confidential/Proprietary/Copyright Information to BuyBoard Members

BuyBoard members (Cooperative and nonprofit members) seeking to make purchases through the BuyBoard may wish to view information included in the Proposals of awarded Vendors. If you identified information on this form as confidential, proprietary, or subject to copyright, and you are awarded a BuyBoard contract, your acceptance of the BuyBoard contract award constitutes your consent to the disclosure of such information to BuyBoard members, including posting of such information on the secure BuyBoard website for members. Note: Neither the Cooperative nor Cooperative administrator will be responsible for the use or distribution of information by BuyBoard members or any other party.

D. Consent to Release Proposal Tabulation

Notwithstanding anything in this Confidential/Proprietary Information form to the contrary, by submitting a Proposal, Vendor consents and agrees that, upon Contract award, the Cooperative may publicly release, including posting on the public BuyBoard website, a copy of the proposal tabulation and award information for the Contract including Vendor name; proposed catalog/pricelist name(s); proposed percentage discount(s), hourly labor rate(s), or other specified pricing; and Vendor award or non-award information.



EDGAR VENDOR CERTIFICATION (2 CFR Part 200 and Appendix II)

When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting a Proposal must complete this EDGAR Certification Form regarding Vendor's willingness and ability to comply with certain requirements which may be applicable to specific Cooperative member purchases using federal grant funds. Completed forms will be made available to Cooperative members for their use while considering their purchasing options when using federal grant funds. Cooperative members may also require Vendors to enter into ancillary agreements, in addition to the terms and conditions of the BuyBoard contract, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

For each of the items below, Vendor should certify Vendor's agreement and ability to comply, where applicable, by having Vendor's authorized representative check the applicable boxes, initial each page, and sign the Compliance Forms Signature Page. If you fail to complete any item in this form, the Cooperative will consider and may list the Vendor's response on the BuyBoard as "NO," the Vendor is unable or unwilling to comply. A "NO" response to any of the items may, if applicable, impact the ability of a Cooperative member to purchase from the Vendor using federal funds.

1. **Vendor Violation or Breach of Contract Terms:**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Provisions regarding Vendor default are included in the BuyBoard General Terms and Conditions, including Section E.18, Remedies for Default and Termination of Contract. Any Contract award will be subject to such BuyBoard General Terms and Conditions, as well as any additional terms and conditions in any Purchase Order or Cooperative member ancillary contract agreed upon by Vendor and the Cooperative member which must be consistent with and protect the Cooperative member at least to the same extent as the BuyBoard Terms and Conditions. The remedies under the Contract are in addition to any other remedies that may be available under law or in equity. By submitting a Proposal, you agree to these Vendor violation

2	Termination for Cause or Convenie	re'
	YES, I agree.	□ NO , I do not agree.
and	breach of contract terms.	

For any Cooperative member purchase or contract in excess of \$10,000 made using federal funds, you agree that the following term and condition shall apply:

The Cooperative member may terminate or cancel any Purchase Order under this Contract at any time, with or without cause, by providing seven (7) business days advance written notice to the Vendor. If this Agreement is terminated in accordance with this Paragraph, the Cooperative member shall only be required to pay Vendor for goods or services delivered to the Cooperative member prior to the termination and not otherwise returned in accordance with Vendor's return policy. If the Cooperative member has paid Vendor for goods or services not yet provided as of the date of termination, Vendor shall immediately refund such payment(s).

☐ YES , I agree.	\square NO , I do not agree.	Initial:
agreement agreed to by the Vendor, the Coope	rative member's provision shall control.	
by which it will be effected and the basis for set	tlement, is included in the Cooperative member's Purchase	Order or ancillary
ii an aitemate provision for termination of a Coc	perative member purchase for cause and convenience, inc	luding the manner

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3. Equal Employment Opportunity:

Except as otherwise provided under 41 CFR Part 60, all Cooperative member purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

compilance i rograms, Equal Emplo	ment opportunity, bepartment of Labor.
provision applies to any Cooperative	ed under 41 CFR 60-1.4(b) is hereby incorporated by reference. Vendor agrees that s member purchase or contract that meets the definition of "federally assisted construct Vendor agrees that it shall comply with such provision.
☐ YES , I agree.	□ NO , I do not agree.
contracts/purchases in excess of \$2 as supplemented by Department of Covering Federally Financed and As laborers and mechanics at a rate no	m legislation, Vendor agrees that, for all Cooperative member prime construction, Vendor shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-31 Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contraisted Construction"). In accordance with the statute, Vendor is required to pay wage t less than the prevailing wages specified in a wage determinate made by the Secretary wages not less than once a week.
	ions issued by the Department of Labor are available at beta.sam.gov. Vendor agr is requirement applies, the award of the purchase to the Vendor is conditioned up termination.
Department of Labor regulations (2' in Whole or in Part by Loans or Grabe prohibited from inducing, by any	lso comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Finants from the United States"). The Act provides that each contractor or subrecipient means, any person employed in the construction, completion, or repair of public wotion to which he or she is otherwise entitled.
☐ YES , I agree.	□ NO , I do not agree.
mechanics or laborers, Vendor agr regulations (29 CFR Part 5). Under laborer on the basis of a standard we that the worker is compensated at excess of 40 hours in the work wee The requirements of 40 USC 3704 required to work in surroundings	e member contracts or purchases in excess of \$100,000 that involve the employment es to comply with 40 USC 3702 and 3704, as supplemented by Department of La 0 USC 3702 of the Act, Vendor is required to compute the wages of every mechanic or week of 40 hours. Work in excess of the standard work week is permissible provious rate of not less than one and a half times the basic rate of pay for all hours worked are applicable to construction work and provide that no laborer or mechanic must be under working conditions which are unsanitary, hazardous or dangerous. Thurchases of supplies or materials or articles ordinarily available on the open market
☐ YES , I agree.	□ NO, I do not agree.



6. Right to Inventions Made Under a Contract or Agreement:

If the Cooperative member's Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Vendor agrees to comply with th	above requirements when applicable.
☐ YES , I agree.	□ NO , I do not agree.
Clean Air Act (42 USC 7401-7671) and subgrants of amounts in excomply with all applicable standathe Federal Water Pollution Corawarding agency and the Region	Paral Water Pollution Control Act: .) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended – Contracts less of \$150,000 must contain a provision that requires the non-Federal award to agree to ords, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and trol Act, as amended (33 USC 1251-1387). Violations must be reported to the Federal all Office of the Environmental Protection Agency (EPA).
☐ YES , I agree.	□ NO , I do not agree.
to parties listed on the governm OMB guidelines at 2 CFR 180 th Part 1989 Comp. p. 235), "Debar or otherwise excluded by agenci Executive Order 12549. Vendor certifies that Vendor is n or otherwise excluded by agenci 12549. Vendor further agrees to seeking to purchase from Vendor CMB 1800 to	utive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made ent-wide exclusions in the System for Award Management (SAM), in accordance with the it implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR nent and Suspension." SAM Exclusions contains the names of parties debarred, suspended, es, as well as parties declared ineligible under statutory or regulatory authority other than ext currently listed on the government-wide exclusions in SAM, is not debarred, suspended, es or declared ineligible under statutory or regulatory authority other than Executive Order mmediately notify the Cooperative and all Cooperative members with pending purchases or or if Vendor is later listed on the government-wide exclusions in SAM, or is debarred, and by agencies or declared ineligible under statutory or regulatory authority other than
☐ YES , I agree.	□ NO , I do not agree.
required certification. Each tier c any person or organization for in Congress, officer or employee of contract, grant or any other awar that takes place in connection w	31 USC 1352) - Vendors that apply or bid for an award exceeding \$100,000 must file the ertifies to the tier above that it will not and has not used Federal appropriated funds to pay fluencing or attempting to influence an officer or employee of any agency, a member of congress, or an employee of a member of Congress in connection with obtaining any Federal d covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds th obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the , Vendor agrees to file all certifications and disclosures required by, and otherwise comply
☐ YES , I agree.	\square NO , I do not agree.
	Initial:



10. **Procurement of Recovered Materials:**

For Cooperative member purchases utilizing Federal funds, Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as a Cooperative member may require to confirm estimates and otherwise comply. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR

Part 247 that contain the highest percentage level of competition, where the purchase price preceding fiscal year exceeded \$10,000; procur	of recovered materials practicable, consistent with maintaining a satisfactory of the item exceeds \$10,000 or the value of the quantity acquired during the ring solid waste management services in a manner that maximizes energy and tive procurement program for procurement of recovered materials identified in
☐ YES , I agree.	\square NO , I do not agree.
procurements which may be applicable to Comember, Vendor agrees to provide such info	ements: 2 CFR §200.322 contains certain considerations for domestic preferences for cooperative members using federal funds. When required by a Cooperative rmation or certification as may reasonably be requested by the Cooperative g whether goods, products, or materials are produced in the United States.
☐ YES , I agree.	□ NO , I do not agree.
2 CFR §200.216 prohibits expending federal lo surveillance services or equipment. To the exterprovide such information or certification as m	unications and Video Surveillance Services or Equipment ban or grant funds to procure or obtain certain telecommunications and video ent applicable and when required by a Cooperative member, Vendor agrees to ay reasonably be requested by the Cooperative member to confirm whether services or equipment provided by Vendor is covered equipment or covered
☐ YES , I agree.	\square NO , I do not agree.
to negotiate profit as a separate element of t Vendor agrees to provide information and negothe price for a particular purchase. However, V	the Simplified Acquisition Threshold, a Cooperative member may be required the price. See, 2 CFR 200.324(b). When required by a Cooperative member, otiate with the Cooperative member regarding profit as a separate element of Vendor agrees that the total price, including profit, charged by Vendor to the arded pricing, including any applicable discount, under Vendor's Cooperative
☐ YES , I agree.	\square NO , I do not agree.
member, it shall make a good faith effort to we	nents, Vendor agrees, in accepting any Purchase Order from a Cooperative ork with Cooperative members to provide such information and to satisfy such perative member purchase or purchases including, but not limited to, applicable
☐ YES , I agree.	\square NO , I do not agree.

Initial:



COMPLIANCE FORMS SIGNATURE PAGE

By initialing pages and by signature below, I certify that I have reviewed the following forms; that the information provided therein is true, complete, and accurate; and that I am authorized by my company to make all certifications, consents, acknowledgements, and agreements contained herein:

- Proposal Acknowledgements
- Felony Conviction Disclosure
- Debarment Certification
- Resident/Nonresident Certification
- Vendor Employment Certification
- No Boycott Verification
- No Excluded Nation or Foreign Terrorist Organization Certification
- Historically Underutilized Business Certification
- Construction-Related Goods and Services Affirmation
- Acknowledgement of BuyBoard Technical Requirements
- Deviation and Compliance
- Vendor Consent for Name Brand Use
- Confidential/Proprietary Information
- EDGAR Vendor Certification

Company Name
Signature of Authorized Company Official
Printed Name and Title
Date



PROPOSAL FORMS PART 2: VENDOR INFORMATION FORMS

Instructions:

Proposer must completely and accurately provide all information requested in the following Vendor Information Forms or your Proposal may be rejected as non-responsive:

- Vendor Business Name
- Vendor Contact Information
- Federal and State/Purchasing Cooperative Experience
- Governmental References
- Company Profile
- Texas Regional Service Designation
- State Service Designation

- National Purchasing Cooperative Vendor Award Agreement (Vendors serving outside Texas only)
- Local/Authorized Seller Listings
- Manufacturer Dealer Designation
- Proposal Invitation Questionnaire
- Vendor Request to Self-Report BuyBoard Purchases (Optional)

To the extent any information requested is not applicable to your company, you must so indicate on the form.

VENDOR BUSINESS NAME

By submitting a Proposal, Vendor is seeking to enter into a legal contract with the Cooperative. As such, Vendor must be an individual or legal business entity capable of entering into a binding contract.

individual or legal busir	ness entity capable of entering into a binding contract.
Name of Proposing (Company:
be provided below. If you ar	company seeking to contract with the Cooperative. Do <u>NOT</u> list an assumed name, dba, aka, etc. here. Such information may be submitting a joint proposal with another entity to provide the same proposed goods or services, each submitting entity should information form. Separately operating legal business entities, even if affiliated entities, which propose to provide goods or amit their own Proposals.)
Please check ($$) one of the	following:
Type of Business:	\square Individual/Sole Proprietor \square Corporation \square Limited Liability Company \square Partnership
	☐ Other (Specify:)
State of Incorporation	on (if applicable):
Federal Employer Id	entification Number:
(Vendor must include a	a completed <u>IRS W-9</u> form with their Proposal)
	lor, if awarded, wishes to be identified on the BuyBoard: (Note: If different than the Name of Proposing valid trade names (dba, aka, etc.) of the Proposing Company may be used and a copy of your Assumed Name Certificate(s), if (!.)



VENDOR CONTACT INFORMATION

Vendor shall provide the requested Vendor Contact Information in the electronic proposal submission system including contract, purchase order, RFQ, and invoice contacts (or, if submitting a hard copy Proposal, timely request and complete the Vendor Contact Information form in accordance with the Instructions to Proposers).

FEDERAL AND STATE/PURCHASING COOPERATIVE EXPERIENCE

	Cooperative strives to provide Cooperative moders with the technical resources and ability			
1.	Provide the dollar value of sales to or through purchasing cooperatives at or based on an established catalog or market price during the previous 12-month period or the last fiscal year: \$ (The period of the 12-month period is). In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).			
2.	By submitting a proposal, you agree that, based on your written discounting policies, the discounts you offer the Cooperative are equal to or better than the best price you offer other purchasing cooperatives for the same items under equivalent circumstances.			
3.	Provide the information requested below for the past has served, as an awarded vendor as required.			
	PURCHASING GROUP	CURRENT VENDOR? (Y/N)	FORMER VENDOR (Y/N)? – IF YES, LIST YEARS AS VENDOR	AWARDED COMMODITY CATEGORY(IES)
1.	Federal General Services Administration	(1/11)	AS VENDOR	CATEGORT(ILS)
2.	T-PASS (State of Texas)			
3.	OMNIA Partners			
4.	Sourcewell (NJPA)			
5.	E&I Cooperative			
6.	Houston-Galveston Area Council (HGAC)			
7.	Choice Partners			
8.	The Interlocal Purchasing System (TIPS)			
9.	Other			
	MY COMPANY DOES NOT CURRENTLY H	AVE ANY OF	THE ABOVE OR SIMILAR TYP	E CONTRACTS.
If yo	RRENT BUYBOARD VENDORS ou are a current BuyBoard vendor in the sacunt for your current BuyBoard contract and sent and proposed discounts.			
Cur	rent Discount (%):		Proposed Discount (%):	

Explanation:



GOVERNMENTAL REFERENCES

For your Proposal to be considered, you must supply a minimum of five (5) individual governmental entity references. The Cooperative may contact any and all references provided as part of the Proposal evaluation. Provide the information requested below, including the existing pricing/discounts you offer each customer. The Cooperative may determine whether pricing/discounts are fair and reasonable by comparing pricing/discounts stated in your Proposal with the pricing/discounts you offer other governmental customers. Attach additional pages if necessary.

Entity Name	Contact	Phone#	Email Address	Discount	Volume
1					
2					
3					
4					
5					
Do you ever modify your better discounts (lower pr					bove chart to give

COMPANY PROFILE

Information on awarded Cooperative Contracts is available to Cooperative Members on the BuyBoard website. If your company is awarded a Contract under this Proposal Invitation, please provide a brief company description that you would like to have included with your company profile on the BuyBoard website. **Submit your company profile in a separate file, in Word format, with your Proposal**. (Note: Vendor is solely responsible for any content provided for inclusion on the BuyBoard website. The Cooperative reserves the right to exclude or remove any content in its sole discretion, with or without prior notice, including but not limited to any content deemed by the Cooperative to be inappropriate, irrelevant to the Contract, inaccurate, or misleading.)

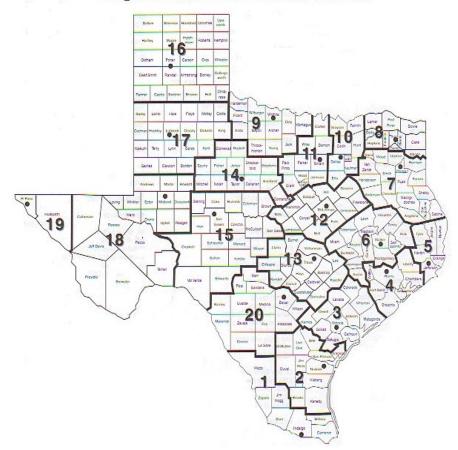


TEXAS REGIONAL SERVICE DESIGNATION

This form must be completed in the electronic proposal submission system (or, if submitting a hard copy Proposal, timely request and complete the form in accordance with the Instructions to Proposers).

The Cooperative (referred to as "Texas Cooperative" in this form and in the State Service Designation form) offers vendors the opportunity to service its members throughout the entire State of Texas. In the electronic proposal submission system, you must indicate if you will service Texas Cooperative members statewide or, if you do not plan to service all Texas Cooperative members statewide, you **must** indicate the specific regions you will service. If you propose to serve different regions for different products or services included in your Proposal, you must complete and submit a separate Texas Regional Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. (Additional forms can be obtained by contacting bids@buyboard.com at least five (5) business days prior to the Proposal Due Date.) By designating a region or regions, you are certifying that you are authorized and willing to provide the proposed products and services in those regions. Designating regions in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract. Additionally, if you do not plan to service Texas Cooperative members (i.e., if you will service only states other than Texas), you must so indicate on the form in the electronic proposal submission system.

Regional Education Service Centers



Region and Headquarters

- 1 Edinburg
- 2 Corpus Christi
- 3 Victoria
- 4 Houston
- 5 Beaumont
- 6 Huntsville
- 7 Kilgore
- 8 Mount Pleasant
- 9 Wichita Falls
- 10 Richardson
- 11 Fort Worth
- 12 Waco
- 13 Austin
- 14 Abilene
- 15 San Angelo
- 16 Amarillo
- 17 Lubbock
- 18 Midland
- 19 El Paso
- 20 San Antonio



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STATE SERVICE DESIGNATION

This form must be completed in the electronic proposal submission system (or, if submitting a hard copy Proposal, timely request and complete the in accordance with the Instructions to Proposers).

As set forth in the Proposal Invitation, it is the Cooperative's intent that other governmental entities in the United States have the opportunity to purchase goods or services awarded under the Contract, subject to applicable state law, through a piggy-back award or similar agreement through the National Purchasing Cooperative BuyBoard. If you plan to service the entire United States or only specific states, you must complete the State Service Designation information in the electronic proposal submission system. (Note: If you plan to service Texas Cooperative members, be sure that you complete the Texas Regional Service Designation form.) In addition to this form, to be considered for a piggy-back award by the National Purchasing Cooperative, you must have an authorized representative sign the National Purchasing Cooperative Vendor Award Agreement that follows this page.

If you serve different states for different products or services included in your Proposal, you must complete and submit a separate State Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. (Additional forms can be obtained by contacting bids@buyboard.com at least five (5) business days prior to the Proposal Due Date.) By designating a state or states, you are certifying that you are authorized and willing to provide the proposed products and services in those states. Designating states in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract.

- I will service all states in the United States.
- I will not service all states in the United States.

Alabama Alaska

Arizona Arkansas

California (Public Contract Code 20118 & 20652)

Colorado Connecticut Delaware

District of Columbia

Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana

Maine Maryland Massachusetts

Michigan

Montana

Minnesota Mississippi Missouri Nebraska Nevada

New Hampshire New Jersey New Mexico New York North Carolina North Dakota

Ohio Oklahoma Oregon Pennsylvania Rhode Island South Carolina South Dakota Tennessee Texas Utah Vermont Virginia Washington West Virginia Wisconsin Wyoming



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NATIONAL PURCHASING COOPERATIVE VENDOR AWARD AGREEMENT

In accordance with the Terms and Conditions associated with this Proposal Invitation, a contract awarded under this Proposal Invitation may be "piggy-backed" by another governmental entity. The National Purchasing Cooperative is an intergovernmental purchasing cooperative formed by certain school districts outside of Texas to serve its members throughout the United States. If you agree to be considered for a piggy-back award by the National Purchasing Cooperative, you agree to the following terms and agree to serve National Purchasing Cooperative members in the states you have indicated on the State Service Designation form, in your Proposal.

By signing this form, Proposer (referred to in this Agreement as "Vendor") agrees as follows:

- 1. Vendor acknowledges that if The Local Government Purchasing Cooperative ("Texas Cooperative") awards Vendor a contract under this Proposal Invitation ("Underlying Award"), the National Purchasing Cooperative ("National Cooperative") may but is not required to "piggy-back" on or re-award all or a portion of that Underlying Award ("Piggy-Back Award"). By signing this National Cooperative Vendor Award Agreement ("Agreement"), Vendor accepts and agrees to be bound by any such Piggy-Back Award as provided for herein.
- 2. In the event National Cooperative awards Vendor a Piggy-Back Award, the National Cooperative Administrator ("BuyBoard Administrator") will notify Vendor in writing of such Piggy-Back Award, which award shall commence on the effective date stated in the Notice and end on the expiration date of the Underlying Award, subject to annual renewals as authorized in writing by the BuyBoard Administrator. Vendor agrees that no further signature or other action is required of Vendor in order for the Piggy-Back Award and this Agreement to be binding upon Vendor. Vendor further agrees that no interlineations or changes to this Agreement by Vendor will be binding on National Cooperative, unless such changes are agreed to by its BuyBoard Administrator in writing.
- 3. Vendor agrees that it shall offer its goods and services to National Cooperative members at the same unit pricing and same general terms and conditions, subject to applicable state laws in the state of purchase, as required by the Underlying Award. However, nothing in this Agreement prevents Vendor from offering National Cooperative members better (i.e., lower) competitive pricing and more favorable terms and conditions than those in the Underlying Award.
- 4. Vendor hereby agrees and confirms that it will serve those states it has designated on the State Service Designation Form of this Proposal Invitation. Any changes to the states designated on the State Service Designation Form must be approved in writing by the BuyBoard Administrator.
- 5. Vendor agrees to pay National Cooperative the service fee provided for in the Underlying Award based on the amount of purchases generated from National Cooperative members through the Piggy-Back Award. Vendor shall remit payment to National Cooperative on such schedule as it specifies (which shall not be more often than monthly). Further, upon request, Vendor shall provide National Cooperative with copies of all purchase orders generated from National Cooperative members, vendor invoices, and/or such other documentation regarding those purchase orders as the Cooperative's administrators may require in their reasonable discretion for purposes of reviewing and verifying purchase activity. Vendor further agrees that National Cooperative shall have the right, upon reasonable written notice, to review Vendor's records pertaining to purchases made by National Cooperative members in order to verify the accuracy of service fees.
- 6. Vendor agrees that the Underlying Award, including its General Terms and Conditions, are adopted by reference to the fullest extent such provisions can reasonably apply to the post-proposal/contract award phase. The rights and responsibilities that would ordinarily inure to the Texas Cooperative pursuant to the Underlying Award shall inure to National Cooperative; and, conversely, the rights and responsibilities that would ordinarily inure to Vendor in the Underlying Award shall inure to Vendor in this Agreement. Vendor recognizes and agrees that Vendor and National Cooperative are the only parties to this Agreement, and that nothing in this Agreement has application to other third parties, including the Texas Cooperative. In the event of conflict between this Agreement and the terms of the Underlying Award, the terms of this Agreement shall control, and then only to the extent necessary to reconcile the conflict.

this



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- 7. This Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island and venue for any dispute shall lie in the federal district court of Alexandria, Virginia.
- 8. Vendor acknowledges and agrees that the award of a Piggy-Back Award is within the sole discretion of National Cooperative, and that this Agreement does not take effect unless and until National Cooperative awards Vendor a Piggy-Back Award and the BuyBoard Administrator notifies Vendor in writing of such Piggy-Back Award as provided for herein.

WHEREFORE, by signing below Vendor agrees to the Agreement.	e foregoing and warrants that it has the authority to enter into
Name of Vendor	Proposal Invitation Number
Signature of Authorized Company Official	Printed Name of Authorized Company Official



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LOCATION/AUTHORIZED SELLER LISTINGS

If you have more than one location/authorized seller that will service a Contract awarded under this Proposal Invitation, please list each location/authorized seller below. If additional sheets are required, please duplicate this form as necessary. NOTE: Awarded Vendors shall remain responsible for all aspects of the Contract, including processing of Purchase Orders, and shall be responsible for the performance of all locations and authorized sellers under and in accordance with the Contract. If you are a product manufacturer and wish to designate Designated Dealers as defined in the General Terms and Conditions to receive Cooperative member Purchase Orders on your behalf, you must complete the Manufacturer Designated Dealer form.

Location/Authorized Seller Name	Contact Person	Contact Information (Mailing Address, Phone, Fax, Email)



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MANUFACTURER DEALER DESIGNATION

If Vendor is a manufacturer that sells products through a dealer network and wishes to designate a dealer or multiple dealers ("Designated Dealers") to receive Cooperative member Purchase Orders on Vendor's behalf, you must complete this form for each dealer you wish to designate.

Regardless of any Designated Dealers submitted by Vendor, Vendor specifically agrees and acknowledges that any such designations are for Vendor's convenience only and shall not, if Vendor is awarded a Contract, relieve Vendor of any obligations under the Contract, including payment of Cooperative service fees on all Purchase Orders submitted to Vendor or any Designated Dealer. In accordance with the General Terms and Conditions, an awarded Vendor shall remain responsible and liable for all of its obligations under the Contract and the performance of both Vendor and any of Vendor's Designated Dealers under and in accordance with the Contract and remain subject to all remedies for default thereunder, including, but not limited to suspension and termination of Vendor's Contract for nonpayment of service fees.

If awarded, Vendor authorizes the Cooperative, in its sole discretion, to list any Vendor Designated Dealers in the BuyBoard system and to receive Purchase Orders directly from Cooperative members on behalf of Vendor. To the extent a Vendor with Designated Dealers receives a Purchase Order directly, it shall be the responsibility of Vendor to appropriately process such Purchase Order in accordance with the Contract, including but not limited to timely forwarding such Purchase Order to a Designated Dealer for processing.

The Cooperative reserves the right, in its sole discretion, to refuse addition of, or request removal of, any Designated Dealer, and Vendor agrees to immediately require such Designated Dealer to cease accepting Purchase Orders or otherwise acting on Vendor's behalf under the Contract. Further, the Cooperative administrator shall be authorized to remove or suspend any or all Designated Dealers from the BuyBoard at any time in its sole discretion.

If you wish to designate a dealer to service a contract awarded under this Proposal Invitation, please list the Designated Dealer below. If you wish to designate multiple dealers, please duplicate this form as necessary.

Designated Dealer Name		Designated Dealer Contact Person		
Designated Dealer Address				
City	State		Zip	
Phone Number		Fax Number		
Email address			ax ID Number* (*attach W	<i>I</i> -9)



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PROPOSAL INVITATION QUESTIONNAIRE

The Cooperative will use your responses to the questions below in evaluating your Proposal and technical and financial resources to provide the goods and perform the services ("Work") under the BuyBoard contract contemplated by this Proposal Invitation ("Contract"). Proposers must fully answer each question, numbering your responses to correspond to the questions/numbers below. Proposers must complete below or attach your responses to this questionnaire and submit in one document with your Proposal. You must submit the questionnaire and responses with your Proposal or the Proposal will not be considered.

1.	company is currently for sale or involved in any transaction that would significantly alter its business or result in acquisition by another entity.
2.	Describe the resources Proposer has to manage staff and successfully perform the Work contemplated under this Contract. State the number and summarize the experience of company personnel who may be utilized for the Work, including those who will be available to Cooperative members for assistance with project development, technical issues, and product selection for Work associated with this Contract.
3.	Marketing Strategy: For your Proposal to be considered, you must submit the Marketing Strategy you will use if the Cooperative accepts all or part of your Proposal. (Example: Explain how your company will initially inform Cooperative members of your BuyBoard Contract, and how you will continue to support the BuyBoard for the duration of the Contract term.) Attach additional pages if necessary.
_	



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4.	Describe Proposer's financial capability to perform the Contract. State or describe the firm's financial strength and rating bonding capacity, and insurance coverage limits. State whether the firm, or any of the firm's past or present owners principal shareholders or stockholders, or officers, have been a debtor party to a bankruptcy, receivership, or insolvency proceeding in the last 7 years, and identify any such debtor party by name and relationship to or position with your firm
 5. 	Does your company have any outstanding financial judgments and/or is it currently in default on any loan or financing agreement? If so, provide detailed information on the nature of such items and prospects for resolution.
6.	List all contracts, if any, in the last 10 years on which Proposer has defaulted, failed to complete or deliver the work, or that have been terminated for any reason. For each such contract, provide the project name, scope, value and date and the name of the procuring entity. Fully explain the circumstances of the default, failure to complete or deliver the work or termination.
7.	List all litigation or other legal proceedings (including arbitration proceedings), if any, in the last 10 years brought against your firm, or any of the firm's past or present owners, principal shareholders or stockholders, officers, agents or employees, that relate to or arise from a contract similar to this Contract or the Work contemplated under this Contract Provide the style of the lawsuit or proceeding (name of parties and court or tribunal in which filed), nature of the claim and resolution or current status.



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VENDOR REQUEST TO SELF-REPORT BUYBOARD PURCHASES

The General Terms and Conditions require that all Purchase Orders generated by or under any Contract awarded under this Proposal Invitation be processed through the BuyBoard and, except as expressly authorized in writing by the Cooperative administrator, Vendors are not authorized to process Purchase Orders received directly from Cooperative members that have not been processed through the BuyBoard or provided to the Cooperative. In accordance with this provision, Vendor may request authorization of the Cooperative administrator to self-report Cooperative member purchases if awarded a Contract under this Proposal Invitation. By making such a request, Vendor acknowledges and agrees that self-reporting is specifically subject to and conditioned upon (1) Vendor's agreement to the Additional Terms and Conditions for BuyBoard Self-Reporting which are included in this Proposal Invitation and incorporated herein for all purposes and (2) approval of this request in writing by the Cooperative administrator.

Note: This form is NOT required as part of your proposal. You should sign and return this form ONLY if you wish to request authorization to self-report BuyBoard purchases. Any request to self-report will not be effective, and Vendor shall not be authorized to self-report BuyBoard member purchases, unless and until (1) Vendor is awarded a Contract under this Proposal Invitation, and (2) the request has been approved in writing by the Cooperative administrator.

By my signature below, I hereby request authorization from the Cooperative administrator to self-report BuyBoard purchases if my company is awarded a Contract. I certify that I am authorized by the above-named Vendor to approve this form, and I have received and read the Additional Terms and Conditions for BuyBoard Self-Reporting included in this Proposal Invitation and do hereby approve and agree to such terms and conditions on behalf of Vendor.

NAME OF VENDOR:	
Signature of Vendor Authorized Representative	_
Signature or vendor Authorized Representative	
Printed Name:	
Title:	
Date:	
(For Cooperative Administrator Use Only)	
Approved by BuyBoard Administrator:	
Effective/Start Date for Self-Reporting:	



12007 Research Boulevard • Austin, Texas 78759-2439 • PH: 800-695-2919 • FAX: 800-211-5454 • buyboard.com

PROPOSAL SPECIFICATION SUMMARY

The categories and items specified for this Proposal Invitation are summarized below. For full Proposal Specifications, you must review and complete the Proposal Specification information in the electronic proposal submission system in accordance with the Instructions to Proposers (or, if submitting a hard copy Proposal, timely request and complete the Proposal Specification Form in accordance with the Instructions to Proposers).

PROPOSAL NOTE: Vendors shall submit catalog(s)/pricelist(s) with their Proposal response, or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted**.

Section I: Sewer Cleaning Equipment, Products, and Supplies

- 1. Discount (%) off catalog/pricelist for Combination Sewer Cleaners, Single Engine, Attachments, Accessories, and related products.
- 2. Discount (%) off catalog/pricelist for **Combination Sewer Cleaners**, **Dual Engine**, **Attachments**, **Accessories**, and related products.
- 3. Discount (%) off catalog/pricelist for **Jetter Units, Attachments, Accessories, and related products.**
- 4. Discount (%) off catalog/pricelist for Trailer Jetter Units, Attachments, Accessories, and related products.
- 5. Discount (%) off catalog/pricelist for Vacuum Excavation Equipment and related products.
- 6. Discount (%) off catalog/pricelist for **All Other Sewer Cleaning Equipment, Attachments, Accessories, and related products.**

Section II: Sewer Inspection Equipment, Products, and Supplies

- 7. Discount (%) off catalog/pricelist for **Portable Mini Sewer Inspection Systems, Attachments, Accessories and related products.**
- 8. Discount (%) off catalog/pricelist for Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products.
- 9. Discount (%) off catalog/pricelist for Lateral and Mainline Sewer Inspection Systems, Attachments, Accessories, and related products.
- 10. Discount (%) off catalog/pricelist for **Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products.**
- 11. Discount (%) off catalog/pricelist for **Sewer Inspection Cameras, Attachments, Accessories, and related products.**
- 12. Discount (%) off catalog/pricelist for **Sewer Inspection Camera Transporters, Attachments, Accessories, and related products.**
- 13. Discount (%) off catalog/pricelist for **Portable Video Inspection Cameras, Attachments, Accessories and related products.**
- 14. Discount (%) off catalog/pricelist for Lateral Cleaning Systems, Attachments, Accessories, and related products.
- 15. Discount (%) off catalog/pricelist for Lateral Reinstatement Cutters, Attachments, Accessories, and related products.
- 16. Discount (%) off catalog/pricelist for **Profiling Systems**, **Attachments**, **Accessories**, and related products.
- 17. Discount (%) off catalog/pricelist for **Gravity Pipeline Inspection Systems**, **Attachments**, **Accessories**, and related products.
- 18. Discount (%) off catalog/pricelist for Pipeline Condition Assessment Software and related products.
- 19. Discount (%) off catalog/pricelist for All Other Sewer Inspection Systems, Attachments, Accessories, and related products.



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Section III: Repair and Replacement Parts

20.Discount (%) off catalog/pricelist for **Repair/Replacement Parts for Sewer Cleaning and Inspection Equipment.**

Section IV: Installation and Repair Service

- 21. Hourly Labor Rate for Installation/Repair Service of Sewer Cleaning, Inspection Products, Equipment and Related Items-- Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.
- 22. **Hourly Labor Rate for Service of Pipeline Condition Assessments, Products, Equipment and Related Items- Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.



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REQUIRED FORMS CHECKLIST (Please check (v) the following)

	Reviewed/Completed:	Proposer's Acceptance and Agreement
PROPO	OSAL FORMS PART 1: COMI	PLIANCE FORMS
	Reviewed/Completed: F	Proposal Acknowledgements
	· · · · · · · · · · · · · · · · · · ·	Felony Conviction Disclosure
	· · · · · · · · · · · · · · · · · · ·	Resident/Nonresident Certification
	· · · · · · · · · · · · · · · · · · ·	Debarment Certification
		Vendor Employment Certification
	· · · · · · · · · · · · · · · · · · ·	No Boycott Verification
	•	No Excluded Nation or Foreign Terrorist Organization Certification
	· · · · · · · · · · · · · · · · · · ·	Historically Underutilized Business Certification
	· · · · · · · · · · · · · · · · · · ·	Acknowledgement of BuyBoard Technical Requirements
	· · · · · · · · · · · · · · · · · · ·	Construction-Related Goods and Services Affirmation
		Deviation and Compliance
		Vendor Consent for Name Brand Use
	Reviewed/Completed: (Confidential/Proprietary Information
	Reviewed/Completed: E	EDGAR Vendor Certification
	Reviewed/Completed: (Compliance Forms Signature Page
PROPO	OSAL FORMS PART 2: VEND	OOR INFORMATION FORMS
	Reviewed/Completed: \	Vendor Business Name
	Reviewed/Completed: \	Vendor Contact Information (complete in electronic proposal submission system)
	Reviewed/Completed:	Federal and State/Purchasing Cooperative Experience
	Reviewed/Completed:	Governmental References
	Reviewed/Completed:	Company Profile
	Reviewed/Completed: 1	Texas Regional Service Designation (complete in electronic proposal submission system)
	Reviewed/Completed: \$	State Service Designation (complete in electronic proposal submission system)
	Reviewed/Completed:	National Purchasing Cooperative Vendor Award Agreement (Vendors serving outside Texas only)
	Reviewed/Completed: L	Local/Authorized Seller Listings
	Reviewed/Completed:	Manufacturer Dealer Designation
	Reviewed/Completed: F	Proposal Invitation Questionnaire
	Reviewed/Completed: \	Vendor Request to Self-Report BuyBoard Purchases (Optional)
		Proposal Specifications Discount (%) off Catalog/Pricelist and/or other required pricing Pricelists (or no bid response) must be submitted with the Proposal or the Proposal will not



GENERAL TERMS AND CONDITIONS

A. General Provisions

1. Statement of Inclusion/Applicability

These General Terms and Conditions ("Terms and Conditions") apply to this Proposal Invitation and the proposing company's response to this Proposal Invitation. These Terms and Conditions are an integral part of any Contract which is awarded or Purchase Order which is issued in association with this Proposal Invitation.

2. Organization and Section Titles

The provisions of these Terms and Conditions are generally organized according to the stages of the procurement process: proposal, evaluation, award, and performance. This organization of and the section titles used in these Terms and Conditions are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document. Unless otherwise stated, any listing of factors or criteria in these Terms and Conditions does not constitute an order of preference or importance.

3. Definitions

As used in this Proposal Invitation and associated documentation, the following terms have the meanings set out below unless the context requires otherwise, regardless of whether initial capitalization is consistently used. Words used in the singular include the plural, and words used in the plural include the singular. To the extent terms are defined or used differently in different Proposal Invitation documents, substance prevails over form:

"Awarded Items" has the meaning set for in section E.3 of the Terms and Conditions.

"Awarded Pricing" has the meaning set forth in section E.4 of the Terms and Conditions.

"BuyBoard®," "the BuyBoard," or "BuyBoard website" means the internet-based electronic commerce technology provided by the Cooperative Administrator, the Texas Association of School Boards, Inc. (TASB), to enable Cooperative members to purchase awarded goods and services electronically.

"BuyBoard Administrator" or **"Cooperative Administrator"** means the Texas Association of School Boards, Inc. (TASB), 12007 Research Blvd, Austin, Texas 78759.

"Contract" means the contract between the Cooperative and a successful Proposer (Vendor), which gives Vendor the opportunity to serve Cooperative members based on the Cooperative's acceptance of all or part of the Vendor's Proposal, and is comprised collectively of the following:

- (a) This Proposal Invitation;
- (b) Vendor's Proposal;
- (c) Notice of Award issued to Vendor by the Cooperative; and
- (d) Purchase Order between a Cooperative member and Vendor, and any additional terms, conditions, or instructions agreed to by Vendor and a Cooperative member that are consistent with these Terms and Conditions. (A Purchase Order between a Cooperative member and Vendor shall be deemed part of the Contract for the specific Cooperative member purchase only and for determination of the Service Fee as set forth in these Terms and Conditions. Purchase Order terms, including additional or supplemental terms, conditions, or instructions agreed to between a Vendor and a Cooperative member where permitted by these Terms and Conditions shall apply between the Cooperative member and Vendor as to the specific Cooperative member purchase only but shall not alter or affect the Terms and Conditions of the Contract as between the Cooperative in its own right and Vendor.)



"Cooperative" means The Local Government Purchasing Cooperative (which may also be referred to as "Texas Cooperative" herein), including when acting by and through the Cooperative Administrator, unless a distinction is made otherwise.

"Cooperative member" or "member" means a local governmental entity (e.g., school district, city or county) or other governmental entity that is a member of the Cooperative and is eligible to purchase through a governmental purchasing cooperative or interlocal contract. Although not eligible to be a member of the Cooperative, "Cooperative member" as used in these Terms and Conditions may include the Cooperative administrator's non-profit entity subscribers when used in relation to a purchase from a non-profit subscriber.

"Goods" or "Products" (which terms are used interchangeably) means the goods, products, equipment or other commodities and/or services that are the subject of this Proposal Invitation.

"Proposal Invitation" means this Proposal Invitation and all associated documentation, including without limitation, these Terms and Conditions and any amendments hereto, additional terms and conditions specific to this Proposal Invitation, instructions, exhibits or attachments, forms, agreements, certifications, item specifications, appendices, and addenda.

"Proposal" means Proposer's complete and correct response to this Proposal Invitation, including all information, forms, agreements, certifications and other documentation required by this Proposal Invitation, properly submitted by Proposer's duly authorized representative.

"Proposal Due Date" means the date and time specified in the Proposal Invitation, or any addenda thereto, by which Vendors are required to submit Proposals for this Proposal Invitation.

"Proposer" or **"Vendor"** means the company or firm that submits a Proposal or, depending on the context, the proposing company to which the Cooperative awards a Contract under this Proposal Invitation. (For purposes of the forms associated with this Proposal Invitation, "you", "your", "I" or "my" refer to Proposer or Vendor, as applicable.)

"Purchase Order" means a Cooperative member's fiscal form or other instrument which is used in making a purchase from Vendor under a Contract. A Purchase Order may include a written or electronic purchase order, record of an online order, record of a purchasing card (P card) purchase, or any other record or instrument used by a Cooperative member to document a Cooperative member's authorized commitment to purchase awarded goods or services from a Vendor under a Contract.

"Vendor Invoice" means Vendor's billing form or other instrument, written or electronic, documenting charges for goods or services delivered to the Cooperative member under a Purchase Order under a Contract.

B. Proposal Requirements

1. Specifications

Unless otherwise specified, the specifications are intended to be non-proprietary, and should be construed as such. Catalog numbers, brand names, or manufacturer product or reference numbers used in the item specifications in this Proposal Invitation are intended to be descriptive, not restrictive. These references, as well as any approved brands and/or models listed, are intended to identify and indicate the type of product being sought and establish the level of quality desired. If any conflict exists in the item specifications between the product descriptions and any brand names or model or reference numbers used, the product descriptions will override the brand names or model number references.



In some cases, however, the Cooperative may find it advantageous in order to provide best value to Cooperative members to standardize equipment and/or supplies by manufacturer in order to achieve efficiencies in procurement, repair, and operation, to match existing stock, or to satisfy other requirements. In these limited cases, preference will be given to the specific products identified as approved brands and/or models, especially if all other evaluation factors are deemed to be equal. For this reason, where specific brands or models are identified, Proposer is encouraged to propose the exact item specified, in addition to an alternate brand or model with equal/equivalent functionality or features where appropriate or necessary.

In all cases, Proposals must identify the manufacturer, brand, model, etc., of the item being offered. For Proposals on "equal/equivalent" items other than the specified approved brand and/or model, Proposer must supply a complete description and sufficient data for the Cooperative to properly analyze the product being proposed, including its functionality and features. In order to conduct such analysis, the Cooperative may request samples for items other than approved brands and/or models. If the specification identifies a specific brand or model for any item and Proposer fails to identify the manufacturer, brand, model, etc., for that item, **the Cooperative will assume Proposer is proposing on the exact brand and model identified in the specification, and if awarded a contract, Vendor must furnish the exact brand name, model, etc., as specified. Substitutions will not be allowed after the contract is awarded, except as provided for in section E.8 (Product Updates and Substitutions) of these Terms and Conditions.**

The apparent silence of the specifications as to any detail, or the apparent omission from any specification of a detailed description concerning any point, will be interpreted to mean that only the best commercial practices will prevail, and the specification will be construed accordingly.

NOTE: Unless a different time period is stated in the General Information document of this Proposal Invitation, if Proposer discovers or suspects an error in any item specification in this Proposal Invitation, including that the specification is proprietary where not intended, Proposer must notify the Cooperative Administrator of the error in writing at bids@buyboard.com immediately, but in no event later than the 10th business day before the Proposal Due Date.

2. Proposal Pricing

Pricing must be provided in the form required by the specifications and in accordance with the Proposal Invitation.

Unless otherwise provided in the specifications, if the specifications require "Line Item" or unit pricing, the Proposal must include a specific not-to-exceed price for the unit of measure specified for that item. Proposer is responsible for clearly noting any differences in proposed packaging and/or units of measure as a deviation in accordance with section B.4 (Deviations from Item Specifications or General Terms and Conditions) of these Terms and Conditions.

Unless otherwise provided in the specifications, if the specifications require "discount from catalog" or "discount from pricelist" pricing, Proposer must quote the discount percentage to be applied to all items in each published catalog or pricelist included in the Proposal. Proposer must submit each catalog or published pricelist proposed with the Proposal in electronic format and in accordance with the requirements of the Proposal Invitation. Catalogs and pricelists should contain only items that relate to the items requested in the specifications. Vendors are discouraged from including irrelevant or non-responsive information with their Proposal. The Cooperative reserves the right to deem a Proposal non-responsive if the catalogs or pricelists submitted do not specifically relate to the intent of the Proposal Invitation or contain what the Cooperative deems, in its sole discretion, excessive irrelevant or non-responsive information, including information which makes it burdensome or impractical for the Cooperative to identify responsive products and pricing.

For installation, repair, and other services or labor, the specifications may require not-to-exceed labor rates or coefficient to be applied to a unit cost book. Proposers must provide pricing in the form required by the specifications and note any deviations in accordance with B.4 (Deviations from Item Specifications or General Terms and Conditions).



Proposer's pricing must be equal to or better than pricing Proposer offers other similarly situated customers under similar circumstances, including those offered to other purchasing cooperatives. Pricing that is not considered equal or better could result in the Proposal being determined non-competitive and not considered for award.

Unless specified otherwise in this Proposal Invitation:

- (a) A "cost plus" Proposal will not be accepted;
- (b) Proposer will not include freight, transportation and delivery charges or costs, or sales tax in Proposal pricing. (Freight, transportation and delivery charges, if applicable, are to be pre-paid by the awarded Vendor and, subject to section E.5 (Packaging, Transportation, and Delivery) of these Terms and Conditions, included as a separate item on the invoice to the ordering Cooperative member);
- (c) Proposal pricing must include the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions; and
- (d) Proposal pricing must be firm for acceptance and the Cooperative's period for acceptance will be at least 120 calendar days from the Proposal Due Date.

If Vendor is awarded a Contract, updates to pricing during the Contract term shall only be permitted in accordance with the requirements of section E.4 (Awarded Pricing) of these Terms and Conditions. Discount percentages off catalogs or pricelists must remain firm for the full Contract term.

3. Quality

Unless otherwise indicated in this Proposal Invitation, proposed products must be new and in first class condition, and must be warranted in the same manner and to the same extent as normally provided to other customers of Proposer. Additionally, proposed products must conform to the highest standards of manufacturing practice, including, for all tangible goods included in this Proposal Invitation, containers suitable for shipment and storage. Unless otherwise specified, "factory seconds," "refurbished", or otherwise inferior items are not acceptable. All services must comply with applicable industry standards.

4. Deviations from Item Specifications or General Terms and Conditions

Other than a deviation submitted in writing with the Proposal and <u>accepted by the Cooperative</u>, the Cooperative will hold Vendor accountable to the Cooperative and Cooperative members to perform in strict accordance with these Terms and Conditions and the item specifications as written. (For requirements for ancillary agreements between Cooperative members and Vendors for specific purchases, see section D.2 (Applicable Terms and Conditions; Ancillary Agreements).)

Vendor must clearly note and explain in detail any and all limitations, exceptions, qualifications, special conditions, or other deviations (collectively "deviations") from these Terms and Conditions or any of the item specifications in the Proposal on the Deviation and Compliance form (or an attachment thereto) at the time the Proposal is submitted. Deviations must be specific to these Terms and Conditions or the item specifications and clearly identify the specific section or item to which the deviation applies. The Cooperative shall not be deemed to have accepted, and a Contract shall not be subject to, any term or condition included in Vendor's Proposal which differs from these Terms and Conditions unless Vendor has specifically identified the deviation on the Deviation and Compliance form and the deviation is accepted by the Cooperative.

The submission of a deviation or deviations may place Vendor at a competitive disadvantage or otherwise prevent the Cooperative from considering the Proposal on the affected item(s).



The following Terms and Conditions are not subject to deviation. Any attempted deviation by Vendor to such Terms and Conditions, whether directly or indirectly, shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety:

- (a) Section B.9, Requirements of the Texas Public Information Act; Confidential Information;
- (b) Section B.12, Certifications;
- (c) Section D.2, Applicable Terms and Conditions; Ancillary Agreements;
- (d) Section E.6.b, Payments;
- (e) Section E.11, BuyBoard Vendor Information and Reporting of Cooperative Member Purchases
- (f) Section E.12, Service Fee;
- (g) Section E.13, Disclaimer of Warranty and Limitation of Liability;
- (h) Section E.14, Sales Tax;
- (i) Section E.15, Use of BuyBoard Logo and Trade Name;
- (j) Section E.16, Indemnification;
- (k) Section E.17, Intellectual Property Infringement;
- (I) Section E.18, Remedies for Default and Termination of Contract;
- (m) Section E.19, Force Majeure;
- (n) Section F., Miscellaneous, including all subsections (F.1-F.12) thereto.

Further, any deviation by Vendor which, directly or indirectly, seeks to add terms or requirements substantively similar to the following shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety:

- (a) Any deviation seeking to supersede these Terms and Conditions with Vendor's own agreement form, standard agreement, or terms and conditions;
- (b) Any deviation seeking to require the Cooperative, Cooperative Administrator, or any Cooperative member to indemnify or hold harmless Vendor.

The Cooperative may, in its sole discretion, seek clarification from and/or communicate with Vendor(s) regarding any submitted deviation(s), consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a proposal based upon any submitted deviation.

5. Addenda

Any interpretation, correction or change to this Proposal Invitation will be made by written addendum, and updated information contained in an addendum will prevail over the information contained in the original Proposal Invitation or a previous addendum. The Cooperative, by and through the Cooperative Administrator, is the sole authority for the issuance of any addendum, and any communication related to this Proposal Invitation that is not from the Cooperative is invalid. Although the Cooperative may provide electronic notification when an addendum has been issued and the changes will be flagged, it is Vendor's responsibility to monitor the BuyBoard vendor website for possible addenda and incorporate any posted addendum into the Proposal. Vendor must acknowledge each addendum in accordance with the instructions accompanying the addendum.

6. Samples

For any commodities included in this Proposal Invitation, the Cooperative, by and through the Cooperative Administrator, or Cooperative member may request a product sample. Proposer must furnish the requested sample at no cost to the Cooperative, Cooperative Administrator, or requesting Cooperative member, as applicable. The Cooperative Administrator or requesting Cooperative member must receive the sample within such reasonable specified time as requested. The submitted sample must be labeled with the Proposal Invitation name and number, item number, product identification number, and Vendor's name. Vendor's failure to submit a sample when requested will result in the product in question not being considered for award to Vendor.



The Cooperative Administrator or Cooperative member may retain samples for a sufficient length of time for proper evaluation. If not destroyed or consumed during examination or testing and if Vendor has included a written return request with a submitted sample, the Cooperative Administrator or Cooperative member will return samples to Vendor at Vendor's expense. Notwithstanding the foregoing, the Cooperative Administrator or Cooperative member may permanently retain samples submitted by awarded Vendors for the purpose of determining that the quality and workmanship of awarded products delivered to Cooperative members is comparable to the samples. Neither the Cooperative, the Cooperative Administrator, nor a requesting Cooperative member will be liable for samples that are damaged, destroyed or consumed during examination or testing.

7. Proposal on All or Certain Items; Service Regions

Unless otherwise specified, Vendor may propose on any or all items. Vendor should answer all questions related to each item on which Vendor wishes to propose and indicate "No Bid" for those items on which Vendor does not wish to propose. Failure to complete any item in the specifications will be deemed a no bid on that item. The Cooperative will consider items individually and make awards on each item independently, except for related items for which compatibility will be an element of consideration. In such cases, small groups of items may be considered as a unit.

Vendor's Proposal shall specify the regions and/or states that Vendor proposes to serve by completing the appropriate Proposal forms. Vendor shall specify only those regions or states for which Vendor is authorized either under applicable law and/or by the manufacturer to sell the proposed products. If Vendor proposes multiple products, and the regions or states which the Vendor is able to serve and proposes to serve differ by product, Vendor must specify the specific regions or states by product in its Proposal. A Vendor may not select a region or state in its Proposal where Vendor is unable or unauthorized to sell a proposed product. If it is determined that a Vendor is unable, unauthorized, or refuses to provide any awarded product(s) or service(s) in a region or state specified in Vendor's Proposal, such inability, lack of authorization, or refusal shall be an event of default and subject to all remedies up to and including termination of Vendor's Contract.

8. "All or Nothing" Awards

Unless otherwise indicated in this Proposal Invitation, "all or nothing" Proposals are **not** acceptable and will be rejected. Vendor must be willing to accept a partial award for any combination of the items or services proposed and must be willing to share the business with any other successful Proposers.

9. Requirements of the Texas Public Information Act; Confidential Information

(a) Vendor Compliance.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Proposal Invitation and any awarded Contract, and Vendor agrees that the Contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

Pursuant to Texas Government Code Sections 552.371 and 552.372, to the extent the Contract or any Purchase Order thereunder has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body in a fiscal year of the governmental body, Vendor shall:

- preserve all contracting information, as defined in Texas Government Code Section 552.003(7) ("Contracting Information"), related to the Contract or any Cooperative member Purchase Order thereunder as provided by the records retention requirements applicable to the governmental body for the duration of the Contract (including any Purchase Order thereunder);
- 2) promptly provide to the Cooperative or Cooperative member, as applicable, any Contracting Information related to the Contract that is in the custody or possession of Vendor on request of the Cooperative or Cooperative member; and



- 3) on completion of the Contract (including any Purchase Order thereunder), either:
 - (A) provide at no cost to the Cooperative or Cooperative member, as applicable, all Contracting Information related to the Contract (including any Purchase Order) that is in the custody or possession of Vendor; or
 - (B) preserve the Contracting Information related to the Contract (including any Purchase Order thereunder) as provided by the record retention requirements applicable to the Cooperative or Cooperative member, as applicable.

The Cooperative may not accept a Proposal or award a Contract to a Vendor that the Cooperative has determined has knowingly or intentionally failed to comply with Texas Government Code Chapter 552, Subchapter J, in a previous Proposal or Contract unless the Cooperative determines and documents that Vendor has taken adequate steps to ensure future compliance with the requirements of said Subchapter.

(b) Confidential/Proprietary Information.

Proposer must clearly identify information in the Proposal that Proposer considers proprietary or confidential by completing the Confidential/Proprietary Information form. Further, for any other information provided by Vendor to the Cooperative after Contract award (updated catalogs or pricelists, Vendor information, etc.), Vendor shall clearly mark and identify any information that Vendor considers proprietary or confidential. The Cooperative will treat such information as confidential only to the extent allowable under the Texas Public Information Act (Chapter 552 of the Texas Government Code) or similar disclosure law.

If Vendor fails to properly identify information that the Vendor considers proprietary or confidential, the Cooperative shall have no obligation to seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure laws. The Cooperative and its Administrator will not be responsible for Vendor's failure to clearly identify information Vendor considers confidential or proprietary. Vendor may be notified of a third-party request for information that Proposer has identified in the Confidential/Proprietary Information form as proprietary or confidential when required by the Texas Public Information Act or similar disclosure law.

By submitting a Proposal, Vendor acknowledges that the Cooperative and the Cooperative Administrator will disclose information when required by law, even if such information has been identified herein as information Vendor considers confidential or proprietary.

10. Certain Professional Services Excluded

Neither this Proposal Invitation nor any Contract includes services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), including without limitation architecture and professional engineering services.

11. Withdrawal or Modification of Proposal

Vendor may withdraw or modify a submitted Proposal **prior to the Proposal Due Date and time** specified in this Proposal Invitation. A Proposal may be withdrawn only in strict accordance with this section.

Electronic Proposals Submissions: A Proposal submitted electronically through a website designated by the Cooperative for submission of electronic proposals may be withdrawn or modified prior to the Proposal Due Date and time through the same electronic proposal submission website. Vendor's login to the electronic proposal submission website shall be used to verify Vendor's identity. Vendor shall be solely responsible for ensuring only authorized use of its login, following all website instructions, and ensuring that the Proposal is properly withdrawn or modified prior to the Proposal Due Date and time.



Hard Copy Submissions: If a Vendor submitted a Proposal in hard copy electronic format via mail or in person, rather than electronic submission through the designated website, Proposer must submit a written request to the Cooperative Administrator to withdraw the Proposal. The request to withdraw must be signed by an individual authorized to enter into contracts on Vendor's behalf and indicate the individual's title. If the Cooperative Administrator has any question or doubt regarding Vendor's identity or the identity of its Proposal, withdrawal will not be allowed. If the Cooperative Administrator, decides to allow the withdrawal, Vendor's duly authorized representative may be required to complete and sign a written receipt satisfactory to the Cooperative Administrator before the proposal will be released. The decision of the Cooperative Administrator relating to matters concerning withdrawal of a Proposal is final.

A Vendor may resubmit a withdrawn Proposal, or submit a new Proposal, up until the Proposal Due Date and time, provided any new submission meets the requirements of this Proposal Invitation. If Vendor resubmits a Proposal that was withdrawn and makes any change to any document in the Proposal package, the change must be made in accordance with the Cooperative's instructions for Proposal submissions, and Vendor will be deemed to have authorized such change.

Proposals that are in the Cooperative's possession (including Proposals submitted through an electronic proposal submission website designated by the Cooperative) at the Proposal Due Date and time shall be deemed final, conclusive, and irrevocable; and no Proposal will be subject to withdrawal, amendment, or correction by a Vendor after the Proposal Due Date and time specified in this Proposal Invitation. However, pursuant to section B.4 (Deviations from Item Specifications or General Terms and Conditions), the Cooperative reserves the right, in its sole discretion, to seek clarification, communicate and resolve issues around deviations that were submitted in a Proposal, consistent with general procurement principles of fair competition.

12. Certifications

The Proposer's Acceptance and Agreement and Proposal Acknowledgements forms, which are fundamental to and incorporated into this Proposal Invitation, require Vendor to certify to certain matters. Pursuant to and in accordance with such forms, and in addition to the matters set forth therein, Vendor certifies to the following with respect to this Proposal Invitation, the Proposal, and any Contract awarded under this Proposal Invitation.

(a) Non-Collusion Certification

Vendor agrees and certifies to the following, and understands that the penalty for violating this non-collusion certification will be the immediate disqualification of Vendor's Proposal or, if the violation is revealed after Contract award, any remedies allowed by law or the Contract including termination of Vendor's Contract:

- 1) Neither Vendor nor any business entity represented by Vendor has received compensation for participation in the preparation of the item specifications or these Terms and Conditions related to this Proposal Invitation;
- 2) The Proposal has been arrived at independently and is submitted without collusion with any other Vendor, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any Proposer an unfair advantage over any other Proposer with respect to the Proposal;
- 3) Vendor has not accepted, offered, conferred, or agreed to confer, and will not in the future accept, offer, confer, or agree to confer, any benefit or anything of value to any person or entity related to the Cooperative or any of its members in connection with any information or submission related to the Proposal, any recommendation, decision, vote, or award related to the Proposal, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to the Proposal;
- 4) Neither Vendor, nor any business entity represented by Vendor, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to the Proposal, and the Proposal has not been knowingly disclosed, and will not be knowingly disclosed, to any other Proposer, competitor, or potential competitor prior to the opening of Proposals; and
- 5) No attempt has been or will be made to induce any other person or entity to submit or to not submit a Proposal.



(b) Certification Regarding Ethics, Fair Competition, and Other Matters

Vendor agrees and certifies to the following:

- 1) Vendor has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with the Proposal;
- 2) Vendor has a high degree of integrity and business ethics, and a satisfactory record of performance;
- 3) Vendor is an authorized dealer, distributor, or manufacturer for the products or services offered in the Proposal for each region or state Vendor proposes to serve in the Proposal;
- 4) Vendor has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from submitting its Proposal and Vendor would in no other way whatsoever be disqualified to propose or receive any award or Contract related to this Proposal Invitation, and Vendor will comply with any reasonable request from the Cooperative to supply information sufficient to substantiate the foregoing representations;
- 5) Vendor has provided its valid, proper and correct business entity name and information in its Proposal, that such entity is operating in good standing with the proper authority from whatever state or local jurisdiction is required, and Vendor has obtained, and will continue to maintain during the entire term of the Contract, all permits, approvals, or licenses necessary for lawful performance of its obligations under this Contract;
- 6) The prices, prompt payment discount terms, delivery terms, distribution allowances and the quality and/or performance (including warranties) of the product or services offered in the Proposal are and will remain the same or better than those offered Vendor's similarly situated customers under similar circumstances, including those offered through other purchasing cooperatives;
- 7) All pricing offered in the Proposal is and will remain fair and reasonable considering general market pricing for similar goods or services. Vendor has not and will not seek to engage in price gouging or price manipulation including, but not limited to, submitting artificially low pricing in pricelists, catalogs, or other pricing submitted with the Proposal or quotes to Cooperative members in an attempt to secure a Contract or Purchase Order and subsequently attempting to increase such proposed pricing citing market pricing;
- 8) The products and services offered in the Proposal represent the full and complete products and services Vendor seeks to provide if awarded a Contract. If awarded, except as permitted by Section E.8 (Product Updates and Substitutions) of the Terms and Conditions, Vendor will be limited to awarded products and services included in the Proposal and will not seek to sell non-awarded items using the Contract.
- 9) The Proposal complies with all federal, state, and local laws concerning these types of products or services, and Vendor will continue to comply with any applicable federal, state, and local laws related to Vendor's activities in connection with the Contract;
- 10) Vendor will comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon or state or local law, including Chapter 2258 of the Texas Government Code;
- 11) Vendor will maintain, at Vendor's expense, any insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or its agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law; and
- 12) Any false statement contained in the Proposal is a material breach of contract which will void the Proposal or any resulting Contract, and subject Vendor to removal from all proposal lists, and possible criminal prosecution.

13. Proposal Signatures

Vendor must submit its Proposal in strict accordance with the Cooperative's instructions, including having an officer duly authorized by Vendor execute the Proposal. By signing, the signatory warrants that he or she has read and agrees to the terms of the Proposal and is authorized to execute same as a legally binding act of Vendor. A facsimile or electronic signature will be deemed an original.



14. No Reimbursement

Vendor understands and acknowledges the Cooperative will not reimburse or pay Vendor for any expenses Vendor incurs in preparing its Proposal or providing additional information required in connection with the Proposal.

C. Proposal Evaluation

1. General

A Proposal submitted in accordance with this Proposal Invitation will initially be considered for award; however, initial consideration of a Proposal will not constitute an assessment of its meeting the necessary qualifications, and a Proposal may be disqualified at any time during the evaluation process for failure to meet any other terms or conditions contained anywhere else in this Proposal Invitation.

2. Best Value Criteria

The Cooperative evaluates Proposals on the basis of best value to Cooperative members. In evaluating Proposals and determining best value for all Cooperative members, the Cooperative will consider the following criteria:

Be	st Value Criteria	Maximum Points
1	Price Competitiveness	45
2	Vendor Past Performance	15
3	Vendor Reputation for Goods and Services	15
4	Financial and Technical Resources	15
5	Capability of Servicing Cooperative Members	5
6	Any other relevant factor or requirement listed in this Proposal Invitation	5
TC)TAL	100

The Cooperative's evaluation may include Vendor's responses to the forms and other attachments or information included with a Proposal or associated with this Proposal Invitation, including but not limited to Vendor's responses to the Proposal Invitation Questionnaire, as well as any other information at its disposal deemed relevant by the Cooperative in its sole discretion. Only responsive Proposals will be evaluated. Failure to include all required information may result in a Proposal being deemed non-responsive.

As a general matter, the Cooperative seeks to make competitive and indefinite quantity awards to Proposers that give the same or better discounts/pricing than they give their best governmental clients and can provide best value to Cooperative members. Proposers should provide competitive pricing that is the same or better than the pricing provided their best governmental clients. Each Proposal is evaluated on its own merit and determined to be fair and reasonable, including by comparing the price/discounts that Vendor offers other governmental clients.

If this Proposal Invitation requires discount pricing, discount practices may be examined and evaluated, in the Cooperative's sole discretion, based on historical data, sales information, discounts granted to other governmental clients, and/or other market research techniques. The Cooperative may award Contracts to multiple Proposers supplying comparable products or services, also known as a multiple award schedule, or award the Contract to a single Proposer. The Cooperative's decision to make multiple awards or a single award will be based upon the Cooperative's sole discretion regarding the type of award that provides best value to all Cooperative members.

In regard to Vendor past performance, among other factors, the Cooperative may consider a Vendor's breach of contractual obligation on any other active or prior Cooperative contract awarded to Vendor including, but not limited to, nonpayment of service fees by Vendor, its parent company or affiliates and/or Vendor's failure to generate any minimum amount specified in a prior-awarded Cooperative contract.



The Proposal Invitation may also require Proposers to provide certain information in the Proposal Forms for which the Cooperative does not evaluate the Proposer's responses as part of the award criteria set out in this Section C.2. The Cooperative requests such information because it may be relevant to federal, state or local procurement law or other requirements that apply to various Cooperative members. (Cooperative members may also require and request Vendors provide additional certifications and information to meet the Cooperative member's specific procurement requirements prior to making purchases under an awarded Contract.) This information, which will be made available to Cooperative members with respect to awarded Vendors, includes the following:

- (a) Resident/Nonresident Certification;
- (b) Vendor Employment Certification;
- (c) Historically Underutilized Business Certification
- (d) EDGAR Vendor Certification.

3. Cooperative Board Decision

The Cooperative reserves the right to waive any or all irregularities, formalities, or other technicalities and to be the sole and independent judge of quality and suitability of any products or services offered. The Cooperative may accept or reject a Proposal in its entirety or may reject any part of a Proposal without affecting the remainder of that Proposal and may award individual items in this Proposal Invitation in any combination or in any way that provides best value to Cooperative members based on the criteria set out in section C.2 (Best Value Criteria) of these Terms and Conditions. The Cooperative may use all means and information at the collective disposal of the Cooperative, Cooperative Administrator, and Cooperative members to evaluate Proposals. The final decision as to the best overall offer(s), including as to pricing and suitability of the proposed products or services to meet the needs of and provide best value to Cooperative members, rests solely with the Cooperative's Board of Trustees.

The Board's decision may be protested only in accordance with the Board's protest procedure policy, which is available from the Cooperative Administrator upon written request. Pursuant to the Board's protest procedure policy, a protest challenging the terms, conditions or form of notice of this Proposal Invitation and accompanying documentation must be received by the Cooperative no later than 5:00 p.m. CST the fifth business day before the Proposal opening date, and a protest challenging an award decision, including proposal evaluations, no later than 5:00 p.m. CST the fifth business day after the award is posted on the BuyBoard vendor website.

D. Contract Award

1. Notice of Award and Related Matters

A Proposal is an offer by Vendor to contract with the Cooperative and Cooperative members in accordance with this Proposal Invitation, including without limitation the item specifications and these Terms and Conditions. A Proposal does not become a Contract unless and until the Proposal is accepted by the Cooperative through the issuance of a written Notice of Award to a successful Proposer, whereupon the Contract becomes binding and enforceable. The Contract may then be utilized by a Cooperative member by the member issuing a Purchase Order for the awarded products or services. Vendor must honor all Purchase Orders issued by Cooperative members during the Contract term in accordance with these Terms and Conditions. The Cooperative may maintain Vendor's contract documents in electronic format for the duration of the Contract term.

The Cooperative reserves the right to allow awarded Vendors to add additional service regions, at the Awarded Pricing, to the Vendor's Contract during the Contract term.

As provided for in detail in section E.11 (BuyBoard Vendor Information and Reporting of Cooperative Member Purchases), all Purchase Orders must be processed through the BuyBoard. All deliveries and financial transactions related to the Purchase Order will occur directly between Vendor and the ordering Cooperative member. As provided for in detail in section E.11(c) (Vendor Invoices), Vendor must provide copies of Vendor Invoices for Cooperative member purchases to the Cooperative Administrator.



2. Applicable Terms and Conditions; Ancillary Agreements

By submitting a Proposal, Vendor specifically agrees that these Terms and Conditions shall apply, subject to any deviations properly submitted by Proposer and **approved by the Cooperative** in accordance with section B.4 (Deviations from Item Specifications or General Terms and Conditions). Following award, Vendor shall not seek to impose on a Cooperative member additional terms, conditions, or ancillary agreements that are inconsistent with, or intended to supersede, the Contract Terms and Conditions. Further, Cooperative members and Vendors do not have the authority to modify these Terms and Conditions.

However, nothing herein shall prevent the Cooperative member and Vendor from negotiating additional ancillary terms applicable to a specific purchase or purchases, consistent with the requirements of these Terms and Conditions, including but not limited to:

- (a) Detailed product or service requirements for the specific Cooperative member purchase;
- (b) Product delivery times and requirements for the specific Cooperative member purchase;
- (c) Performance and/or payment bonds from Vendor as may be required by law or policy or deemed necessary or appropriate by the Cooperative member;
- (d) Requirements for Vendor to carry and provide proof of insurance as may be required by law or policy or as deemed necessary or appropriate by the Cooperative member;
- (e) Requirements for background checks at Vendor's expense on Vendor employees who will have direct contact with students or staff, or for other reasons;
- (f) Other requirements applicable to the purchase as may be required by law, local policy, or deemed necessary or appropriate by the Cooperative member.

Any ancillary terms between a Cooperative member and Vendor must be in writing and signed by a representative of the Cooperative member with all necessary authority to accept the agreement and bind the Cooperative member. All risk of confirming proper authority shall lie with Vendor.

By submitting a Proposal, Vendor understands and acknowledges that Cooperative members are governmental entities, and any provision in any ancillary agreement which requires the Cooperative member to indemnify or hold harmless Vendor, or any other provision not allowed by the laws applicable to the purchasing Cooperative member, shall be void and of no effect. Vendor further acknowledges and agrees that, notwithstanding anything in any ancillary agreement, including a product warranty, to the contrary, the laws applicable to such agreement shall be the laws of the state in which the Cooperative member is located. This provision supersedes any provision in any ancillary agreement to the contrary.

Any attempt by Vendor to deviate from this section in Vendor's Proposal shall be deemed rejected. Further, any attempt by an awarded Vendor to impose terms and conditions on a Cooperative member that are inconsistent with the requirements of this section shall be an event of default under the Contract and subject to all remedies up to and including termination of Vendor's Contract.

Nothing in any ancillary agreement between a Cooperative member and Vendor shall affect the Terms and Conditions of the Contract as between the Cooperative and Vendor.

3. Piggyback Contract and Other Entity Clause

It is the Cooperative's intent that other governmental entities throughout the United States, as well as the administrator's nonprofit entity BuyBoard subscribers, have the opportunity to purchase the goods or services awarded under the Contract at the same pricing and according to these Terms and Conditions, subject to applicable state law, through a piggy-back award or similar agreement. To the extent applicable, Vendor must offer and sell the awarded goods and services to such other organizations and entities in accordance with Vendor's Proposal, including without limitation the State Service Designation form and the National Purchasing Cooperative Vendor Award Agreement.



E. Contract Performance

1. Contract Term

- (a) **Term.** The term of the Contract is for the initial term stated in this Proposal Invitation, which term begins on the date specified in the Notice of Award. Unless otherwise stated in this Proposal Invitation, the Contract may be renewed for two additional one-year terms as provided for in this section E.1. In the event the Contract term will expire before the Cooperative awards a successor contract for the categories of awarded products or services, the Contract may be extended beyond the expiration date on a month-to-month basis, or such other term as determined by the Cooperative, upon the agreement of the Cooperative and Vendor, provided that the Awarded Pricing does not increase during such extension. A reference to "Contract term" in these Terms and Conditions means the initial term and any renewal term.
- **(b) Survival.** The Contract shall govern the Vendor's and the Cooperative member's rights and obligations with respect to any Purchase Order issued during the Contract term and afterwards with respect to any Purchase Order or purchase bound by the Cooperative member for specified goods or services **before** the Contract award period ended. This includes, but is not limited to, the Vendor's obligations to pay to the Cooperative all applicable service fees as required by section E.12 (Service Fees) of these Terms and Conditions for such Purchase Orders.
- (c) Renewals. Vendor has no right to or vested interest in a Contract renewal. The Cooperative will evaluate the Contract award prior to the expiration of the then current Contract term (initial or renewal) and reserves the right to not renew the Contract based on factors that may include, but are not limited to, the annual amount of business, Vendor's performance (including, but not limited to, compliance with the Terms and Conditions), and the continued provision of best value to Cooperative members. With respect to annual amount of business, Vendor must generate the minimum amount specified in the General Information document associated with this Proposal Invitation through the Contract, during both the initial and the first renewal term, or may not be offered a second renewal term. A Vendor's failure to generate this minimum amount may also be considered by the Cooperative as part of Vendor's past performance evaluation on future proposal invitations. A renewal must be agreed to by the Cooperative and Vendor. Vendor must promptly, and before the start of the renewal term, notify the Cooperative in writing if Vendor does not accept a renewal offered by the Cooperative or Vendor will have been deemed to have accepted the renewal.

2. Prevailing Wages, Bonding and Insurance Requirements

Vendor must comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon and/or state or local law, including but not limited to Chapter 2258 of the Texas Government Code.

Vendor must provide any applicable performance and payment bonds as required by law, including but not limited to Chapter 2253 of the Texas Government Code, or as requested by a Cooperative member.

Vendor must maintain appropriate and sufficient insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect Vendor and the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided by law.

3. Awarded Items Only May Be Sold; Conformity to Item Specifications

If awarded a Contract, Vendor may only offer under the Contract those products and services included in Vendor's Proposal and awarded to Vendor by the Cooperative ("Awarded Items"). For awards based on catalogs or pricelists, Awarded Items shall include only those items within the specification category or categories awarded to Vendor that were included in the catalog(s) or pricelist(s) submitted with Vendor's Proposal or as updated when and if permitted



by section E.8 (Product Updates and Substitutions). Any attempt by Vendor to sell items other than Awarded Items under the Contract shall be an event of default under the Contract.

Vendor warrants that the Awarded Items Vendor provides under the Contract will conform to the item specifications and other requirements of this Proposal Invitation (except to the extent and as specifically noted as deviations in Vendor's Proposal), and will be free from all defects in material, workmanship and title. Vendor further warrants that (i) Vendor has obtained, and will continue to maintain during the entire term of the Contract, all permits, approvals, and/or licenses necessary for lawful performance of Vendor's obligations under the Contract; (ii) Vendor will comply with all applicable state, federal and local laws, rules, and regulations in regard to Awarded Items, and (iii) all Awarded Items provided under the Contract meet all applicable legal standards and requirements, including OSHA standards and regulations, and that any electrical items bear the appropriate listing from US, FMRC, NEMA, or UL Laboratories.

If Vendor provides a product that does not conform to an item specification, including delivering a product other than the specific brand and model of the product awarded, the ordering Cooperative member may reject the product when delivered and terminate the Purchase Order, at no cost or penalty to the member.

If Awarded Items include chemicals or other products that customarily require Material Safety Data Sheets (MSDS), Vendor must include the MSDS with the first shipment of the product to a Cooperative member during the Contract term. Vendor must provide additional MSDSs to Cooperative members upon request, promptly and at no additional cost.

4. Awarded Pricing

Awarded pricing shall be based on the line item or unit pricing, discount off catalog or pricelist, not-to-exceed hourly labor rates, or other pricing structure as set forth in the Proposal Invitation, submitted in Vendor's Proposal, and approved by the Cooperative ("Awarded Pricing"). Except as provided in this section E.4 or otherwise in this Proposal Invitation, Vendor shall hold Awarded Pricing firm during the Contract term.

(a) Price Increases

Except as expressly permitted by these Terms and Conditions, Vendor has no contractual right to make price increases during the Contract term. The Cooperative reserves the right to reject any or all price increases it deems not representing best value to Cooperative members.

1) Line Item/Unit Pricing

Unless otherwise provided in the Proposal Invitation, for awards based on not-to-exceed line item or unit pricing, Vendor may submit updated pricing reflecting manufacturer or similar market-wide price increases that occur during the Contract term to the Cooperative, subject to the following requirements:

- (A) No price increases will be permitted or accepted between the time of Vendor's Proposal submission and Contract award.
- (B) Unless otherwise provided in the Proposal Invitation or approved by the Cooperative Administrator in writing, Vendor shall be required to keep the Awarded Pricing firm for the first year of the Contract Term; thereafter, Vendor may submit updated pricing no more frequently than annually for each subsequent year of the Contract Term.
- (C) Vendor must promptly provide all such supporting documentation, including manufacturer documentation, as the Cooperative, by and through the Cooperative Administrator, may require to support price increases;
- (D) Information on price increases must be provided in such format as may reasonably be required by the Cooperative Administrator;
- (E) All price increases must be supported by manufacturer price changes or similar market changes; and
- (F) Updated pricing must be limited to Awarded Items or the updated pricing may be rejected in its entirety. The Cooperative may deem any attempt by Vendor to included non-awarded items in updated pricing as an attempt to sell non-awarded items which is an event of default under the Contract.



2) Discount Off Catalog or Pricelist

For awards based on discount off catalog or pricelist, Vendor shall hold all awarded discount percentages firm during the Contract term. However, Vendor may submit updated pricelists or catalogs reflecting manufacturer or similar market-wide price increases that occur during the Contract term to the Cooperative, subject to the following requirements:

- (A) No catalog or pricelist price increases, including website-based catalogs or pricelists, will be permitted or accepted between the time of Vendor's Proposal submission and Contract award;
- (B) Following Contract award, Vendor may submit updated pricelists or catalogs to the BuyBoard no more frequently than 180 days from the date of Vendor's last pricelist or catalog unless otherwise provided in the Proposal invitation or otherwise approved by the Cooperative Administrator in writing;
- (C) Vendor must promptly provide all such supporting documentation, including manufacturer documentation, as the Cooperative, by and through the Cooperative Administrator, may require to support price increases;
- (D) Pricelists or catalogs must be provided in such format as may reasonably be required by the Cooperative Administrator;
- (E) All price increases must be supported by manufacturer price changes or similar market changes; and
- (F) Updated pricelists or catalogs must be limited to Awarded Items or the pricelist/catalog may be rejected in its entirety. The Cooperative may deem any attempt by Vendor to include non-awarded items in updated pricelists/catalogs as an attempt to sell non-awarded items which is an event of default under the Contract.

3) Labor Rates

Unless otherwise provided in the Proposal Invitation, for Awarded Pricing based on not to exceed hourly labor rates, Vendor may not increase Awarded Pricing during the Contract term unless changes to prevailing wage rates under state, local, or federal law applicable to the work to be performed support higher rates. In such event, the Vendor must notify the Cooperative and, upon request, promptly provide such documentation as the Cooperative may require to support the requested labor rate increase. Unless required by law, no rate increases will be permitted or accepted between the time of Vendor's Proposal submission and Contract award. Following Contract award, Vendor may submit updated labor rates no more frequently than 180 days from Vendors last hourly labor rate submission unless otherwise provided in the Proposal Invitation, otherwise approved by the Cooperative administrator in writing, or otherwise required by law.

For Awarded Pricing based on a coefficient to be applied to a unit price book, coefficients shall remain firm for the full Contract Term and are not subject to change.

(d) Price Decreases

Regardless of the pricing method specified, in the event Vendor decreases the price of awarded products or services below the Awarded Pricing for Vendor's other customers in similar market circumstances, Vendor must offer such decreased pricing to Cooperative members under the Contract.

Further, Cooperative members may negotiate with Vendor, through the BuyBoard request for quotes (RFQ) function or otherwise, to obtain lower prices for Awarded Items based on volume or other factors. Nothing herein shall prohibit Vendor from offering pricing lower than the Awarded Pricing.

(e) Exceeding Awarded Pricing Prohibited

If it is determined that a Vendor has sold Awarded Items to Cooperative members through the Contract at a price higher than the applicable Awarded Pricing, Vendor shall be in default of its Contract and subject to all remedies up to and including termination.

(f) Service Fee Included in Awarded Pricing

Unless specified otherwise in this Proposal Invitation, the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions is included in the Awarded Pricing.



5. Packaging, Transportation, and Delivery

Unless otherwise provided for in this Proposal Invitation, all tangible goods included in this Proposal Invitation must be packaged in containers that are new, appropriately designed for the product, and sturdy enough to protect the product during loading, transit, unloading, and storage, and be suitably packed to secure the lowest transportation costs. Products for which palletizing is appropriate must be delivered on standard and industry acceptable pallets for the products to be delivered in good, serviceable condition.

Vendor is responsible for paying all freight, delivery, handling and other charges incurred in transporting and delivering products to a Cooperative member, and for the risk of loss until the product is delivered to and accepted by the Cooperative member. Freight, delivery, handling and other charges incurred in transporting and delivering products to a Cooperative member are to be prepaid by Vendor. Vendor may collect the actual amount of such charges after delivery and acceptance, provided that the charges (a) are reasonable, (b) were disclosed to the Cooperative member, if requested, and in all instances in which the charges exceed ten percent (10%) of the total cost of the order, prior to shipment; (c) are itemized and shown separately on the member's invoice; and (d) are supported by appropriate documentation submitted with the invoice.

Except for items that have hidden defects or that do not meet specifications, title and risk of loss to products pass to a Cooperative member upon the member's actual receipt and acceptance of the product at the point and time of delivery. Unless otherwise noted in the Proposal (as a deviation) or the Purchase Order, Vendor must deliver or provide awarded products or services within 10 business days after receipt of a Cooperative member's Purchase Order. Vendor must immediately notify the Cooperative member's primary contact of any anticipated or actual delay and document the notice in writing, and the member may extend the delivery time or cancel the order if the delay is unacceptable. If the Cooperative member has not received notice of the delay as required by this section, the member may, at its discretion, return to Vendor any items received after the due date, at Vendor's expense and without liability or penalty to the member. When the needs of a Cooperative member require immediate response, the right to pick up tangible goods, if part of this Proposal Invitation, on an "over the counter" basis must be available for the majority of the awarded tangible goods. In these circumstances, the Cooperative member's personnel may pick up the products at Vendor's warehouse location. Additionally, a Cooperative member may request emergency delivery, and Vendor must use its best efforts to comply with rush or emergency requests. If Vendor cannot fulfill the emergency delivery requirement, the member may procure the products or services from alternative sources without penalty. Time is of the essence in Vendor's performance of the Contract.

6. Packing Lists, Invoices and Payments

(a) Packing Lists, Vendor Invoices

Packing lists or other suitable shipping documents must accompany each shipment of tangible goods included in this Proposal Invitation and state: (a) Vendor's name and address; (b) Cooperative member's name and address or delivery location; (c) Cooperative member's Purchase Order number; (d) descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, and total number of containers; and (e) copies of all product warranties for the item(s) delivered. Vendor must submit separate invoices, in duplicate, on each Purchase Order after each delivery. Invoices must (a) contain the information stated above; (b) separately itemize any transportation and delivery charges, and include associated documentation; (c) include a properly signed copy of the delivery receipt; and (d) be mailed directly to the ordering Cooperative member. Unless specified otherwise in this Proposal Invitation, the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions is included in the Awarded Pricing and must not be separately itemized in the invoice.

Vendor shall provide copies of Vendor Invoices to the Cooperative in accordance with the requirements of section E.11(c) (Vendor Invoices).



(b) Payments

Payment by the Cooperative member is due after a Cooperative member's receipt and acceptance of ordered products or services and the documentation identified above, including a complete and correct invoice, in accordance with the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code). A Cooperative member is not responsible for products delivered or invoiced without a valid purchase order number.

A Cooperative member's obligation to Vendor is payable only and solely from funds available for the purpose of the purchase. Lack of funds will render a Cooperative member's Purchase Order null and void to the extent funds are not available and any delivered but unpaid product will be returned to Vendor. Neither the Cooperative nor TASB is liable or responsible for any payment owed Vendor by a Cooperative member under the Contract.

7. Product Inspection, Testing, and Defective Items

Products supplied under the Contract must be delivered in the best possible condition, be covered by the product warranties provided by Vendor and/or the product manufacturer to other customers, and are subject to inspection, testing, and approval by the Cooperative or a Cooperative member. Tests may be performed on samples taken from any regular shipment of the product. In the event a tested product fails to meet or exceed all requirements of the item specifications or these Terms and Conditions, Vendor must pay the cost of the samples and/or the testing. Upon receipt of notification from the Cooperative or Cooperative member, Vendor must replace and, for tangible goods, pick up the defective product within five business days or on the next service date, whichever is sooner, without charge for the replacement or delivery. Additionally, the Cooperative or member may dispose of defective products that are not picked up and replaced by Vendor, without cost. Products damaged in shipment are considered defective for purposes of the foregoing. Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance of such products. The Cooperative or Cooperative member must have access to Vendor's place of business during normal business hours for the purpose of inspecting any awarded product.

8. Product Updates and Substitutions

Vendor's Proposal must specify the products or services Vendor proposes to provide under each category of the Proposal Invitation specifications. Vendor shall only be permitted to provide those products or services specified in the Proposal for the category or categories under which Vendor is awarded under the Contract. Except as provided in this section E.8, the Cooperative will not accept additions or substitutions to any of the product(s) listed in the Proposal after a Notice of Award has been issued.

(a) Updated Catalogs

If a manufacturer catalog submitted with Vendor's proposal is later updated with products within the same Proposal Invitation category or categories, including new products not previously available in the awarded product category, Vendor may substitute the updated catalog for the awarded product or catalog. Notwithstanding the forgoing, updated catalogs shall **not** be permitted to include any of the following:

- 1) Items that are outside the category or categories under which Vendor was awarded;
- 2) Items that, in the reasonable discretion of the Cooperative, do not meet the intent of the awarded specification category;
- 3) Items that were available in the market at the time of the submission of Vendor's Proposal which Vendor either elected not to include or neglected to include with Vendor's Proposal; or
- 4) Products from manufacturers or brands not specifically included in Vendor's Proposal in the applicable specification category.

(b) Substitutes

If an awarded product or catalog of products is discontinued by the manufacturer and the same manufacturer offers an equivalent replacement product or catalog, Vendor may substitute the replacement product or catalog for the awarded product or catalog.



Vendor shall submit all reasonable supporting documentation requested by the Cooperative Administrator regarding any catalog updates or product or catalog substitutions. The Cooperative, by and through the Cooperative Administrator, reserves the right to reject, in its sole discretion, any catalog updates or product or catalog substitutions.

9. Product and Service Guarantees and Warranties

Vendor shall extend such warranties on Awarded Items, including the installation thereof if such installation is provided by Vendor, as are normally provided to other customers of Vendor. All services shall be performed in a good and workmanlike manner consistent with industry standards. Unless a deviation is submitted by the Vendor with its proposal and accepted by the Cooperative pursuant to section B.4 (Deviations from Item Specifications or General Terms and Conditions) or unless a different warranty is required by a Cooperative member Purchase Order or ancillary agreement, a minimum of a 90-day product or service guaranty or the manufacturer's standard commercial warranty, whichever is greater, will apply to all awarded products and services. At a minimum, all product warranties must provide for replacement of defective merchandise, parts, and labor, and include pick-up of the defective merchandise from the location specified by the Cooperative member and delivery of the replacement(s) to the same location. In addition, such warranty shall include curing any defects in connection with any Vendor installation of the product at no additional cost to the member. The warranty period is effective from the date the Cooperative member accepts the product or the date the service is completed and accepted by the Cooperative member. No waiver of implied warranties shall be effective unless explicitly approved by a Cooperative member in writing in accordance with section D.2 (Applicable Terms and Conditions; Ancillary Agreements).

Vendor shall respond to any reasonable requests for information from the Cooperative, the Cooperative Administrator, or a Cooperative member pertaining to concerns regarding public health or safety in relation to Awarded Items and provide such documentation as may be reasonably requested. In the event of any product recalls affecting Awarded Items, Vendor shall notify the Cooperative Administrator and any Cooperative members who made purchases from Vendor for such recalled products in writing as soon as practicable of the recall and proposed action. At a minimum and without waiving any other requirements under the Contract, law, or Cooperative member Purchase Order or ancillary agreement, Vendor shall be required to take all action required by law or greater remedy as may be offered by Vendor to other customers with respect to recalled products, including but not limited to, prompt replacement and/or refunds.

10. Multiple Distribution Centers, Single Point of Contact, and Designated Dealers

If tangible goods are included as part of Vendor's Awarded Items and Vendor delivers products out of more than one warehouse or distribution center, all warehouses or distribution centers involved in the distribution plan must carry or have timely access to all Awarded Items and must be able to respond to orders in a timely manner. Except as expressly permitted in this Proposal Invitation, product substitutions are not allowed, and the involvement of multiple distribution centers does not alter any restriction against product substitution.

The Cooperative and Cooperative members will have **one Vendor contact person** for overall contract management relative to the Contract, even if Vendor uses multiple distribution centers or designated dealers, and the Cooperative and its members will not be required to deal with multiple Vendor contacts for overall contract management.

If Vendor is a manufacturer that sells products through a dealer network, Vendor may request to designate a dealer or multiple dealers ("Designated Dealer" or "Designated Dealers") to receive Cooperative member Purchase Orders on Vendor's behalf by completing and submitting to the Cooperative Administrator the information required on the Manufacturer Dealer Designation form contained in the Proposal Invitation and, if requested, such other information as the Cooperative Administrator may reasonably require.

Regardless of any Designated Dealers submitted by Vendor, Vendor specifically agrees and acknowledges that any such designations are for Vendor's convenience only and shall not relieve Vendor of any obligations under the Contract, including payment of Cooperative service fees on all Purchase Orders submitted to Vendor or any Designated Dealer. Vendor shall remain responsible and liable for all obligations under the Contract and the



performance of both Vendor and any of Vendor's Designated Dealers under and in accordance with the Contract. Vendor shall remain subject to all remedies for default thereunder, including, but not limited to suspension and termination of Vendor's Contract for nonpayment of service fees.

Further, Vendor acknowledges and agrees that, if Vendor opts to submit Designated Dealers under the Contract, Vendor is responsible for ensuring the accuracy, maintenance, and updating of the Designated Dealer information provided to the Cooperative and ensuring and confirming such information has been received by the Cooperative Administrator in such form as the Cooperative Administrator may reasonably require. Vendor authorizes the Cooperative Administrator, in its sole discretion, to list any Vendor Designated Dealers on the BuyBoard website and authorizes the Designated Dealer(s) to receive Purchase Orders directly from Cooperative members on behalf of Vendor. To the extent a Vendor with Designated Dealers receives a Purchase Order directly, it shall be the responsibility of Vendor to appropriately process such Purchase Order in accordance with the Contract, including but not limited to timely forwarding such Purchase Order to a Designated Dealer for processing.

The Cooperative reserves the right, in its sole discretion, to refuse addition of, or request removal of, any Designated Dealer, and Vendor agrees to immediately require such Designated Dealer to cease accepting Purchase Orders or otherwise acting on Vendor's behalf under the Contract. Further, the Cooperative Administrator shall be authorized to remove or suspend any or all Designated Dealers from the BuyBoard at any time in its sole discretion.

11. BuyBoard Vendor Information and Reporting of Cooperative Member Purchases

(a) BuyBoard Website and Vendor Information

The awarded Contract will be posted on the BuyBoard website as an online marketplace. By submitting a Proposal, Vendor consents to the posting of all Proposal and product information provided by Vendor including, but not limited to, Vendor's Proposal, contact information, product catalogs, and product pricing on the BuyBoard website for Cooperative members. Vendor further authorizes the Cooperative, the Cooperative Administrator, and any third-party contractor providing services for the BuyBoard website to receive and relay such information to Cooperative members electronically, including via electronic punch out from the BuyBoard website.

Posting of Vendor information on the BuyBoard website or other relay of Vendor information by the Cooperative to Cooperative members shall be for the convenience of Cooperative members and Vendors only and shall not be deemed a contractual obligation or duty on the part of the Cooperative. Whether and when to post information to the BuyBoard website shall be in the sole discretion of the Cooperative. To the extent Vendor pricing or catalog information is posted on the BuyBoard website and Vendor subsequently submits updated pricing or catalog information in accordance with sections E.4 or E.8 of the Terms and Conditions, as applicable, the Cooperative Administrator shall have a reasonable time (which in no event shall be less than 10 business days, and may be longer depending on circumstances) to review the information and, if accepted in accordance with the Terms and Conditions, update the information. Vendor shall continue to honor all prior pricing and catalogs and shall not be permitted to sell products or services to Cooperative members using updated pricing or catalog information until all required information has been received and updated by the Cooperative Administrator. It is the responsibility of Vendor to timely provide all pricing and catalog information in the format required by the Cooperative Administrator and respond to requests for additional information from the Cooperative Administrator to avoid delays in information being updated. As provided in sections E.4 and E.8 of these Terms and Conditions, the Cooperative reserves the right to reject any or all price increases or catalog updates.

Neither the Cooperative nor the Cooperative Administrator shall be liable to any party for information provided by Vendor or for any errors in Vendor information posted to the BuyBoard website or relayed to Cooperative members. Vendor shall be fully responsible and liable to the Cooperative, the Cooperative Administrator, and Cooperative members for all information provided by Vendor related to the Proposal Invitation, Contract and/or for posting on the BuyBoard website including, but not limited to, catalogs and pricelists. Vendor shall not upload, enter, or submit any information that may infringe the intellectual property rights of any third party or that contains software viruses or any other code, files, or programs that may damage or disrupt any software,



hardware, or equipment. To the extent Vendor discovers any error in information on the BuyBoard website, Vendor shall promptly advise the Cooperative Administrator in writing at contractadmin@buyboard.com. Vendor shall also confirm the accuracy of all product and pricing information in Purchase Orders prior to acceptance and promptly notify the Cooperative member and Cooperative of any potential errors.

By submitting a Proposal, Vendor certifies that Vendor has read the BuyBoard Technical Requirements contained in this Proposal Invitation and, if awarded a Contract, will comply with all requirements therein except as specifically indicated by Vendor in the Acknowledgement of BuyBoard Technical Requirements form. To the extent Vendor has acknowledged the ability to comply with the BuyBoard Technical Requirements, Vendor's subsequent failure or refusal to comply shall be deemed an event of default under the Contract. To the extent Vendor is unable to meet the applicable BuyBoard Technical Requirements, Vendor acknowledges that, if awarded a Contract, information available on the BuyBoard for Vendor's awarded products or services may be more limited than other Vendors, potentially placing Vendor at a disadvantage and impacting the ability of Cooperative members to search, find, review, and purchase Vendor's awarded products and services on the BuyBoard website.

The BuyBoard Technical Requirements may be updated from time to time, and Vendor agrees to use best efforts to comply, if able, with updated requirements.

In using the BuyBoard Website, Vendor agrees to comply with BuyBoard Terms and Conditions of Use and BuyBoard Privacy Policy ("BuyBoard Website Terms") which are available on the website and may be updated from time to time. The BuyBoard Website Terms supplement the Contract. In the event of any conflict between the Contract and the BuyBoard Website Terms, the Contract shall prevail.

(b) Purchase Order Reporting

A Cooperative member may make purchases from Vendor under the Contract by issuing a Purchase Order to procure Awarded Items. All Purchase Orders generated by or under the Contract must be processed through the BuyBoard. Except as expressly authorized in writing by the Cooperative Administrator, neither Vendor nor any Vendor Designated Dealer is authorized to process a Purchase Order received directly from a Cooperative member that has not been processed through the BuyBoard or provided to the Cooperative. To the extent Vendor or Vendor's Designated Dealer receives a Purchase Order directly from a Cooperative member that Vendor has reason to believe has not been received by the Cooperative or processed through the BuyBoard, Vendor shall promptly provide a copy of the Purchase Order to the Cooperative Administrator.

A Vendor may request authorization to self-report Cooperative member purchases by completing the Vendor Request to Self-Report BuyBoard Purchases form included in the Proposal Invitation or such other form as may be required by the Cooperative Administrator. Any request must be submitted in writing and is subject to written approval by the Cooperative Administrator. To the extent that a Vendor is authorized in writing by the Cooperative administrator to self-report Cooperative member purchases under the Contract, Vendor shall be required to comply with all additional terms and conditions imposed by the Cooperative as part of such authorization.

The Cooperative may, from time to time, in its reasonable discretion, provide instructions and modify the procedures for reporting Purchase Orders under the Contract by providing Vendor at least 30 days advance written notice. Vendor acknowledges and agrees that notice provided via electronic mail to the Purchase Order contact designated by Vendor in Vendor's Proposal, or subsequently updated in writing, shall satisfy this requirement. Continued acceptance of Purchase Orders and/or any Contract renewal by Vendor shall constitute acceptance of any modified Purchase Order procedures.

The intent of the Cooperative member to purchase through the Cooperative Contract is paramount. The method or timing of reporting a Purchase Order to the Cooperative shall not alter the nature of the transaction as a BuyBoard purchase or relieve Vendor of the obligation to pay the service fee on such purchase.



Vendor and any Vendor Designated Dealer must maintain the computer and telephone hardware necessary to provide for the electronic receipt of Purchase Orders and pay such costs and fees as may be imposed by a supplier or service provider for the software, equipment and service required to use the BuyBoard.

(c) Vendor Invoices

To further document and report Cooperative member purchases under the Contract, Vendor shall provide the Cooperative with copies of Vendor Invoices for all Cooperative member purchases under the Contract. Vendor shall submit copies or reports of Vendor Invoices to info@buyboard.com promptly upon generation of the invoice. Vendor shall ensure that the Contract number and member Purchase Order number is included with the Vendor Invoice.

In lieu of providing copies of individual Vendor Invoices, Vendor may provide monthly reports of Vendor Invoices to info@buyboard.com no later than the 10th day of the month. The monthly Vendor Invoice reports shall include a list of all invoices billed by Vendor during the preceding month to Cooperative members for purchases under the Contract. Monthly Vendor Invoice reports shall include any and all information reasonably required by and be in such format as may be reasonably required by the Cooperative Administrator. At a minimum, Vendor Invoice reports shall include the Cooperative member name, Purchase Order number, general description of the purchase including Contract number and Contract category under which the purchase was made, and invoice amount.

Vendor agrees to cooperate, and to require any Vendor Designated Dealer(s) to cooperate, with the Cooperative to promptly provide such reasonable information and documentation as the Cooperative Administrator may require regarding Purchase Orders received by Vendor and Vendor Invoices issued by Vendor under the Contract.

12. Service Fee

Vendor must pay the Cooperative the service fee specified in this Proposal Invitation and, unless this Proposal Invitation provides otherwise, the service fee is included in the Awarded Pricing. Except as otherwise provided in this section E.12, Vendor must remit the service fee to the Cooperative in Austin, Texas, within 30 days of the date of each service fee invoice.

Service fees shall be deemed incurred on the date of Vendor's receipt of payment for products or services by the Cooperative member. To the extent that a Vendor disputes any service fee listed in a service fee invoice, including but not limited to assertions that the purchase on which the fee is based has yet to be delivered or paid (e.g. special orders), was canceled by the Cooperative member, or is a duplicate purchase order, the Vendor must notify the Cooperative of the dispute in writing **no later than the 90th day after the original invoice date** ("Dispute Period") by returning a copy of the invoice or statement of outstanding balances to the Cooperative Administrator with each disputed item marked and the basis for dispute provided. To the extent that the disputed service fees have been paid by Vendor, any request for a refund must be provided to the Cooperative Administrator in writing, with supporting documentation, no later than the last day of the Dispute Period. Vendor agrees to cooperate, and require any Vendor Designated Dealer(s) or billing agent to cooperate, with the Cooperative Administrator in attempting to reconcile and resolve disputed fees and shall provide such reasonable information and documentation as the Cooperative Administrator may require to review the disputed fees to the satisfaction of the Cooperative Administrator's staff. Any service fees for which the Cooperative Administrator has not received a notice of dispute or request for refund within the Dispute Period as set forth herein shall be deemed conclusively due and owing and no longer subject to dispute or claim for refund.

Unpaid service fees will be subject to collection in accordance with the Cooperative's Board policy on vendor invoicing and collections, which is available from the Cooperative Administrator on request.

A Vendor may designate a billing agent to receive Cooperative service fee invoices on Vendor's behalf. Such designation must be made in writing by an authorized representative of Vendor and properly submitted to the Cooperative Administrator in such form as the Cooperative Administrator may reasonably require. However, in so doing, Vendor acknowledges and agrees that such designation shall be for Vendor's convenience only and Vendor



shall remain responsible for all obligations under the Contract, including payment of service fees, and shall remain subject to all remedies for default in payment thereof.

Vendor agrees to provide the Cooperative with copies of all Purchase Orders generated by or under the Contract that are received directly from Cooperative members, Vendor Invoices, and/or such other documentation regarding those Purchase Orders as the Cooperative Administrator may require in its reasonable discretion. Additionally, the Cooperative has the right, upon reasonable written notice, to review Vendor's records pertaining to purchases under the Contract with Cooperative members to verify purchase history and the accuracy of service fees payable from Vendor.

13. Disclaimer of Warranty and Limitation of Liability

THE COOPERATIVE AND TAŚB (BOTH D/B/A BUYBOARD) DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE AVAILABILITY, ACCURACY, CONTENT OR ANY OTHER ASPECT OF ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THE CONTRACT AWARD, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITH RESPECT TO ANY AND ALL CAUSES OF ACTION ARISING UNDER OR RELATED TO THE CONTRACT, NEITHER THE COOPERATIVE NOR TASB, NOR THEIR RESPECTIVE OFFICERS, BOARD MEMBERS, EMPLOYEES OR AGENTS, IS LIABLE TO VENDOR UNDER ANY CIRCUMSTANCES FOR LOST REVENUE, DATA OR PROFITS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, EVEN IF THE COOPERATIVE AND/OR TASB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY PROVIDED BY LAW, IN NO EVENT WILL THE COOPERATIVE AND/OR TASB'S TOTAL JOINT LIABILITY TO VENDOR EXCEED THE AMOUNT OF THE SERVICE FEE PAID BY VENDOR DURING THE TWELVE MONTHS IMMEDIATELY PRECEEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

Neither the Cooperative nor TASB is in any way liable to Vendor for a Cooperative member's performance or nonperformance of the member's obligations under the Contract or Purchase Order.

14. Sales Tax

Cooperative members are governmental entities which are generally exempt by law from the payment of state sales tax and federal excise tax. Vendor may request a Cooperative member to provide a tax exemption certificate, or the member may establish its tax-exempt status by including tax exemption information or tax exemption certificate with the Purchase Order as authorized under law. Vendor is responsible for collecting such taxes, if any, as may be due from a Cooperative member and remitting payment to the appropriate taxing authority.

15. Use of BuyBoard Logo and Trade Name

The BuyBoard trade name and logo are proprietary to TASB and have been specifically licensed by TASB to the Cooperative. Vendor may not use, display, or otherwise distribute the BuyBoard logo or trade name except in strict accordance with the Cooperative's written guidelines posted on the BuyBoard website.

16. Indemnification

Vendor agrees to defend, indemnify, and hold harmless the Cooperative, TASB, and Cooperative members, and their officers, board members, agents and employees, from and against all third-party claims, actions, suits, liability, liens, loss and damage of any character, type, or description, including without limitation all expenses of litigation, court costs and attorney's fees, arising out of or related to (a) injury or death to any person or damage to any property related to the acts of Vendor or its agents, subcontractors, or employees in the execution of or performance under the Contract or a Purchase Order, as applicable; and (b) Vendor's negligence, misconduct, breach of contract or other failure to comply with its obligations in the execution or performance under the Contract or a Purchase Order, as applicable.



17. Intellectual Property Infringement by Vendor

Without limiting the scope of section E.16 (Indemnification) of these Terms and Condition, if any claim is asserted, or action or proceeding brought against the Cooperative, the Cooperative Administrator, or a Cooperative member that alleges that either (1) all or any part of the products or services supplied by Vendor, in the form supplied or modified by Vendor, or its subcontractors pursuant to Vendor's sole directions, or (2) any information provided by Vendor or its designated dealers or agents to a Cooperative member, the Cooperative, or the Cooperative Administrator (including, but not limited to, information submitted by Vendor to the Cooperative or Cooperative Administrator for the BuyBoard website), infringes or misappropriates any United States intellectual property, intangible asset, or other proprietary right, title or interest (including, without limitation, any copyright or patent or any trade secret right, title, or interest), or violates any other contract, license, grant, or other proprietary right of any third party, the Cooperative, Cooperative Administrator, or Cooperative member upon its awareness, shall give Vendor prompt written notice thereof. Vendor shall defend, and hold the Cooperative, the Cooperative Administrator, and the Cooperative member harmless against any such claim or action and shall indemnify the Cooperative, the Cooperative Administrator, and Cooperative member against any liability, damages and costs resulting from such claim. In addition, if, in any such suit arising from such claim, the continued use of the product for the purpose intended is enjoined by any court of competent jurisdiction, unless otherwise agreed in writing by the Cooperative member, Vendor shall, at its expense and option, either (a) procure for the Cooperative member the right to continue using the product; (b) modify the product so that it becomes non-infringing; (c) replace the product or portions thereof so that it becomes non-infringing; or (d) allow the Cooperative member to return the product or cancel the service and refund the purchase price (less reasonable depreciation for use, if applicable.)

18. Remedies for Default and Termination of Contract

(a) Default and Termination of Cooperative Contract

Except as otherwise provided for in these Terms and Conditions, either party (Cooperative or Vendor) may terminate the Contract in whole or in part in the event of the other party's substantial failure to fulfill its obligations under the Contract through no fault of the terminating party; provided, however, that the defaulting party is given at least 10 business days prior written notice of the default and intent to terminate (delivered by certified mail, return receipt requested, or other method that similarly documents receipt), and, to the extent the default is capable of being cured, a 10 business day opportunity to remedy the default to the satisfaction of the terminating party (or, in the event of default based on Vendor's failure to timely remit the service fee due the Cooperative, such longer cure period as may be established by Cooperative policy.)

At the Cooperative's option and in addition to any other remedies it may have available, the Cooperative may terminate the Contract if Vendor fails to adhere to or violates any of the provisions of these Terms and Conditions, including the certifications. Without limiting the scope of the foregoing, one or more of the following constitute grounds for termination:

- 1) Materially misleading or false statement(s) in Vendor's Proposal;
- 2) Delivery of product or services that fail to meet the item specifications;
- 3) Delivery of product or services that are defective or substandard or fail to pass product inspection;
- 4) Delivery of a product substitution, except as specifically authorized by the Contract;
- 5) Failure to meet required delivery schedules;
- 6) Failure to timely supply Awarded Items at the Awarded Pricing;
- 7) Failure to timely remit any service fee due the Cooperative under the Contract or any other BuyBoard contract with Vendor, its parent company, or affiliates;
- 8) Failure to provide, within a reasonable time and where required by the Contract, information reasonably requested by the Cooperative or Cooperative Administrator including, but not limited to, information requested under sections E.11 (BuyBoard Vendor Information and Reporting of Cooperative Member Purchases) or E.12 (Service Fees) of these Terms and Conditions;
- 9) Processing a Purchase Order received directly from a Cooperative member, without prior written approval from the Cooperative Administrator;



- 10) Providing architectural or engineering services under the Contract that must be procured pursuant to the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code);
- 11) Selling non-awarded products or services under the Contract or any other BuyBoard contract; or
- 12) Vendor refusal, inability, or loss of ability to offer or provide Awarded Items to Cooperative members in awarded regions or states unless caused by a Force Majeure event pursuant and subject to section E.19 (Force Majeure).

Notwithstanding any other provision of this section E.18, in the event of Vendor's default under or breach of any provision in the Contract, the Cooperative reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of the Cooperative or necessary or appropriate to protect or provide best value to Cooperative members. Without limiting the scope of the foregoing, the Cooperative, acting by or through the Cooperative Administrator, may temporarily inactivate (suspend) Vendor from the BuyBoard website and as a BuyBoard vendor, suspend or remove any Vendor Designated Dealer, or require removal of an Awarded Item with or without prior notice to Vendor, if the Cooperative or Cooperative Administrator reasonably determines that that there has been a breach under the Contract or any other BuyBoard contract with Vendor, including but not limited to nonpayment of service fees, or that there is a potential policy, public health, or safety issue to warrant such action. The temporary inactivation may remain in effect pending further action or termination of the Contract by the Cooperative. Vendor remains liable for all obligations and responsibilities incurred prior to and during any temporary inactivation and prior to termination, as applicable.

In the event the Cooperative terminates the Contract, in whole or in part, the Cooperative reserves the right to award the terminated Contract, or any portion thereof, to the next Proposer the Cooperative determines to provide best value to Cooperative members. Additionally, the Cooperative may sue for breach of contract and specific performance and, in addition to contract damages, recover attorneys' fees and costs. Vendor shall be liable for any and all damages permitted by law, and any deviation submitted by Vendor in its Proposal seeking to limit Vendor's liability to the Cooperative shall be deemed rejected.

The Cooperative will not be liable to Vendor for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Vendor's default or breach of contract.

If any delay or failure of performance is caused by a Force Majeure event as described in section E.19 (Force Majeure) of these Terms and Conditions, the Cooperative may, in its sole discretion, terminate the Contract in whole or part, provided such termination complies with the procedures set out above. Any Contract termination resulting from any cause other than a Force Majeure event will be deemed a valid reason for the Cooperative not considering any future proposals from the defaulting Vendor.

In the event a Vendor's Contract is terminated under this section E.18, Vendor shall remain responsible for payment of all service fees to the Cooperative for Awarded Items sold under the Contract to Cooperative members prior to such termination.

(b) Default and Termination of Cooperative Member Purchase

A Cooperative member has no authority to terminate the Contract at the Cooperative level for default. A Cooperative member may terminate a Purchase Order or refuse to accept delivery (1) as provided for in these Terms and Conditions, Cooperative member Purchase Order, or ancillary agreement, or (2) for Vendor's material breach of a term or condition included in the Contract, a Cooperative member Purchase Order, or ancillary agreement. Additionally, to the extent permitted by law, Cooperative members may sue for breach of contract and specific performance and, in addition to contract damages, recover attorneys' fees and costs. Nothing herein shall limit the remedies available to a Cooperative member under applicable law.



A Cooperative member will not be liable to Vendor for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Vendor's default or breach of contract.

19. Force Majeure

The term Force Majeure includes, but is not limited to, governmental restraints or decrees, provided they affect all companies in Vendor's industry equally and are not actions taken solely against Vendor; acts of God (except natural phenomena, such as rain, wind, or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics or pandemics; riots; war; rebellion; or sabotage.

The Cooperative, Cooperative members, and Vendor are required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred rests on the party seeking relief under this section E.19. The claiming party must promptly notify the other party in writing, citing the details of the Force Majeure event, use due diligence to overcome obstacles to performance created by the Force Majeure event, and resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.

Delay or failure of performance of the Contract or a Purchase Order caused solely by a Force Majeure event will be excused for the period of delay caused solely by the Force Majeure event, provided the party claiming the event promptly notifies the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure. The Cooperative will not be responsible for any cost incurred by Vendor because of a Force Majeure event. A Cooperative member will not be responsible for any cost incurred by Vendor because of the Force Majeure event unless an authorized representative of the Cooperative member has requested, in writing, that Vendor incur such cost in connection with any delay or work stoppage caused by the Force Majeure event.

Notwithstanding any other provision of this section E.19, in the event Vendor's performance of its obligations under the Contract is delayed or stopped by a Force Majeure event, the Cooperative may, at its sole option, terminate the Contract in accordance with section E.18 (Remedies for Default and Termination of Contract) of these Terms and Conditions. This section E.19 does not limit or otherwise modify any of the Cooperative's rights as provided elsewhere in the Contract.

F. Miscellaneous

1. Assignment

Vendor may not sell, assign, transfer, convey or subcontract any responsibility or obligation created by the Contract in regard to the Cooperative without the Cooperative's prior written consent. A Vendor wishing to assign, transfer, or convey all or any portion of an awarded Contract shall submit a written request to the Cooperative, preferably at least 60 days before the projected effective date of the assignment and promptly provide such information as the Cooperative may require to process and consider the request.

Approval or denial of an assignment request shall be within the sole discretion of the Cooperative, and a vendor not awarded a Contract through the Proposal Invitation process has no right or vested interest to assignment of an awarded Contract. In determining whether to consent, the Cooperative may consider any relevant factors, including whether the party to which the sale, assignment, transfer, conveyance or subcontract is proposed is bound to and will honor all obligations and responsibilities imposed on Vendor under the Contract, including Awarded Pricing, and the best interest of and value to Cooperative members. Vendor's attempted sale, assignment, transfer, conveyance or subcontracting of any part of the Contract except in compliance with this section F.1 is void and ineffective.



If Vendor ceases distribution of an Awarded Item for any reason during the Contract term, including ceasing distribution in one or more regions or states designated by Vendor in its Texas Regional Service Designation or State Service Designation forms, and the Cooperative determines that continued availability of the product provides best value to Cooperative members, the Cooperative reserves the right to place the manufacturer of such product on the BuyBoard for the remainder of the Contract term for any or all regions or states in which Vendor has ceased distribution, in which event Vendor's Contract for such product will be deemed assigned to the product manufacturer.

2. Notices

Unless otherwise provided for in this Proposal Invitation, any written notice or other communication required by the Contract or by law will be conclusively deemed to have been given and received on the third business day after such written notice has been deposited in the U. S. Mail, properly addressed, and with sufficient postage affixed thereto, provided that actual notice may also be given via electronic mail or in any other manner used in commerce.

If the conclusion of any time period provided for in these Terms and Conditions falls on a weekend or a federal holiday, the conclusion of such time period shall be deemed to be extended until the next business day. Otherwise, references to time periods measured by days shall mean calendar days unless business days are specifically designated.

3. Equal Employment Opportunity (EEO) Disclosures

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which Vendor's primary place of business is located. In accordance with such laws, regulations and executive orders, Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, disability or genetic information, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies.

4. Applicable Law, Venue and Dispute Resolution

The Contract is governed by and will be construed according to the laws of the State of Texas, including the Uniform Commercial Code (UCC) as adopted in the State of Texas as effective and in force on the date of the Contract. Venue for any litigation concerning the Cooperative or TASB lies in Austin, Travis County, Texas, and venue for any litigation between a Cooperative member and Vendor arising under the Contract lies in the home county of the member. The parties have the mutual affirmative duty to attempt to resolve any disputes that arise under the Contract in good faith at the least possible expense prior to the initiation of any type of judicial or administrative proceeding.

5. Waiver

No claim or right arising out of a breach of the Contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. A party's failure to require strict performance of any provision of the Contract does not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

6. Interpretation – Parol Evidence

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade is relevant to supplement or explain any terms used in the Contract. Acceptance or acquiescence in a course of performance rendered under the Contract is not relevant to and does not determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.



7. Right to Assurance

Whenever the Cooperative in good faith has reason to question Vendor's intent to perform, the Cooperative may demand that Vendor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the Cooperative may treat the failure as an anticipatory repudiation of the Contract.

8. Non-Appropriations Clause

Texas law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. A Cooperative member that is a governmental entity (a) reserves the right to rescind a multi-year purchase order or other agreement to purchase products or services under the Contract at the end of the member's fiscal year if it is determined that funding is not available to extend the agreement; and (b) will use its best efforts to attempt to obtain and appropriate funds for payment.

9. Invalid Term or Condition

If any term or condition of the Contract is held invalid or unenforceable, the remainder of the Contract will not be affected and will be valid and enforceable.

10. Remedies Cumulative

The remedies available to the Cooperative, a Cooperative member, or Vendor under this Contract are in addition to any other remedies that may be available under law or in equity.

11. Signatures

Except as otherwise specifically required in these Terms and Conditions, all notices, requests, amendments and other written documentation required or authorized under the Contract may be provided electronically or as an imaged document, and an electronic or facsimile signature shall be deemed an original.

12. Right of Setoff

Any indebtedness or obligation owed by Vendor or Vendor's affiliates to the Cooperative may be appropriated and applied by the Cooperative at any time, and from time to time, on any indebtedness or other obligation owed by the Cooperative to Vendor or Vendor's affiliates, whether such indebtedness or other obligations are now existing or hereafter arise, and whether under the Contract or otherwise. It is further understood and agreed that this right of setoff is in addition to, and not in lieu of, any other right, remedy or recourse which is available to the Cooperative either at law or equity, and that failure to exercise such right of setoff in any instance shall not constitute a waiver of such right.



APPENDIX I BUYBOARD TECHNICAL REQUIREMENTS

The following are the BuyBoard Technical Requirements, current as of the date indicated at the bottom of this document.

Technical Requirements and Instructions for Vendor Logo Files

Vendor logo files submitted for inclusion on the BuyBoard website must be provided in one of the following formats:

Preferred:

- Minimum longest dimension (width or height): 384 pixels
- Image type: PNG

Other acceptable formats:

- Minimum longest dimension (width or height): 192 pixels
- Image type: JPG, JPEG, WebP

Technical Requirements and Instructions for Vendor Product Details

Following Contract award, Awarded Vendors for commodity items will be expected to promptly provide product details for awarded products in an electronic Excel spreadsheet in the format listed below. (A spreadsheet template will be provided to Vendors after Contract award.)

File Name Format:

<VendorName>_<ContractNumber>_<YYYYMMDD>.xlsx (eg. TASB_123-45_20200720.xlsx)

Field Name	Required?	Description	Туре	Character Limit
Product Name	Required	The product name. Should be unique to each product. Do not list a product category.	Text	255
Product Required Can include Do not incl		Product description as might appear in a catalog. Can include specifications, annotations, etc. Do not include: -Bullet points -HTML	Text	No limit
Manufacturer Name	Information is strongly recommended. The more		Text	125



Manufacturer Product Number	Strongly recommended	Manufacturers product or part number. If none available, blanks are acceptable, but this information is strongly recommended. The more data you can provide about your product, the better.	Text	50
Vendor Product Number	Your product number or SKU. Can be the same as ManufacturerProductNuml you do not use a separate number or SKU (if y are the manufacturer, or use the same numbe the manufacturer).		Text	50
UOM	Required	Measurement that represents a single unit of this product relative to price (eg. EA "each", PK "pack", CS "case", etc). Can be in abbreviated format (ex. EA) or full word format (ex. Each). This should not be a numeric value.	Text	10
Vendor Image Url	Strongly recommended	A link to an individual product image. If none exists, leave blank. Link should begin with https://. Do not provide: -A link to the home page of your website -A link to a product page or another section of your website If none available, blanks are ok, but strongly recommended to have this information. Product images help sell your product!	Text	1000
List Price	Required	Price per unit of product without BuyBoard discount.Cannot be left blank. DO NOT LIST "Call for Price" or "Price Varies". Must be a numeric value.	Numeric (no currency symbols or formatting, should be rounded to 2 decimal places)	N/A
Discount Percent OR	One or the other required*	The percentage discount off of List Price, per the Contract.	Percentage- one decimal place max	N/A



Discount Price *You are only required to provide either Discount Percent OR Discount Price. You may provide both if you wish, but at least one must be provided.		Price per unit of product with BuyBoard discount applied. DO NOT LIST "Call for Price" or "Price Varies". Must be a numeric value.	Numeric (no currency symbols or formatting, should be rounded to 2 decimal places)	N/A
Vendor Page Url	Optional	A link to an online catalog listing for this product (if available). This is for future use. Do not provide: -A link to the home page of your website	Text	1000
Vendor Thumnail Image Url	Optional	A link to a catalog product thumbnail image (if available).	Text	1000
Vendor Category	Optional	Your categorization for this product. If this product is nested within categories, please delimit between categories. This information is for future use.	Text	1000
UNSPSC Code	Optional	(https://www.unspsc.org/) if available.	Numeric	N/A
Extended Attributes	Optional	This field is reserved for any additional information which should be used for search indexing for this line item. It could include information on options, colors, sizes, informative notifications, etc.	Text	No limit

*Products must be unique. Duplicate products will not be accepted. To make a product unique, it must have one of the following:

1- A unique Vendor Product Number

2- A unique Vendor Product Number + UOM combination

DESIRED RESULT:

Product A - 1234567 - EA (different vendor product numbers)

Product B - 1234568 - EA

-OR-

Product A - 1234567 - EA (same vendor product number, different UOM)

Product B - 1234567 - PK

WRONG:

Product A - 1234567 - EA Product B - 1234567 - EA



APPENDIX II ADDITIONAL TERMS AND CONDITIONS FOR BUYBOARD SELF-REPORTING

The following additional terms and conditions shall apply to any approved Vendor Request to Self-Report BuyBoard Purchases:

- 1. **BuyBoard Contracts Subject to Self-Reporting.** Authorization to self-report shall apply only to a Contract awarded under this Proposal Invitation. To the extent Vendor is awarded on another BuyBoard contract or contracts, separate authorization to self-report for such other contract(s) is required.
- 2. Monthly Vendor Reports. Vendor shall submit reports of Cooperative member purchases monthly to the Cooperative Administrator ("Monthly Vendor Reports"). All Monthly Vendor Reports shall be provided to BuyBoard at contractadmin@buyboard.com no later than the 10th day of the month. The Monthly Vendor Reports shall include a list of all purchase orders completed and invoiced by Vendor during the preceding month for BuyBoard members. Monthly Vendor Reports shall include any and all information reasonably required by, and in such format as may be reasonably required by, the BuyBoard Administrator from time to time. At a minimum, Monthly Vendor Reports shall include:
 - i. BuyBoard member name;
 - ii. Purchase Order amount;
 - iii. Purchase Order number;
 - iv. Date Purchase Order submitted to vendor;
 - v. Date purchase executed / completed / delivered;
 - vi. List of any Purchase Orders on prior Monthly Vendor Report(s) subsequently canceled;
 - vii. General description of purchase, including Vendor's awarded BuyBoard contract number and category or categories under which the purchase was made; and
 - viii. Final purchase amount total (as invoiced to BuyBoard member);
 - ix. Invoice Date.
- 3. Reconciling Self-Reported Information and Discrepancies. BuyBoard may, in its sole discretion, periodically send information to Cooperative members listing all purchases self-reported by Vendor for the Cooperative member and/or request reports from Cooperative members containing purchase order data. If discrepancies are noted or reported by the Cooperative member as a result of such report or otherwise, Vendor agrees to promptly respond and cooperate with the Cooperative and/or Cooperative members to reconcile and correct any discrepancies. Vendor further agrees to promptly respond to requests and comply with any reasonable request for information and documentation by the Cooperative or a Cooperative member to assist in such reconciliation.
- 4. Vendor Accounts. Recognizing that Cooperative members seeking best value may wish to compare pricing from multiple cooperatives when considering individual purchases, the Cooperative expects Vendor to honor any request by a Cooperative member to make a purchase through the Contract and expects that Vendor will not seek to limit or inhibit a Cooperative member from making individual purchases through the purchasing cooperative of its choice, regardless of the Cooperative member establishing an account with Vendor designating BuyBoard as its cooperative.



- 5. Vendor Obligation Comply with BuyBoard Contract. Nothing in an authorization to self-report shall be deemed to waive any of Vendor's obligations under the General Terms and Conditions of the Contract, including but not limited to Vendor's obligations to honor Cooperative member Purchase Orders and pay all service fees on such Purchase Orders. Nothing shall require Cooperative members to utilize Vendor's self-reporting option to make purchases under the Contract. Vendor shall process all Purchase Orders, including any Purchase Orders received directly through the BuyBoard.
- 6. **Amendment.** These Additional Terms and Conditions for BuyBoard Self-Reporting are subject to amendment by the Cooperative at any time in its sole discretion. BuyBoard shall provide written notice to Vendor of any amendment, and the amendment shall be effective thirty (30) days after the date of the written notice.
- 7. **Termination of Self-Report Authorization.** The Cooperative may terminate any authorization for Vendor to self-report at any time for any reason, in its sole discretion. Notice of termination, including the effective date of the termination, shall be provided to Vendor in writing. If Vendor at any time wishes to cease self-reporting BuyBoard member purchases, including after receipt of amended self-reporting terms or conditions as provided herein, Vendor shall provide the Cooperative with at least thirty (30) days prior written notice of its request to revoke, listing the effective date of such revocation in the notice. Any termination or revocation of an authorization to self-report shall pertain to Vendor self-reporting only and shall not affect an awarded Vendor's underlying BuyBoard contract.
- 8. **BuyBoard Contract Terms and Conditions.** Self-reporting is subject to the General Terms and Conditions of the Contract. Unless otherwise indicated, all capitalized terms used herein shall have the same meaning as set forth in the General Terms and Conditions of the Contract.
- 9. Assignment. An authorization to self-report is specific to Vendor and not subject to assignment. In the event a Vendor's awarded Contract is subsequently assigned to another vendor where permitted by the Contract, the Contract assignee must submit its own Vendor Request to Self-Report BuyBoard Purchases and receive approval of such request by the BuyBoard Administrator.

Item 13.

Abilene Reporter-Neus PART OF THE USA TODAY NETWORK

Certificate of Publication

TEXAS ASSOC OF SCHOO L BOARDS 12007 RESEARCH BLVD

AUSTIN, TX 78759

STATE OF WISCONSIN)

COUNTY OF BROWN)

Before me, the undersigned authority, on this day personally appeared representing the Abilene Reprter-News being duly sworn deposes and says that the following notice(s) published in said newspaper generally circulated in Brown, Callahan, Coleman, Comanche, Eastland, Erath, Fisher, Haskell, Jones, Knox, Mitchell, Nolan, Runnels, Scurry, Shackelford, Stephans, Stonewall, Taylor counties, Texas by:

TEXAS ASSOC OF SCHOO L BOARDS

On the following issue(s) dated to wit:

01/19/2022, 01/26/2022

Legal Notice Clerk

On this January 26, 2022, I certify that the attached document is a true and exact copy made by the publisher.:

Notary Public, State of Wisconsin, County of Brown

My Commission Expires

Publication Cost: \$850.84 Ad No: 0005089747 Customer No: 1225040 PO #: 5089747

of Affidavits1
This is not an invoice

KATHLEEN ALLEN Notary Public State of Wisconsin

Texas Association of School Boards

Proposal Number, Proposal Name, Proposal Deadline, Contract Effective Date, Contract Expiration Date

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684-22, Ditching, Trenching, Debris/Scrap and Other Utility Equipment, 6/16/2022 at 4:00 PM, 1/1/2022 to 11/30/2025

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689-22, Vehicles, Police Motorcycles, Parts and Maintenance Repair Service, 8/18/2022 at 4:00 PM, 12/1/2022 to 11/30/2025

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NOTE · Proposal Invitations

Item 13.

will be available at www.ve ndar.buyboard.com. The Cooperative reserves the right to reject any or all bids and to waive any formalities in bidding except time of filing.

Affidavit of Publication

STATE OF TEXAS } COUNTY OF POTTER }

SS

Jaime Pipkin, being duly sworn, says:

That she is Multi-Media Account Executive of the Amarillo Globe-News, a daily newspaper of general circulation, printed and published in Amarillo, Potter County, Texas; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following

January 19, 2022, January 26, 2022

That said newspaper was regularly issued and circulated on those dates.

SIGNED:

Multi-Media Account

Subscribed to and sworn to me this 26th day of January 2022.

Kimberly Dawn Megrew, Notary Public, Potter County

My commission expires: January 09, 2023

Kimberly Dawn Megrew My Commission Expires 01/09/2023 ID No. 131847518

18113059

Texas Association of School Boards/AMA 12007 Research Blvd. **AUSTIN, TX 78759**

Legal Notices

Item 13.

Texas Association of School Boards

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679-22, Parks and Recreation Equipment, Products and Installation Services, 4/28/2022 at 4:00 PM, 10/1/2022 to 9/30/2025
680-22, Farm, Livestock and Ranch Equipment and Products, 5/8/2022 at 4:00 PM, 10/1/2022 to 9/30/2025
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to 9/30/2025

677-22, Parks and Sports Field Lighting Products and Installation Services, 4/7/2022 at 4:00 PM, 10/1/2022 to 9/30/2025

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PUBLISHER'S AFFIDAVIT

I Sally Rodriguez, being duly sworn on her oath states that she is a representative of The Brownsville Herald and that the attached notice appeared in the following issues:

Date: January 19, 26, 2022

Acct: 40021292-Texas Asso. Of School Boards

Ticket: 30202702-Request For Proposals

Subscribed and sworn to before me on this the 01st day of February 2022

SYLVIA A. GONZALEZ
My Notary ID # 126798688
Expires May 19, 2025

Notary Public, Cameron County

State of Texas

Texas Association of School Boards

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AFFIDAVIT OF PUBLICATION

STATE OF TEXAS

COUNTY OF DALLAS

Before me, a Notary Public in and for Dallas County, this day personally appeared Mert Tezkol, advertising Representative for The Dallas Morning News, being duly sworn by oath, states the attached advertisement of

TEXAS ASSN OF SCHOOL BOARDS AD# 1815162 was published in The Dallas Morning News

DATE PUBLISHED January 19, 2022 January 26, 2022



Mert Tezkol

January 26, 2022

(Notary Public)

Texas Association of School Boards

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Houston



AFFIDAVIT OF PUBLICATION

STATE OF TEXAS:

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared, the Newspaper Representative at the HOUSTON CHRONICLE, a daily newspaper published in Harris County, Texas, and generally circulated in the Counties of: HARRIS, TRINITY, WALKER, GRIMES, POLK, SAN JACINTO, WASHINGTON, MONTGOMERY, LIBERTY, AUSTIN, WALLER, CHAMBERS, COLORADO, BRAZORIA, FORT BEND, GALVESTON, WHARTON, JACKSON, and MATAGORDA and that the publication, of which the annexed herein, or attached to, is a true and correct copy, was published to-wit:

TEXAS ASSOCIATION OF SCHOOL

0034175946

HOUC004513224

RAN A LEGAL NOTICE SIZE BEING: 3 x58 L

Product

HOU Chronicle HOU Chronicle Date Jan 19 2022 Class

Page

Bids and Proposals B 4 Jan 26 2022 Bids and Proposals B 5

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Sworn and subscribed to before me, this 26th Day of January A.D. 2022

128948353

TARY PUBLIC, STATE OF TEXAS

Y COMMISSION EXPIRES MAY 16, 2024

ERIKA ACEVEDO

Notary Public in and for the State of Texas

ERIKA ACEVEDO
128646353
128646353
WY COMMISSION EXPIRES
MAY 16, 2024
MAY 16, 2024

Texas Association of School Boards

Proposal Number, Proposal Name, Proposal Deadline, Contract Effective Date, Contract Expiration Date

675-22, General Disaster Recovery and Restoration Services, 3/17/2022 at 4:00 PM, 10/1/2022 to 9/30/2025

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"Sealed proposals will be received by the Local Government Purchasing Cooperative, Cooperative Purchasing Office, 12007 Research Blvd., Austin, TX 78759:

NOTE: Proposal Invitations will be available at www.vendor.buyboard.com. The Cooperative reserves the right to reject any or all bids and to waive any formalities in bidding except time of filling.

El Paso Times

Affidavit of Publication
Ad # 0005089352
This is not an invoice

TEXAS ASSOCIATION OF SCHOOL BO 12007 RESEARCH BLVD

AUSTIN, TX 78759-2429

I, being duly sworn say: El Paso Times, a daily newspaper of general circulation published in the City and County El Paso, State of Texas, which is a newspaper of general circulation and which has been continuously and regularly published for the period of not less than one year in the said County of El Paso, and that he/she was upon the dates herein mentioned in the EL PASO TIMES.

That the LEGAL copy was published in the EL PASO TIMES for the date(s) of such follows DAY(s) to wit

01/19/2022, 01/26/2022

Legal Clerk

Subscribed and sworn before me this January 26, 2022:

State of WI, County of Brown NOTARY PUBLIC

My commission expires

Texas Association of School Boards Proposal Number, Proposal Name, Proposal Deadline, Contract Effective Date, Contract Expiration Date

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NOTE: Proposal Invitations will be available at www.vendor.buyboar d.com. The Cooperative reserves the right to reject any or all bids and to waive any formalities in bidding except time of filing. #5089352, El Paso Times, Jan. 19, 26, 2022

KATHLEEN ALLEN Notary Public State of Wisconsin

Ad # 0005089352 PO #: # of Affidavits1

This is not an invoice

AFFP

Texas Association of School Bo

Texas Association of School Boards/AMA 12007 Research Blvd. AUSTIN, TX 78759

Affidavit of Publication

State of Wisconsin County of Brown

I, said Legal Clerk, being duly sworn, says:

That I am the Legal Clerk of the Avalanche-Journal, a daily newspaper of general circulation, printed and published in Lubbock, Lubbock County, Texas; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

January 19, 2022, January 26, 2022

That said newspaper was regularly issued and circulated on those dates.

SIGNED:

Legal Clerk

Subscribed to and sworn to me this 26th day of January

2022.

00008868 16113066

Texas Association of School Boards

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> AMY KOKOTT Notary Public State of Wisconsin

Texas Association of School Boards

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STATE OF OKLAHOMA, COUNTY OF OKLAHOMA

ss.

Affidavit of Publication

Bryan Miller, of lawful age, being first duly sworn, upon oath deposes and says that she/he is the <u>Classified Legal Notice Admin</u>, of GateHouse Media Oklahoma Holdings, Inc, a corporation, which is the publisher of <u>The Oklahoman</u> which is a daily newspaper of general circulation in the State of Oklahoma, and which is a daily newspaper published in Oklahoma County and having paid general circulation therein; that said newspaper has been continuously and uninterruptedly published in said county and state for a period of more than one hundred and four consecutive weeks next prior to the first publication of the notice attached hereto, and that said notice was published in the following issues of said newspaper, namely:

TEXAS ASSOCIATION OF SCHOOL BOARDS 84453

AdNumber	Pub1	ication	Page	Date
0000683328-01	OC-	The Oklahoman	B11	02/02/2022
0000683328-01	OC-	The Oklahoman	B14	02/09/2022

Agent: Bryan Miller

Date: 02/09/2022

Item 13.

Subscribed and sworn to be me before this date : 02/09/2022

Notary: Terri Roberts

Date: 02/09/2022



Defait Date of the 1 ESCOS 1500



AD#: 0010218716

State of Oregon,) ss County of Multnomah)

Kate O'Neill being duly sworn, deposes that he/she is principal clerk of Oregonian Media Group; that The Oregonian is a public newspaper published in the city of Portland, with general circulation in Oregon, and this notice is an accurate and true copy of this notice as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following

The Oregonian 01/19, 01/26/2022

Principal Clerk of the Publisher

Sworn to and subscribed before me this 31th day of January 2022

OFFICIAL STAMP KIMBERLEE WRIGHT O'NEILL NOTARY PUBLIC-OREGON COMMISSION NO. 979329 MY COMMISSION EXPIRES SEPTEMBER 24, 2022

Notary Public

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Standard-Times PART OF THE USA TODAY NETWORK

PROOF OF PUBLICATION

TEXAS ASSOCIATION OF SCHOOL BOARDS P O BOX 400

AUSTIN, TX 78767

State of Wisconsin, County of Brown

On January 26, 2022, personally appeared before me the undersigned, a Notary Public in and for said county and state, legal clerk of the SAN ANGELO STANDARD-TIMES, a daily newspaper published in San Angelo, County of TOM GREEN, State of Texas and of general circulation in the following counties: Tom Green, Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Runnels, Schleicher, Sterling, Sutton. The attached advertisement, a true copy of which is hereto annexed, was published in said newspaper in its issues there of the issue(s) dated as follows:

01/19/2022, 01/26/2022

Subscribed and sworn to before me on January 26, 2022

Legal Clerk

Notary Public, State of WI, County of Brown

My commission expires

SHELLY HORA Notary Public State of Wisconsin

Publication Cost: \$1,145.62 Ad No: 0005090315 Customer No: 1244504

PO # . # of Affidavits 1

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Item 13.

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HEARST

MEDIA SOLUTIONS

San Antonio Express News | ExpressNews.com | mySA.com

SAN ANTONIO EXPRESS - NEWS **AFFIDAVIT OF PUBLICATION**

STATE OF TEXAS: **COUNTY OF BEXAR**

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared: Geena Garza, who after being duly sworn, says that she is the Bookkeeper of HEARST NEWSPAPERS, LLC - dba: SAN ANTONIO EXPRESS - NEWS, a newspaper published in Bexar County, Texas and that the publication, of which the annexed is a true copy, was published to wit:

Customer ID	Customer	Order ID	Publication	Pub Date
20000624	TEXAS ASSN OF SCHOOL BOARDS	34175867	SAE Express-News	01/19/22
			SAE Express-News	01/26/22

Bookkeeper

Sworn and subscribed to before me, this 27th day of 0 an A.D. 2022

Notary public in and for the State of Texas

MARK RAYMOND PORTER Notary Public, State of Texas Comm. Expires 10-27-2025 Notary ID 133416864

Proposal Number, Proposal Proposal Deadline, Contract Date, Contract Expiration Da

Texas Association of Sch

Item 13.

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PROPOSER'S ACCEPTANCE AND AGREEMENT

<u>Proposal Invitation Name</u>: Sewer Inspection and Cleaning Products

Proposal Due Date/Opening Date and Time:

March 24, 2022, at 4:00 PM

Location of Proposal Opening:

Texas Association of School Boards, Inc. BuyBoard Department 12007 Research Blvd. Austin, TX 78759

Proposal Invitation Number: 676-22

Anticipated Cooperative Board Meeting Date: August 2022

Contract Term: October 1, 2022, through September 30, 2023, with two possible one-year renewals.

By signature below, the undersigned acknowledges and agrees that you are authorized to submit this Proposal, including making all acknowledgements, consents, and certifications herein, on behalf of Proposer and, to the best of your knowledge, the information provided is true, accurate, and complete.

Reliance Truck & Equipment, LLC

Name of Proposing Company

9818 Green Road

Street Address

3-24-22



Signature of Authorized Company Official

Converse, Texas, 78109

City, State, Zip

George Gutierrez

Printed Name of Authorized Company Official

512-801-5269

Telephone Number of Authorized Company Official

Vice President

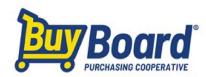
Position or Title of Authorized Company Official

210-648-3066

Fax Number of Authorized Company Official

82-4901774

Federal ID Number



PROPOSAL FORMS PART 1: COMPLIANCE FORMS

INSTRUCTIONS:

Proposer must review and complete all forms in this Proposal Forms Part 1:

- Proposal Acknowledgements
- Felony Conviction Disclosure
- Resident/Nonresident Certification
- Debarment Certification
- Vendor Employment Certification
- No Boycott Verification
- No Excluded Nation or Foreign Terrorist Organization Certification
- Historically Underutilized Business Certification
- Acknowledgement of BuyBoard Technical Requirements
- Construction-Related Goods and Services Affirmation
- Deviation and Compliance
- Vendor Consent for Name Brand Use
- Confidential/Proprietary Information
- EDGAR Vendor Certification
- Compliance Forms Signature Page

An authorized representative of Proposer <u>must initial in the bottom right corner of each page</u> where indicated and complete and sign the Compliance Forms Signature Page. Proposer's failure to fully complete, initial, and sign forms as required may result in your Proposal being rejected as non-responsive.

PROPOSAL ACKNOWLEDGEMENTS

The proposing company ("you" or "your") hereby acknowledges and agrees as follows:

- 1. You have carefully examined and understand all information and documentation associated with this Proposal Invitation, including the Instructions to Proposers, General Information, General Terms and Conditions, attachments/forms, appendices, item specifications, and line items (collectively "Requirements");
- 2. By your response ("Proposal") to this Proposal Invitation, you propose to supply the products or services submitted at the pricing quoted in your Proposal and in strict compliance with the Requirements, unless specific deviations or exceptions are noted in the Proposal;
- 3. By your Proposal, you acknowledge and certify all items set forth in the General Terms and Conditions, Section B.12 (Certifications), including all non-collusion certifications and certifications regarding legal, ethical, and other matters set forth therein.
- 4. Any and all deviations and exceptions to the Requirements have been noted in your Proposal on the required form and no others will be claimed;

Initial: $\frac{\mathcal{L}}{\mathcal{L}}$



- 5. If the Cooperative accepts any part of your Proposal and awards you a Contract, you will furnish all awarded products or services at the pricing quoted and in strict compliance with the Requirements (unless specific deviations or exceptions are noted on the required form and accepted by the Cooperative), including without limitation the Requirements related to:
 - a. conducting business with Cooperative members, including offering pricing to members that is the best you offer compared to similarly situated customers in similar circumstances;
 - b. payment of a service fee in the amount specified and as provided for in this Proposal Invitation;
 - c. the **possible** award of a piggy-back contract by the National Purchasing Cooperative or nonprofit entity, in which event you will offer the awarded products and services in accordance with the Requirements; and
 - d. submitting price sheets or catalogs in the proper format as required by the Cooperative as a prerequisite to activation of your Contract;
- 6. You have clearly identified on the included form any information in your Proposal that you believe to be confidential or proprietary or that you do not consider to be public information subject to public disclosure under the Texas Public Information Act or similar public information law;
- 7. The individual submitting this Proposal is duly authorized to enter into the contractual relationship represented by this Proposal Invitation on your behalf and bind you to the Requirements, and such individual (and any individual signing a form or Proposal document) is authorized and has the requisite knowledge to provide the information and make the representations and certifications required in the Requirements;
- 8. You have carefully reviewed your Proposal, and certify that all information provided is true, complete, and accurate to the best of your knowledge, and you authorize the Cooperative to take such action as it deems appropriate to verify such information; and
- 9. Any misstatement, falsification, or omission in your Proposal, whenever or however discovered, will be grounds for disqualifying you from consideration for a contract award under this Proposal Invitation, termination of a contract award, or any other remedy or action provided for in the General Terms and Conditions or by law.

FELONY CONVICTION DISCLOSURE

Subsection (a) of Section 44.034 of the Texas Education Code (Notification of Criminal History of Contractor) states: "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Section 44.034 further states in Subsection (b): "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

Diana chael (/) and of the following

riease check (y) one or the following.
My company is a publicly-held corporation. (Advance notice requirement does not apply to publicly-held corporation.) My company is not owned or operated by anyone who has been convicted of a felony. My company is owned/operated by the following individual(s) who has/have been convicted of a felony:
Name of Felon(s):
Details of Conviction(s):



RESIDENT/NONRESIDENT CERTIFICATION

Chapter 2252, Subchapter A, of the Texas Government Code establishes certain requirements applicable to proposers who are not Texas residents. Under the statute, a "resident" proposer is a person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas. A "nonresident" proposer is a person who is not a Texas resident. Please indicate the status of your company as a "resident" proposer or a "nonresident" proposer under these definitions.

Landard Landar		
Please check ($$) one of the following:		
I certify that my company is a Resident Pro I certify that my company is a Nonresident	poser. Proposer.	
If your company is a Nonresident Proposer, you must pro which your company's principal place of business is locate		rmation for your resident state (the state in
Type text here		
Company Name	Address	
City	State	Zip Code
A. Does your resident state require a proposer who whose resident state is the same as yours by a proposer who resident state is the same as yours by a proposer who resident state require a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident state is the same as yours by a proposer who whose resident states is the same as yours by a proposer who whose resident states is the same as yours by a proposer who whose resident states are proposer who		
B. What is the prescribed amount or percentage?	\$ or	%
<u>Debarmen</u>	T CERTIFICATI	<u>ON</u>
By signature on the Compliance Forms Signature Page, I company has been debarred, suspended or otherwise ma Executive Order 12549, "Debarment and Suspension," Neither my company nor an owner or principal of my com debarred, suspended, or otherwise excluded by agencies My company agrees to immediately notify the Cooperativ to purchase from my company if my company or an own SAM, or is debarred, suspended, or otherwise excluded by authority.	de ineligible for participas described in the Fepany is currently listed or declared ineligible and all Cooperative refer or principal is later	pation in Federal Assistance programs unde deral Register and Rules and Regulations on the government-wide exclusions in SAM under any statutory or regulatory authority nembers with pending purchases or seeking isted on the government-wide exclusions in
VENDOR EMPLOY	MENT CERTIF	CATION
Section 44.031(b) of the Texas Education Code estable determining to whom to award a contract. Among the cultimate parent or majority owner (i) has its principal place.	criteria for certain cont	racts is whether the vendor or the vendor's
If neither your company nor the ultimate parent company your company, ultimate parent company, or majority own		
Please check ($$) one of the following:		22
☐ Yes 💢 No	12 4 72	Initial: 410
Pa	nge 13 of 72	



No Boycott Verification

A Texas governmental entity may not enter into a contract with a value of \$100,000 or more that is to be paid wholly or partly from public funds with a company (excluding a sole proprietorship) that has 10 or more full-time employees for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel and will not boycott Israel during the term of the contract (Tex. Gov'T Code Ch. 2271), (2) does not boycott energy companies and will not boycott energy companies during the term of the contract (Tex. Gov'T Code Ch. 2274 effective September 1, 2021), and (3) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association (Tex. Gov'T Code Ch. 2274 effective September 1, 2021). Accordingly, this certification form is included to the extent required by law.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Tex. Gov't Code §808.001(1).

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A). Tex. Gov'T Code §809.001(1) (effective September 1, 2021).

"Discriminate against a firearm entity or firearm trade association" means, (A) with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. Tex. Gov'T Code §2274.001(3) (effective September 1, 2021).

By signature on the Compliance Forms Signature Page, to the extent applicable, I certify and verify that Vendor does not boycott Israel, boycott energy companies, or discriminate against a firearm entity or firearm trade association and will not do so during the term of any contract awarded under this Proposal Invitation, that this certification is true, complete and accurate, and that I am authorized by my company to make this certification.



NO EXCLUDED NATION OR FOREIGN TERRORIST ORGANIZATION CERTIFICATION

Chapter 2252 of the Texas Government Code provides that a Texas governmental entity may not enter into a contract with a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

By signature on the Compliance Forms Signature Page, I certify and verify that Vendor is not on the Texas Comptroller's list identified above; that this certification is true, complete and accurate; and that I am authorized by my company to make this certification.

HISTORICALLY UNDERUTILIZED BUSINESS CERTIFICATION

A Proposer that has been certified as a Historically Underutilized Business (also known as a Minority/Women Business

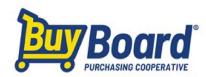
respon	ding to thi	VBE" and all referred to in this form as a "HUB") is encouraged to indicate its HUB certifications. The BuyBoard website will indicate HUB certifications for awarded and document their HUB certification on this form. Please check ($$) all that apply:	
	I certify t	hat my company has been certified as a HUB in the following categories:	
	S S O	Minority Owned Business \square Women Owned Business Service-Disabled Veteran Owned Business (veteran defined by 38 U.S.C. §101(2), service-connected disability as defined by 38 U.S.C. § 101(16), and who has a disability or more as determined by the U.S. Department of Veterans Affairs or Deportment)	ability rating
	Certifica	tion Number:	
	Name of	f Certifying Agency:	
×	My compa	any has NOT been certified as a HUB.	

ACKNOWLEDGEMENT OF BUYBOARD TECHNICAL REQUIREMENTS

Vendor shall review the BuyBoard Technical Requirements included in this Proposal Invitation. By signature on the Compliance Forms Signature Page, the undersigned affirms that Proposer has obtained a copy of the BuyBoard Technical Requirements, has read and understands the requirements, and certifies that Vendor is able to meet and will comply with those requirements except as follows: [List and explain BuyBoard Technical Requirements, if any, to which your company cannot or will not comply.]

Note: In accordance with the General Terms and Conditions of the Contract, to the extent Vendor is awarded a Contract under this Proposal Invitation but is unable or unwilling to meet the applicable BuyBoard Technical Requirements, the information available on the BuyBoard for Vendor's awarded products or services may be limited, potentially placing Vendor at a disadvantage and impacting the ability of Cooperative members to search, find, review, and purchase Vendor's awarded products and services on the BuyBoard website. Further, to the extent Vendor has acknowledged ability to meet and comply with the BuyBoard Technical Requirements, any subsequent failure or refusal by Vendor to promptly provide information upon request to the Cooperative administrator in accordance with those technical requirements may be deemed an exercised default under the Contract.

Initial:



CONSTRUCTION-RELATED GOODS AND SERVICES AFFIRMATION

The Cooperative issued the BuyBoard Procurement and Construction-Related Goods and Services Advisory for Texas Members ("Advisory"), which provides information specifically relevant to the procurement of construction-related goods and services by Texas Cooperative members. The Advisory, available at buyboard.com/Vendor/Resources.aspx, provides an overview of certain legal requirements that are potentially relevant to a Cooperative member's procurement of construction or construction-related goods and services, including those for projects that may involve or require architecture, engineering or independent testing services. A copy of the Advisory can also be provided upon request. Because many BuyBoard contracts include goods or installation services that might be considered construction-related, Proposer must make this Construction Related-Goods and Services Affirmation regardless of type of goods or services associated with this Proposal Invitation.

A contract awarded under this Proposal Invitation covers only the specific goods and/or services awarded by the Cooperative. As explained in the Advisory ("Advisory"), Texas law prohibits the procurement of architecture or engineering services through a purchasing cooperative. This Proposal Invitation and any Contract awarded thereunder does not include such services. Architecture or engineering services must be procured by a Cooperative member separately, in accordance with the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) and other applicable law and local policy.

By signature on the Compliance Forms Signature Page, Proposer affirms that Proposer has obtained a copy of the Advisory, has read and understands the Advisory, and is authorized by Proposer to make this affirmation. If Proposer sells construction-related goods or services to a Cooperative member under a Contract awarded under this Proposal Invitation, Proposer will comply with the Advisory and applicable legal requirements, make a good faith effort to make its Cooperative member customers or potential Cooperative member customers aware of such requirements, and provide a Cooperative member with a copy of the Advisory before accepting the member's Purchase Order or other agreement for construction-related goods or services.



DEVIATION AND COMPLIANCE

If your company intends to deviate from the General Terms and Conditions, Proposal Specifications or other requirements associated with this Proposal Invitation, you MUST list all such deviations on this form, and provide complete and detailed information regarding the deviations on this form or an attachment to this form. **Prior to completing this form, Vendor shall review the General Terms and Conditions section B.4 (Deviations from Item Specifications and General Terms and Conditions).** Please note that, as provided in section B.4, certain provisions of the General Terms and Conditions are NOT subject to deviation, and certain deviations will be deemed rejected without further action by the Cooperative. Any attempted deviation, whether directly or indirectly, to provisions identified in this Proposal Invitation as not subject to deviation shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety.

The Cooperative will consider any deviations in its contract award decision and reserves the right to accept or reject a proposal based upon any submitted deviation.

In the absence of any deviation identified and described in accordance with the above, your company must fully comply with the General Terms and Conditions, Proposal Specifications and all other requirements associated with this Proposal Invitation if awarded a Contract under this Proposal Invitation. A deviation will not be effective unless accepted by the Cooperative. The Cooperative, by and through the Cooperative administrator, may, in its sole discretion, seek clarification from and/or communicate with Proposer(s) regarding any submitted deviation, consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a Proposal based upon any submitted deviation.

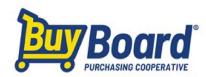
Please check ($\sqrt{}$) one of the following:

No; Deviations

Yes; Deviations

List and fully explain any deviations you are submitting:

Initial: 99



VENDOR CONSENT FOR NAME BRAND USE

BuyBoard members seeking to make purchases using a Contract awarded under this Proposal Invitation may view information regarding awarded Vendors, including but not limited to product catalogs, pricelists, pricing, and Proposals, through the BuyBoard website. To improve and enhance the experience of BuyBoard members seeking to procure goods and services under the Contract utilizing the BuyBoard website, any Vendor logo, product images, and similar brand and trademark information provided by Vendor for purposes of the Contract ("Vendor Information") may be posted on the BuyBoard website.

You acknowledge that, by submitting your Proposal, unless you specifically opt out below, you consent to use of your company's Vendor Information on the BuyBoard website if awarded a Contract. You further acknowledge that whether, where, and when to include the Vendor Information on the BuyBoard website shall be at the sole discretion of the BuyBoard Administrator. Vendor retains, however, the right of general quality control over the BuyBoard Administrator's authorized display of proprietary Vendor Information. Neither the BuyBoard nor its administrator will be responsible for the use or distribution of Vendor Information by BuyBoard members or any other third party using the BuyBoard website. This Vendor Consent shall be effective for the full term of the Contract, including renewals, unless Vendor provides a signed, written notice revoking consent to contractadmin@buyboard.com. BuyBoard shall have up to thirty days from the date of receipt of a termination or revocation of a Vendor Consent to remove Vendor information from the BuyBoard website.

This Vendor Consent is subject to the Terms and Conditions of the Contract, including, but not limited to, those terms pertaining to Disclaimer of Warranty and Limitation of Liability, Indemnification, and Intellectual Property Infringement.

Vendor logo files must be submitted in one of the formats set forth in the BuyBoard Technical Requirements. Proposers are requested to submit this information with Vendor's Proposal. (This consent shall not authorize use of your company's Vendor Information by BuyBoard if your company is not awarded a Contract.)

OPT OUT:

If your company wishes to opt out of the Vendor Consent for Name Brand Use, you must check the opt out box below. *DO NOT select this box unless your company is opting out of this Vendor Consent for Name Brand Use.*

☐ By checking this box, Vendor hereby declines to provide consent for use of Vendor Information (as defined herein) on
the BuyBoard website. By opting out, Vendor acknowledges and agrees that, if Vendor is awarded a Contract
under this Proposal Invitation, information available on the BuyBoard for Vendor's awarded products or
services may be limited, potentially placing Vendor at a disadvantage and impacting the ability of
Cooperative members to search, find, review, and purchase Vendor's awarded products and services on the
BuyBoard website.



CONFIDENTIAL/PROPRIETARY INFORMATION

A. Public Disclosure Laws

All Proposals, forms, documentation, catalogs, pricelists, or other materials submitted by Vendor to the Cooperative in response to this Proposal Invitation, may be subject to the disclosure requirements of the Texas Public Information Act (Texas Government Code chapter 552.001, et. seq.) or similar disclosure law. Proposer must clearly identify on this form any information in its Proposal (including forms, documentation, or other materials submitted with the Proposal) that Proposer considers proprietary or confidential. If Proposer fails to properly identify the information, the Cooperative shall have no obligation to notify Vendor or seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure law. When required by the Texas Public Information Act or other disclosure law, Proposer may be notified of any third-party request for information in a Proposal that Proposer has identified in this form as proprietary or confidential.

Does your Proposal (including forms, documentation, catalogs, pricelists, or other materials submitted with the Proposal) contain information which Vendor considers proprietary or confidential?

Please check $()$ one of the following:
NO , I certify that none of the information included with this Proposal is considered confidential or proprietary.
YES , I certify that this Proposal contains information considered confidential or proprietary and all such information is specifically identified on this form.
If you responded "YES", you must clearly identify below the specific information you consider confidential or proprietary. List each page number, form number, or other information sufficient to make the information readily identifiable. The Cooperative and Cooperative administrator shall not be responsible for a Proposer's failure to clearly identify information considered confidential or proprietary. Further, by submitting a Proposal, Proposer acknowledges that the Cooperative and Cooperative administrator will disclose information when required by law, even if such information has been identified herein as information Vendor considers confidential or proprietary.
Confidential / Proprietary Information:
(Attach additional sheets if needed.)



B. Copyright Information

Does your Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) contain copyright information?

Please check ($$) one of the following:
NO, Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) does not contain copyright information.
YES, Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) does contain copyright information.
If you responded "YES", clearly identify below the specific documents or pages containing copyright information.
Copyright Information:
(Attach additional sheets if needed.)

C. Consent to Release Confidential/Proprietary/Copyright Information to BuyBoard Members

BuyBoard members (Cooperative and nonprofit members) seeking to make purchases through the BuyBoard may wish to view information included in the Proposals of awarded Vendors. If you identified information on this form as confidential, proprietary, or subject to copyright, and you are awarded a BuyBoard contract, your acceptance of the BuyBoard contract award constitutes your consent to the disclosure of such information to BuyBoard members, including posting of such information on the secure BuyBoard website for members. Note: Neither the Cooperative nor Cooperative administrator will be responsible for the use or distribution of information by BuyBoard members or any other party.

D. Consent to Release Proposal Tabulation

Notwithstanding anything in this Confidential/Proprietary Information form to the contrary, by submitting a Proposal, Vendor consents and agrees that, upon Contract award, the Cooperative may publicly release, including posting on the public BuyBoard website, a copy of the proposal tabulation and award information for the Contract including Vendor name; proposed catalog/pricelist name(s); proposed percentage discount(s), hourly labor rate(s), or other specified pricing; and Vendor award or non-award information.



EDGAR VENDOR CERTIFICATION (2 CFR Part 200 and Appendix II)

When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting a Proposal must complete this EDGAR Certification Form regarding Vendor's willingness and ability to comply with certain requirements which may be applicable to specific Cooperative member purchases using federal grant funds. Completed forms will be made available to Cooperative members for their use while considering their purchasing options when using federal grant funds. Cooperative members may also require Vendors to enter into ancillary agreements, in addition to the terms and conditions of the BuyBoard contract, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

For each of the items below, Vendor should certify Vendor's agreement and ability to comply, where applicable, by having Vendor's authorized representative check the applicable boxes, initial each page, and sign the Compliance Forms Signature Page. If you fail to complete any item in this form, the Cooperative will consider and may list the Vendor's response on the BuyBoard as "NO," the Vendor is unable or unwilling to comply. A "NO" response to any of the items may, if applicable, impact the ability of a Cooperative member to purchase from the Vendor using federal funds.

1. **Vendor Violation or Breach of Contract Terms:**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Provisions regarding Vendor default are included in the BuyBoard General Terms and Conditions, including Section E.18, Remedies for Default and Termination of Contract. Any Contract award will be subject to such BuyBoard General Terms and Conditions, as well as any additional terms and conditions in any Purchase Order or Cooperative member ancillary contract agreed upon by Vendor and the Cooperative member which must be consistent with and protect the Cooperative member at least to the same extent as the BuyBoard Terms and Conditions. The remedies under the Contract are in addition to any other remedies that may be available under law or in equity. By submitting a Proposal, you agree to these Vendor violation and breach of contract terms.

YES, I agree.	□ NO , I do not agree.

Termination for Cause or Convenience:

For any Cooperative member purchase or contract in excess of \$10,000 made using federal funds, you agree that the following term and condition shall apply:

The Cooperative member may terminate or cancel any Purchase Order under this Contract at any time, with or without cause, by providing seven (7) business days advance written notice to the Vendor. If this Agreement is terminated in accordance with this Paragraph, the Cooperative member shall only be required to pay Vendor for goods or services delivered to the Cooperative member prior to the termination and not otherwise returned in accordance with Vendor's return policy. If the Cooperative member has paid Vendor for goods or services not yet provided as of the date of termination, Vendor shall immediately refund such payment(s).

If an alternate provision for termination of a Cooperative member purchase for cause and convenience, including the manner by which it will be effected and the basis for settlement, is included in the Cooperative member's Purchase Order or ancillary agreement agreed to by the Vendor, the Cooperative member's provision shall control.

YES, I agree.

□ **NO**, I do not agree.



Equal Employment Opportunity:

Except as otherwise provided under 41 CFR Part 60, all Cooperative member purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

provision applies to any Coopera	ovided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Vendor agrees that such tive member purchase or contract that meets the definition of "federally assisted construction and Vendor agrees that it shall comply with such provision.
X YES, I agree.	□ NO , I do not agree.
contracts/purchases in excess of as supplemented by Departmer Covering Federally Financed and laborers and mechanics at a ratiof Labor. In addition, Vendor should be considered as a constant of Labor and purchase to which wendor's acceptance of the wag wendor further agrees that it should be prohibited from inducing, by	ogram legislation, Vendor agrees that, for all Cooperative member prime construction \$2,000, Vendor shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) at of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Assisted Construction"). In accordance with the statute, Vendor is required to pay wages to enot less than the prevailing wages specified in a wage determinate made by the Secretary all pay wages not less than once a week. Sinations issued by the Department of Labor are available at beta.sam.gov. Vendor agrees this requirement applies, the award of the purchase to the Vendor is conditioned upon the determination. Sall also comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by t
YES, I agree.	□ NO , I do not agree.
Where applicable, for all Cooper mechanics or laborers, Vendor regulations (29 CFR Part 5). Und	and Safety Standards Act: ative member contracts or purchases in excess of \$100,000 that involve the employment of agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor ler 40 USC 3702 of the Act, Vendor is required to compute the wages of every mechanic and rd work week of 40 hours. Work in excess of the standard work week is permissible provided

that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

YES, I agree.	\square NO , I do not agree.



6. Right to Inventions Made Under a Contract or Agreement:

Vendor agrees to comply with the above requirements when applicable.

with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

YES, I agree.

If the Cooperative member's Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

YES, I agree.	\square NO , I do not agree.
Clean Air Act (42 USC 7401-767) and subgrants of amounts in ϵ comply with all applicable stanthe Federal Water Pollution C	deral Water Pollution Control Act: 1q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended – Contracts ccess of \$150,000 must contain a provision that requires the non-Federal award to agree to lards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and ontrol Act, as amended (33 USC 1251-1387). Violations must be reported to the Federal anal Office of the Environmental Protection Agency (EPA).
When required, Vendor agrees Air Act and the Federal Water	to comply with all applicable standards, orders, or regulations issued pursuant to the Clean collution Control Act.
X YES, I agree.	\square NO , I do not agree.
to parties listed on the goverr OMB guidelines at 2 CFR 180 Part 1989 Comp. p. 235), "Deb or otherwise excluded by ager Executive Order 12549. Vendor certifies that Vendor is or otherwise excluded by ager 12549. Vendor further agrees to seeking to purchase from Vendor OMB guidelines and the particular to purchase from Vendor OMB guidelines at 2549.	ecutive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made ment-wide exclusions in the System for Award Management (SAM), in accordance with the hat implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Imment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, cies, as well as parties declared ineligible under statutory or regulatory authority other than not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, cies or declared ineligible under statutory or regulatory authority other than Executive Order o immediately notify the Cooperative and all Cooperative members with pending purchases or dor if Vendor is later listed on the government-wide exclusions in SAM, or is debarred, ded by agencies or declared ineligible under statutory or regulatory authority other than
X YES, I agree.	□ NO , I do not agree.
required certification. Each tier any person or organization for Congress, officer or employee	Amendment: t (31 USC 1352) - Vendors that apply or bid for an award exceeding \$100,000 must file the certifies to the tier above that it will not and has not used Federal appropriated funds to pay influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal and covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds

 \square **NO**, I do not agree.

that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. As applicable, Vendor agrees to file all certifications and disclosures required by, and otherwise comply



10. Procurement of Recovered Materials:

For Cooperative member purchases utilizing Federal funds, Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as a Cooperative member may require to confirm estimates and otherwise comply. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

the EPA guidelines.	
XYES, I agree.	\square NO , I do not agree.
procurements which may be a member, Vendor agrees to pro	s for Procurements: ent with law, 2 CFR §200.322 contains certain considerations for domestic preferences for oplicable to Cooperative members using federal funds. When required by a Cooperative vide such information or certification as may reasonably be requested by the Cooperative ducts, including whether goods, products, or materials are produced in the United States.
YES, I agree.	□ NO , I do not agree.
2 CFR §200.216 prohibits expensurveillance services or equipme provide such information or cer	ding federal loan or grant funds to procure or obtain certain telecommunications and video nt. To the extent applicable and when required by a Cooperative member, Vendor agrees to tification as may reasonably be requested by the Cooperative member to confirm whether o surveillance services or equipment provided by Vendor is covered equipment or covered
X YES, I agree.	\square NO , I do not agree.
to negotiate profit as a separat Vendor agrees to provide inform the price for a particular purcha	de in excess of the Simplified Acquisition Threshold, a Cooperative member may be required to element of the price. See, 2 CFR 200.324(b). When required by a Cooperative member, ation and negotiate with the Cooperative member regarding profit as a separate element of see. However, Vendor agrees that the total price, including profit, charged by Vendor to the exceed the awarded pricing, including any applicable discount, under Vendor's Cooperative
YES, I agree.	\square NO , I do not agree.
In addition to the foregoing sp member, it shall make a good fa	and Cooperation with Cooperative Members: ecific requirements, Vendor agrees, in accepting any Purchase Order from a Cooperative ith effort to work with Cooperative members to provide such information and to satisfy such particular Cooperative member purchase or purchases including, but not limited to, applicable ion requirements.
XYES, I agree.	\square NO . I do not agree.



COMPLIANCE FORMS SIGNATURE PAGE

By initialing pages and by signature below, I certify that I have reviewed the following forms; that the information provided therein is true, complete, and accurate; and that I am authorized by my company to make all certifications, consents, acknowledgements, and agreements contained herein:

- Proposal Acknowledgements
- Felony Conviction Disclosure
- Debarment Certification
- Resident/Nonresident Certification
- Vendor Employment Certification
- No Boycott Verification
- No Excluded Nation or Foreign Terrorist Organization Certification
- Historically Underutilized Business Certification
- Construction-Related Goods and Services Affirmation
- Acknowledgement of BuyBoard Technical Requirements
- Deviation and Compliance
- Vendor Consent for Name Brand Use
- Confidential/Proprietary Information
- EDGAR Vendor Certification

Reliance Truck and Equipment, LLC.

Company Name

Signature of Authorized Company Official
George Gutierrez - Vice President

Printed Name and Title

March 24, 2022

Date

422



PROPOSAL FORMS PART 2: VENDOR INFORMATION FORMS

Instructions:

Proposer must completely and accurately provide all information requested in the following Vendor Information Forms or your Proposal may be rejected as non-responsive:

- Vendor Business Name
- Vendor Contact Information
- Federal and State/Purchasing Cooperative Experience
- Governmental References
- Company Profile
- Texas Regional Service Designation
- State Service Designation

- National Purchasing Cooperative Vendor Award Agreement (Vendors serving outside Texas only)
- Local/Authorized Seller Listings
- Manufacturer Dealer Designation
- Proposal Invitation Questionnaire
- Vendor Request to Self-Report BuyBoard Purchases (Optional)

To the extent any information requested is not applicable to your company, you must so indicate on the form.

VENDOR BUSINESS NAME

By submitting a Proposal, Vendor is seeking to enter into a legal contract with the Cooperative. As such, Vendor must be an individual or legal business entity capable of entering into a binding contract.

ındıviduai or iegai busin	ess entity capable of entering into a binding contract.
Name of Proposing C	Reliance Truck and Equipment, LLC.
(List the legal name of the co be provided below. If you are	ompany seeking to contract with the Cooperative. Do <u>NOT</u> list an assumed name, dba, aka, etc. here. Such information may e submitting a joint proposal with another entity to provide the same proposed goods or services, each submitting entity should information form. Separately operating legal business entities, even if affiliated entities, which propose to provide goods or
Please check ($$) one of the f	ollowing:
Type of Business:	\square Individual/Sole Proprietor \square Corporation \boxtimes Limited Liability Company \square Partnership
	☐ Other (Specify:)
State of Incorporation	on (if applicable):
Federal Employer Ide	entification Number: 82-4901774
	completed <u>IRS W-9</u> form with their Proposal)
	or, if awarded, wishes to be identified on the BuyBoard: (Note: If different than the Name of Proposing valid trade names (dba, aka, etc.) of the Proposing Company may be used and a copy of your Assumed Name Certificate(s), if

Department of the Treasury

Request for Taxpayer Identification Number and Certification

Item 13. Give Form requester. Do not send to the IRS.

michia	il nevenue delvice P do to www.ii3.gov/i offitiva for illa			Hat	1011.								
	1 Name (as shown on your income tax return). Name is required on this line; d	o not leave this line blank											
	RELIANCE ENVIRONMENTAL TRUCK SALES, LLC												
	2 Business name/disregarded entity name, if different from above									~~~			_
	RELIANCE TRUCK & EQUIPMENT												
page 3.						4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):							
e. ns on	☐ Individual/sole proprietor or ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate single-member LLC					Exempt payee code (if any)							
Ę, ţ	☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ►												
Print or type. Specific Instructions on page	Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.						Exemption from FATCA reporting code (if any)						
ec.	☐ Other (see instructions) ▶					(Appl	ies to a	account	s maintaiı	ned ou	ıtside t	he U.S.)
Sp	5 Address (number, street, and apt. or suite no.) See instructions.		Request	ter's	name a	nd a	ddre	ss (op	tional)	1			
See	9818 GREEN ROAD												
U)	6 City, state, and ZIP code		1										
	CONVERSE, TX 78109												
	7 List account number(s) here (optional)		1										—
Par	Taxpayer Identification Number (TIN)												
Enter	your TIN in the appropriate box. The TIN provided must match the nan	ne given on line 1 to a	void	So	cial sec	urity	nun/	nber					
backu	up withholding. For individuals, this is generally your social security nun	nber (SSN). However,								ᆿ			
	ent alien, sole proprietor, or disregarded entity, see the instructions for					-	-		-				
endde TIN. Ia	es, it is your employer identification number (EIN). If you do not have a r ater.	number, see How to g		∟ or	L				ا ل				
,	If the account is in more than one name, see the instructions for line 1	Also see What Name			ployer	r identification number							
Numb	per To Give the Requester for guidelines on whose number to enter.	. r add ddd r r ac r ac r ac r ac r ac r	u,,u						T	_			
				8	2 -	- 4	1 9	9 0	1	7	7	4	
Par	t II Certification			<u> </u>							!		—
	r penalties of perjury, I certify that:												
	e number shown on this form is my correct taxpayer identification number	her (or Lam waiting for	a numbe	ar ta	ho icc	uod	to n	no). c	nd				
2. I an Ser	n not subject to backup withholding because: (a) I am exempt from bac vice (IRS) that I am subject to backup withholding as a result of a failur longer subject to backup withholding; and	ckup withholding, or (b) I have r	not k	oeen no	otifie	ed by	y the	Intern				m
3. I an	n a U.S. citizen or other U.S. person (defined below); and												
4. The	e FATCA code(s) entered on this form (if any) indicating that I am exemp	pt from FATCA reporti	ng is corr	rect.									
you ha acquis	ication instructions. You must cross out item 2 above if you have been no ave failed to report all interest and dividends on your tax return. For real es sition or abandonment of secured property, cancellation of debt, contributi than interest and dividends, you are not required to sign the certification, b	tate transactions, item ons to an individual reti	2 does no rement ar	ot ap	ply. For gement	r mo (IRA	ortga: A), ar	ge int nd ge	terest nerally	paid v, pa	l, yme	nts	se
Sign Here			Date ►	/-	-2	_	2	0	2:	 2			_
Gei	neral Instructions	• Form 1099-DIV (d								or n	านtu	al	_

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

• Form 1099-INT (interest earned or paid)

- funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



VENDOR CONTACT INFORMATION

Vendor shall provide the requested Vendor Contact Information in the electronic proposal submission system including contract, purchase order, RFQ, and invoice contacts (or, if submitting a hard copy Proposal, timely request and complete the Vendor Contact Information form in accordance with the Instructions to Proposers).

FEDERAL AND STATE/PURCHASING COOPERATIVE EXPERIENCE

	I EDEIGLE AND STATE	I CICCIAS	211G GOO! LITATIVE EXT	<u> LIALITOL</u>					
	Cooperative strives to provide Cooperative r dors with the technical resources and ability								
1.	Provide the dollar value of sales to or through purchasing cooperatives at or based on an established catalog or market price during the previous 12-month period or the last fiscal year: \$ (The period of the 12-month period is/). In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).								
2.	By submitting a proposal, you agree that, based on your written discounting policies, the discounts you offer the Cooperative are equal to or better than the best price you offer other purchasing cooperatives for the same items under equivalent circumstances.								
3.	Provide the information requested below f the past has served, as an awarded vendo as required.								
		CURRENT	FORMER VENDOR (Y/N)? -	AWARDED					
	PURCHASING GROUP	VENDOR?	IF YES, LIST YEARS AS VENDOR	CATECORY(JEC)					
4	Federal General Services Administration	(Y/N)	AS VENDOR	CATEGORY(IES)					
2.	T-PASS (State of Texas)								
3.	OMNIA Partners								
4.	Sourcewell (NJPA)								
5.	E&I Cooperative								
6.	Houston-Galveston Area Council (HGAC)	Yes	2 Years	Refuse					
7.	Choice Partners								
8.	The Interlocal Purchasing System (TIPS)								
9.	Other								
CUI If y	MY COMPANY DOES NOT CURRENTLY IN THE RENT BUYBOARD VENDORS Ou are a current BuyBoard vendor in the secount for your current BuyBoard contract and the rent and proposed discounts.	ame contract	category as proposed in this Pro	posal Invitation, indicate the any difference between your					
Cur	rent Discount (%):	· · · · · · · · · · · · · · · · · · ·	Proposed Discount (%): _	5%					

Explanation:

Ouantity/



12007 Research Boulevard • Austin, Texas 78759-2439 • PH: 800-695-2919 • <u>buyboard.com</u>

GOVERNMENTAL REFERENCES

For your Proposal to be considered, you must supply a minimum of five (5) individual governmental entity references. The Cooperative may contact any and all references provided as part of the Proposal evaluation. Provide the information requested below, including the existing pricing/discounts you offer each customer. The Cooperative may determine whether pricing/discounts are fair and reasonable by comparing pricing/discounts stated in your Proposal with the pricing/discounts you offer other governmental customers. Attach additional pages if necessary.

Entity Name	Contact	Phone#	Email Address	Discount	Quantity/ Volume		
City of Austin	Dale Johnson	512-470-2739 _p	dale.johnson@c	i.austin.tx			
City of San Antonio	David Newman	210-207-5441	david.newman@	②sanantonio.	gov		
City of Edinburg	Ramiro Gomez	956-369-3140	rgomez@cityofe	edinburg.com			
City of Richardson	Ernie Ramos	972-774-4421	ernie.ramos@co	or.gov			
5. City of Mission	Roel Mendiola	956-270-2250	rmendiola@miss	siontexas.us			
Do you ever modify your written policies or standard governmental sales practices as identified in the above chart to give better discounts (lower pricing) than indicated? YES NO If YES, please explain:							

COMPANY PROFILE

Information on awarded Cooperative Contracts is available to Cooperative Members on the BuyBoard website. If your company is awarded a Contract under this Proposal Invitation, please provide a brief company description that you would like to have included with your company profile on the BuyBoard website. **Submit your company profile in a separate file, in Word format, with your Proposal**. (Note: Vendor is solely responsible for any content provided for inclusion on the BuyBoard website. The Cooperative reserves the right to exclude or remove any content in its sole discretion, with or without prior notice, including but not limited to any content deemed by the Cooperative to be inappropriate, irrelevant to the Contract, inaccurate, or misleading.)



Company Profile:

Reliance Truck and Equipment, LLC is happy to provide our customers with options when it comes to service and parts. We currently have one brick and mortar facilities located in San Antonio, Texas and an additional location scheduled for 2023. Each site is fully trained staff certified in the all our municipal product lines. Current products; CUES, Labrie, Multihog, PakMor, Brush Hawg

San Antonio - Reliance Truck and Equipment

9818 Green Road

Converse, Texas 78222

210-648-3337

8:00 AM - 5:00 PM Weekly

Parts and Service Manager – Parts and Service available – Stock Inventory

CEO: Tim Barr 405-760-8059 tbarr@relianceequip.net

President: Jon Loftis <u>jloftis@relianceequip.net</u> 817-584-1860

Vice President: George Gutierrez ggutierrez@relianceequip.net 512-801-5268

Service Manager: Grady Cooper gcooper@relianceequip.net 210-596-2072

Sales - Tommy Titzman <u>ttitzman@relianceequip.net</u> 210-413-9876

Sales – Matt Rendon <u>mrendon@relianceequip.net</u> 281-954-1456

Sales – Trey Stamps <u>tstamps@relianceequip.net</u> 817-996-0897

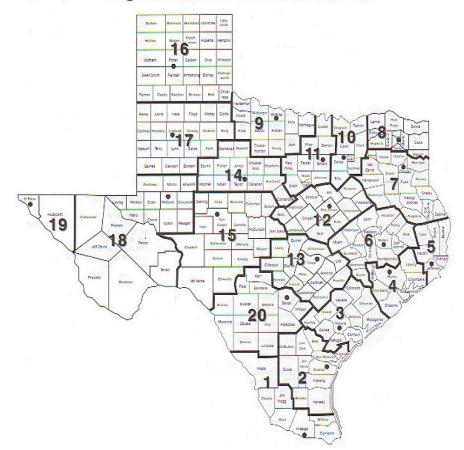


TEXAS REGIONAL SERVICE DESIGNATION

This form must be completed in the electronic proposal submission system (or, if submitting a hard copy Proposal, timely request and complete the form in accordance with the Instructions to Proposers).

The Cooperative (referred to as "Texas Cooperative" in this form and in the State Service Designation form) offers vendors the opportunity to service its members throughout the entire State of Texas. In the electronic proposal submission system, you must indicate if you will service Texas Cooperative members statewide or, if you do not plan to service all Texas Cooperative members statewide, you **must** indicate the specific regions you will service. If you propose to serve different regions for different products or services included in your Proposal, you must complete and submit a separate Texas Regional Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. (Additional forms can be obtained by contacting bids@buyboard.com at least five (5) business days prior to the Proposal Due Date.) By designating a region or regions, you are certifying that you are authorized and willing to provide the proposed products and services in those regions. Designating regions in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract. Additionally, if you do not plan to service Texas Cooperative members (i.e., if you will service only states other than Texas), you must so indicate on the form in the electronic proposal submission system.

Regional Education Service Centers



Region and Headquarters

- 1 Edinburg
- 2 Corpus Christi
- 3 Victoria
- 4 Houston
- 5 Beaumont
- 6 Huntsville
- 7 Kilgore
- 8 Mount Pleasant
- 9 Wichita Falls
- 10 Richardson
- 11 Fort Worth
- 12 Waco
- 13 Austin
- 14 Abilene
- 15 San Angelo
- 16 Amarillo
- 17 Lubbock
- 18 Midland
- 19 El Paso
- 20 San Antonio



STATE SERVICE DESIGNATION

This form must be completed in the electronic proposal submission system (or, if submitting a hard copy Proposal, timely request and complete the in accordance with the Instructions to Proposers).

As set forth in the Proposal Invitation, it is the Cooperative's intent that other governmental entities in the United States have the opportunity to purchase goods or services awarded under the Contract, subject to applicable state law, through a piggy-back award or similar agreement through the National Purchasing Cooperative BuyBoard. If you plan to service the entire United States or only specific states, you must complete the State Service Designation information in the electronic proposal submission system. (Note: If you plan to service Texas Cooperative members, be sure that you complete the Texas Regional Service Designation form.) In addition to this form, to be considered for a piggy-back award by the National Purchasing Cooperative, you must have an authorized representative sign the National Purchasing Cooperative Vendor Award Agreement that follows this page.

If you serve different states for different products or services included in your Proposal, you must complete and submit a separate State Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. (Additional forms can be obtained by contacting bids@buyboard.com at least five (5) business days prior to the Proposal Due Date.) By designating a state or states, you are certifying that you are authorized and willing to provide the proposed products and services in those states. Designating states in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract.

X

I will service all states in the United States.

I will not service all states in the United States.

Alabama

Alaska Arizona

Arkansas

California (Public Contract Code 20118 & 20652)

Colorado Connecticut Delaware

District of Columbia

Florida Georgia Hawaii Idaho Illinois

Indiana

Iowa Kansas Kentucky

Louisiana Maine Maryland Massachusetts

Michigan Minnesota Mississippi

Missouri Montana Nebraska Nevada

New Hampshire New Jersey New Mexico New York North Carolina

North Dakota

Ohio Oklahoma Oregon Pennsylvania Rhode Island

South Carolina South Dakota Tennessee Texas

Utah Vermont Virginia Washington West Virginia Wisconsin

Wyoming



NATIONAL PURCHASING COOPERATIVE VENDOR AWARD AGREEMENT

In accordance with the Terms and Conditions associated with this Proposal Invitation, a contract awarded under this Proposal Invitation may be "piggy-backed" by another governmental entity. The National Purchasing Cooperative is an intergovernmental purchasing cooperative formed by certain school districts outside of Texas to serve its members throughout the United States. If you agree to be considered for a piggy-back award by the National Purchasing Cooperative, you agree to the following terms and agree to serve National Purchasing Cooperative members in the states you have indicated on the State Service Designation form, in your Proposal.

By signing this form, Proposer (referred to in this Agreement as "Vendor") agrees as follows:

- 1. Vendor acknowledges that if The Local Government Purchasing Cooperative ("Texas Cooperative") awards Vendor a contract under this Proposal Invitation ("Underlying Award"), the National Purchasing Cooperative ("National Cooperative") may but is not required to "piggy-back" on or re-award all or a portion of that Underlying Award ("Piggy-Back Award"). By signing this National Cooperative Vendor Award Agreement ("Agreement"), Vendor accepts and agrees to be bound by any such Piggy-Back Award as provided for herein.
- 2. In the event National Cooperative awards Vendor a Piggy-Back Award, the National Cooperative Administrator ("BuyBoard Administrator") will notify Vendor in writing of such Piggy-Back Award, which award shall commence on the effective date stated in the Notice and end on the expiration date of the Underlying Award, subject to annual renewals as authorized in writing by the BuyBoard Administrator. Vendor agrees that no further signature or other action is required of Vendor in order for the Piggy-Back Award and this Agreement to be binding upon Vendor. Vendor further agrees that no interlineations or changes to this Agreement by Vendor will be binding on National Cooperative, unless such changes are agreed to by its BuyBoard Administrator in writing.
- 3. Vendor agrees that it shall offer its goods and services to National Cooperative members at the same unit pricing and same general terms and conditions, subject to applicable state laws in the state of purchase, as required by the Underlying Award. However, nothing in this Agreement prevents Vendor from offering National Cooperative members better (i.e., lower) competitive pricing and more favorable terms and conditions than those in the Underlying Award.
- 4. Vendor hereby agrees and confirms that it will serve those states it has designated on the State Service Designation Form of this Proposal Invitation. Any changes to the states designated on the State Service Designation Form must be approved in writing by the BuyBoard Administrator.
- 5. Vendor agrees to pay National Cooperative the service fee provided for in the Underlying Award based on the amount of purchases generated from National Cooperative members through the Piggy-Back Award. Vendor shall remit payment to National Cooperative on such schedule as it specifies (which shall not be more often than monthly). Further, upon request, Vendor shall provide National Cooperative with copies of all purchase orders generated from National Cooperative members, vendor invoices, and/or such other documentation regarding those purchase orders as the Cooperative's administrators may require in their reasonable discretion for purposes of reviewing and verifying purchase activity. Vendor further agrees that National Cooperative shall have the right, upon reasonable written notice, to review Vendor's records pertaining to purchases made by National Cooperative members in order to verify the accuracy of service fees.
- 6. Vendor agrees that the Underlying Award, including its General Terms and Conditions, are adopted by reference to the fullest extent such provisions can reasonably apply to the post-proposal/contract award phase. The rights and responsibilities that would ordinarily inure to the Texas Cooperative pursuant to the Underlying Award shall inure to National Cooperative; and, conversely, the rights and responsibilities that would ordinarily inure to Vendor in the Underlying Award shall inure to Vendor in this Agreement. Vendor recognizes and agrees that Vendor and National Cooperative are the only parties to this Agreement, and that nothing in this Agreement has application to other third parties, including the Texas Cooperative. In the event of conflict between this Agreement and the terms of the Underlying Award, the terms of this Agreement shall control, and then only to the extent necessary to reconcile the conflict.



- 7. This Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island and venue for any dispute shall lie in the federal district court of Alexandria, Virginia.
- 8. Vendor acknowledges and agrees that the award of a Piggy-Back Award is within the sole discretion of National Cooperative, and that this Agreement does not take effect unless and until National Cooperative awards Vendor a Piggy-Back Award and the BuyBoard Administrator notifies Vendor in writing of such Piggy-Back Award as provided for herein.

WHEREFORE, by signing below Vendor agrees to the foregoing and warrants that it has the authority to enter into this Agreement.

Reliance Truck and Equipment, L	LC.	676-22			
Name of Vendor		Proposal Invitation Number			
		George Gutierrez			
Signature of Authorized Company Official		Printed Name of	Authorized Company Official		
	March 24, 2022				
_	Date				



LOCATION/AUTHORIZED SELLER LISTINGS

If you have more than one location/authorized seller that will service a Contract awarded under this Proposal Invitation, please list each location/authorized seller below. If additional sheets are required, please duplicate this form as necessary. NOTE: Awarded Vendors shall remain responsible for all aspects of the Contract, including processing of Purchase Orders, and shall be responsible for the performance of all locations and authorized sellers under and in accordance with the Contract. If you are a product manufacturer and wish to designate Designated Dealers as defined in the General Terms and Conditions to receive Cooperative member Purchase Orders on your behalf, you must complete the Manufacturer Designated Dealer form.

Location/Authorized Seller Name	Contact Person	Contact Information (Mailing Address, Phone, Fax, Email)



MANUFACTURER DEALER DESIGNATION

If Vendor is a manufacturer that sells products through a dealer network and wishes to designate a dealer or multiple dealers ("Designated Dealers") to receive Cooperative member Purchase Orders on Vendor's behalf, you must complete this form for each dealer you wish to designate.

Regardless of any Designated Dealers submitted by Vendor, Vendor specifically agrees and acknowledges that any such designations are for Vendor's convenience only and shall not, if Vendor is awarded a Contract, relieve Vendor of any obligations under the Contract, including payment of Cooperative service fees on all Purchase Orders submitted to Vendor or any Designated Dealer. In accordance with the General Terms and Conditions, an awarded Vendor shall remain responsible and liable for all of its obligations under the Contract and the performance of both Vendor and any of Vendor's Designated Dealers under and in accordance with the Contract and remain subject to all remedies for default thereunder, including, but not limited to suspension and termination of Vendor's Contract for nonpayment of service fees.

If awarded, Vendor authorizes the Cooperative, in its sole discretion, to list any Vendor Designated Dealers in the BuyBoard system and to receive Purchase Orders directly from Cooperative members on behalf of Vendor. To the extent a Vendor with Designated Dealers receives a Purchase Order directly, it shall be the responsibility of Vendor to appropriately process such Purchase Order in accordance with the Contract, including but not limited to timely forwarding such Purchase Order to a Designated Dealer for processing.

The Cooperative reserves the right, in its sole discretion, to refuse addition of, or request removal of, any Designated Dealer, and Vendor agrees to immediately require such Designated Dealer to cease accepting Purchase Orders or otherwise acting on Vendor's behalf under the Contract. Further, the Cooperative administrator shall be authorized to remove or suspend any or all Designated Dealers from the BuyBoard at any time in its sole discretion.

If you wish to designate a dealer to service a contract awarded under this Proposal Invitation, please list the Designated Dealer below. If you wish to designate multiple dealers, please duplicate this form as necessary.

Designated Dealer Name		Designated Dealer Contact Person		
Designated Dealer Address				
City	State		Zip	_
Phone Number		Fax Number		
Email address			r Tax ID Number* (*attac h	ı W- 9)



PROPOSAL INVITATION QUESTIONNAIRE

The Cooperative will use your responses to the questions below in evaluating your Proposal and technical and financial resources to provide the goods and perform the services ("Work") under the BuyBoard contract contemplated by this Proposal Invitation ("Contract"). Proposers must fully answer each question, numbering your responses to correspond to the questions/numbers below. Proposers must complete below or attach your responses to this questionnaire and submit in one document with your Proposal. You must submit the questionnaire and responses with your Proposal or the Proposal will not be considered.

	cument with your Proposal. You must submit the questionnaire and responses with your Proposal or the opposal will not be considered.		
1.	List the number of years Proposer has been in business and former business names (if applicable). Note whether your company is currently for sale or involved in any transaction that would significantly alter its business or result in acquisition by another entity.		
	Reliance Truck and Equipment, LLC.is owned by Tim Barr. Reliance has been in business since 2002,		
	and is currently not for sale. There are no transaction that would significantly alter the bussiness.		
2.	Describe the resources Proposer has to manage staff and successfully perform the Work contemplated under this Contract. State the number and summarize the experience of company personnel who may be utilized for the Work, including those who will be available to Cooperative members for assistance with project development, technical issues, and product selection for Work associated with this Contract.		
F	Reliance has 12 staff members who handle sales and service throughout Texas, including brick and		
r	nortar facilities as well as field service. This allows us to manage and cover our customer base		
	vith over 100 years of combined experience. Additionally, we have the support of our manufacture		
<u>r</u>	eps.		
3.	<u>Marketing Strategy</u> : For your Proposal to be considered, you must submit the Marketing Strategy you will use if the Cooperative accepts all or part of your Proposal. (<u>Example</u> : Explain how your company will initially inform Cooperative members of your BuyBoard Contract, and how you will continue to support the BuyBoard for the duration of the Contract term.) Attach additional pages if necessary.		
	The cooperative will be advertised on its website by Reliance Truck and Equipment, LLC. BuyBoard		
	advertisements will be displayed at Swana, TML, and Public Works Show. Most customer already		
	associate Reliance with BuyBoard.		



4.	Describe Proposer's financial capability to perform the Contract. State or describe the firm's financial strength and rating bonding capacity, and insurance coverage limits. State whether the firm, or any of the firm's past or present owners principal shareholders or stockholders, or officers, have been a debtor party to a bankruptcy, receivership, or insolvency proceeding in the last 7 years, and identify any such debtor party by name and relationship to or position with your firm.
	The financial health of Reliance is excellent. We have open credit terms with all our manufacturers, including Cues. We are bondable and our insurance is attached.
	We haven't been bankrupt, receivershiped, or insolvent in the last seven years.
5.	Does your company have any outstanding financial judgments and/or is it currently in default on any loan or financing agreement? If so, provide detailed information on the nature of such items and prospects for resolution.
	No
6.	List all contracts, if any, in the last 10 years on which Proposer has defaulted, failed to complete or deliver the work, of that have been terminated for any reason. For each such contract, provide the project name, scope, value and date and the name of the procuring entity. Fully explain the circumstances of the default, failure to complete or deliver the work or termination.
	None
7.	List all litigation or other legal proceedings (including arbitration proceedings), if any, in the last 10 years brought against your firm, or any of the firm's past or present owners, principal shareholders or stockholders, officers, agents of employees, that relate to or arise from a contract similar to this Contract or the Work contemplated under this Contract Provide the style of the lawsuit or proceeding (name of parties and court or tribunal in which filed), nature of the claim and resolution or current status.
	None



VENDOR REQUEST TO SELF-REPORT BUYBOARD PURCHASES

The General Terms and Conditions require that all Purchase Orders generated by or under any Contract awarded under this Proposal Invitation be processed through the BuyBoard and, except as expressly authorized in writing by the Cooperative administrator, Vendors are not authorized to process Purchase Orders received directly from Cooperative members that have not been processed through the BuyBoard or provided to the Cooperative. In accordance with this provision, Vendor may request authorization of the Cooperative administrator to self-report Cooperative member purchases if awarded a Contract under this Proposal Invitation. By making such a request, Vendor acknowledges and agrees that self-reporting is specifically subject to and conditioned upon (1) Vendor's agreement to the Additional Terms and Conditions for BuyBoard Self-Reporting which are included in this Proposal Invitation and incorporated herein for all purposes and (2) approval of this request in writing by the Cooperative administrator.

Note: This form is NOT required as part of your proposal. You should sign and return this form ONLY if you wish to request authorization to self-report BuyBoard purchases. Any request to self-report will not be effective, and Vendor shall not be authorized to self-report BuyBoard member purchases, unless and until (1) Vendor is awarded a Contract under this Proposal Invitation, and (2) the request has been approved in writing by the Cooperative administrator.

By my signature below, I hereby request authorization from the Cooperative administrator to self-report BuyBoard purchases if my company is awarded a Contract. I certify that I am authorized by the above-named Vendor to approve this form, and I have received and read the Additional Terms and Conditions for BuyBoard Self-Reporting included in this Proposal Invitation and do hereby approve and agree to such terms and conditions on behalf of Vendor.

NAME OF VENDOR: Reliance Truck and Equipment, LLC.				
Signature of Vendor Authorized Representative				
Printed Name: George Gutierrez				
Title: Vice President				
Date: 3-24-22				
(For Cooperative Administrator Use Only)				
Approved by BuyBoard Administrator:				
Effective/Start Date for Self-Reporting:				



REQUIRED FORMS CHECKLIST

(Please check $(\sqrt{})$ the following)

Reviewed/Completed: Proposer's Acceptance and Agreement

PROPOSAL FORMS PART 1: COMPLIANCE FORMS

\square	Reviewed/Completed: Proposal Acknowledgements
\square	Reviewed/Completed: Felony Conviction Disclosure

Reviewed/Completed: Resident/Nonresident Certification

Reviewed/Completed: **Debarment Certification**

Reviewed/Completed: Vendor Employment Certification

Reviewed/Completed: No Boycott Verification

Reviewed/Completed: No Excluded Nation or Foreign Terrorist Organization Certification

Reviewed/Completed: Historically Underutilized Business Certification

Reviewed/Completed: Acknowledgement of BuyBoard Technical Requirements
Reviewed/Completed: Construction-Related Goods and Services Affirmation

Reviewed/Completed: **Deviation and Compliance**

Reviewed/Completed: Vendor Consent for Name Brand Use
Reviewed/Completed: Confidential/Proprietary Information

Reviewed/Completed: EDGAR Vendor Certification

Reviewed/Completed: Compliance Forms Signature Page

PROPOSAL FORMS PART 2: VENDOR INFORMATION FORMS

Reviewed/Completed: Vendor Business Name

Reviewed/Completed: **Vendor Contact Information** (complete in electronic proposal submission system)

Reviewed/Completed: Federal and State/Purchasing Cooperative Experience

Reviewed/Completed: **Governmental References**

Reviewed/Completed: Company Profile

 \square

Reviewed/Completed: Texas Regional Service Designation (complete in electronic proposal submission system)

Reviewed/Completed: State Service Designation (complete in electronic proposal submission system)

Reviewed/Completed: National Purchasing Cooperative Vendor Award Agreement (Vendors serving outside Texas only)

Reviewed/Completed: Local/Authorized Seller Listings
Reviewed/Completed: Manufacturer Dealer Designation
Reviewed/Completed: Proposal Invitation Questionnaire

Neviewed/Completed: Vendor Request to Self-Report BuyBoard Purchases (Optional)

Reviewed/Completed: **Proposal Specifications** Discount (%) off Catalog/Pricelist and/or other required pricing information including Catalogs/Pricelists (or no bid response) must be submitted with the Proposal or the Proposal will not be considered.



PROPOSAL SPECIFICATION SUMMARY

The categories and items specified for this Proposal Invitation are summarized below. For full Proposal Specifications, you must review and complete the Proposal Specification information in the electronic proposal submission system in accordance with the Instructions to Proposers (or, if submitting a hard copy Proposal, timely request and complete the Proposal Specification Form in accordance with the Instructions to Proposers).

PROPOSAL NOTE: Vendors shall submit catalog(s)/pricelist(s) with their Proposal response, or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted**.

Section I: Sewer Cleaning Equipment, Products, and Supplies

- 1. Discount (%) off catalog/pricelist for Combination Sewer Cleaners, Single Engine, Attachments, Accessories, and related products.
- 2. Discount (%) off catalog/pricelist for **Combination Sewer Cleaners**, **Dual Engine**, **Attachments**, **Accessories**, **and related products**.
- 3. Discount (%) off catalog/pricelist for **Jetter Units, Attachments, Accessories, and related products.**
- 4. Discount (%) off catalog/pricelist for Trailer Jetter Units, Attachments, Accessories, and related products.
- 5. Discount (%) off catalog/pricelist for Vacuum Excavation Equipment and related products.
- 6. Discount (%) off catalog/pricelist for **All Other Sewer Cleaning Equipment, Attachments, Accessories, and related products.**

Section II: Sewer Inspection Equipment, Products, and Supplies

- 7. Discount (%) off catalog/pricelist for **Portable Mini Sewer Inspection Systems, Attachments, Accessories and related products.**
- 8. Discount (%) off catalog/pricelist for Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products.
- 9. Discount (%) off catalog/pricelist for Lateral and Mainline Sewer Inspection Systems, Attachments, Accessories, and related products.
- 10. Discount (%) off catalog/pricelist for **Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products.**
- 11. Discount (%) off catalog/pricelist for **Sewer Inspection Cameras, Attachments, Accessories, and related products.**
- 12. Discount (%) off catalog/pricelist for **Sewer Inspection Camera Transporters, Attachments, Accessories, and related products.**
- 13. Discount (%) off catalog/pricelist for **Portable Video Inspection Cameras, Attachments, Accessories and related products.**
- 14. Discount (%) off catalog/pricelist for Lateral Cleaning Systems, Attachments, Accessories, and related products.
- 15. Discount (%) off catalog/pricelist for Lateral Reinstatement Cutters, Attachments, Accessories, and related products.
- 16. Discount (%) off catalog/pricelist for **Profiling Systems**, **Attachments**, **Accessories**, and related products.
- 17. Discount (%) off catalog/pricelist for **Gravity Pipeline Inspection Systems**, **Attachments**, **Accessories**, **and related products**.
- 18. Discount (%) off catalog/pricelist for **Pipeline Condition Assessment Software and related products.**
- 19. Discount (%) off catalog/pricelist for All Other Sewer Inspection Systems, Attachments, Accessories, and related products.



Section III: Repair and Replacement Parts

20.Discount (%) off catalog/pricelist for **Repair/Replacement Parts for Sewer Cleaning and Inspection Equipment.**

Section IV: Installation and Repair Service

- 21. Hourly Labor Rate for Installation/Repair Service of Sewer Cleaning, Inspection Products, Equipment and Related Items-- Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.
- 22. Hourly Labor Rate for Service of Pipeline Condition Assessments, Products, Equipment and Related Items- Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.

RELIANCE ENVIRONMENTAL TRUCK SALES, LLC Information

Item 13.

Contact: GEORGE GUTIERREZ

Address: 9818 GREEN RD

CONVERSE, TX 78109

Phone: (210) 648-3337

Email: GGUTIERREZ@RELIANCEEQUIP.NET

By submitting your response, you certify that you are authorized to represent and bind your company.

George Gutierrez ggutierrez@relianceequip.net

Signature Email

Submitted at 3/24/2022 3:46:41 PM

Requested Attachments

BuyBoard Proposal Invitation No. 676-22 Sewer Inspection and Cleaning Products

proposal-no-676-22.pdf

REQUIRED-In PDF format, upload all proposal invitation documents available for download at vendor.buyboard.com including any additional pages, as necessary. NOTICE: DO NOT complete proposal forms in internet browser. No data will be stored. Download file to computer and complete proposal forms prior to submitting. (Please DO NOT password protect uploaded files.)

Catalog/Pricelist

2022 BuyBoard Contract Price Book.doc

REQUIRED-In Excel or PDF format, upload catalog(s)/pricelist(s) in accordance with proposal invitation instructions. Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or Proposal will not be considered. No paper catalogs or manufacturer/vendor websites will be accepted. File size must not exceed 250MB. (Please DO NOT password protect uploaded files.)

Exceptions and/or Detailed Information Related to Discount % and/or Hourly Labor Rate No response Proposed

In PDF format and if necessary, vendor shall attach detailed information regarding exceptions to pricing and/or discount percentage and define the services that are proposed to be provided. NOTE: IF DETAILED INFORMATION IS NOT SUBMITTED, PROPOSAL MAY NOT BE CONSIDERED. (Please DO NOT password protect uploaded files.)

Company Profile Company Profile.docx

REQUIRED-Information on awarded Cooperative Contracts is available to Cooperative Members on the BuyBoard website. If your company is awarded a Contract under this Proposal Invitation, please provide a brief company description that you would like to have included with your company profile on the BuyBoard website. Submit your company profile in a separate file, in Word format, with your Proposal. (Note: Vendor is solely responsible for any content provided for inclusion on the BuyBoard website. The Cooperative reserves the right to exclude or remove any content in its sole discretion, with or without prior notice, including but not limited to any content deemed by the Cooperative to be inappropriate, irrelevant to the Contract, inaccurate, or misleading.)

IRS Form W-9 Request for Taxpayer Identification Number and Certification

DOC022422-02242022170513.pdf

REQUIRED-In PDF format, upload W-9 form. (Please DO NOT password protect uploaded files.)

Response Attachments

RELIANCE BUYBOARD PRICING - CAMERA PARTS & ACCESSORIES.xisx

RELIANCE BUYBOARD PRICING - CAMERA PARTS & ACCESSORIES

To-Whom-It-May-Conc Reliance-Enviro 22-23-Reliance- 3-24-2022 301873452.pdf

Insurance

440 676-22 Bid Attributes Item 13.

1 Federal Identification Number

Federal Identification Number

82-4901774

2 HUB/No Israel Boycott Certification/No Excluded Nation or Foreign Terrorist Certification

HUB/No Israel Boycott Certification/No Excluded Nation or Foreign Terrorist Certification

3 No Israel Boycott Certification

A Texas governmental entity may not enter into a contract with a value of \$100,000 or more that is to be paid wholly or partly from public funds with a company (excluding a sole proprietorship) that has 10 or more full-time employees for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. (TEX. GOV'T CODE Ch. 2270). Accordingly, this certification form is included to the extent required by law.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. TEX. GOV'T CODE §808.001(1).

By signature on the Compliance Forms Signature Page, to the extent applicable, I certify and verify that Vendor does not boycott Israel and will not boycott Israel during the term of any contract awarded under this Proposal Invitation, that this certification is true, complete and accurate, and that I am authorized by my company to make this certification.

Yes

4 No Excluded Nation or Foreign Terrorist Organization Certification

Chapter 2252 of the Texas Government Code provides that a Texas governmental entity may not enter into a contract with a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

By signature on the Compliance Forms Signature Page, I certify and verify that Vendor is not on the Texas Comptroller's list identified above; that this certification is true, complete and accurate; and that I am authorized by my company to make this certification.

Yes

5 MWBE/HUB Status Certification

A Proposer that has been certified as a Historically Underutilized Business (also known as a Minority/Women Business Enterprise or "MWBE" and all referred to in this form as a "HUB") is encouraged to indicate its HUB certification status when responding to this Proposal Invitation. The BuyBoard website will indicate HUB certifications for awarded Vendors that properly indicate and document their HUB certification on this form.

I certify that my company has been certified as a MWBE/HUB in the following categories: (Please check all that apply)

6 Minority Owned Business

Minority Owned Business

☐ Minority Owned Business (Yes)

7	Women Owned Business Women Owned Business Women Owned Business (Yes)
8	Service-Disabled Veteran Owned Business Service-Disabled Veteran Owned Business (veteran defined by 38 U.S.C. §101(2), who has a service-connected disability as defined by 38 U.S.C. § 101(16), and who has a disability rating of 20% or more as determined by the U. S. Department of Veterans Affairs or Department of Defense) \$\sumset \text{ Service-Disabled Veteran Owned Business (Yes)}\$
9	Certification Number Certification Number No response
10	Name of Certifying Agency Certifying Agency No response
1	Non-MWBE/HUB My company has NOT been certified as a MWBE/HUB Non-HUB (Yes)
1 2	Vendor General Contact Information Proposal/Contract General Contact Information
1 3	Vendor Proposal/Contract Contact Name Vendor Proposal/Contract Contact Name George Gutierrez
1 4	Vendor Proposal/Contract Contact E-mail Address Vendor Proposal/Contract Contact E-mail Address ggutierrez@relianceequip.net
1 5	Vendor Proposal/Contract Mailing Address Vendor Proposal/Contract Mailing Address 9818 Green Road
16	Vendor Proposal/Contact Mailing Address - City Vendor Proposal/Contact Mailing Address - City Converse
1	Vendor Proposal/Contact Mailing Address - State Vendor Proposal/Contact Mailing Address - State (Abbreviate State Name) TX
18	Vendor Proposal/Contact Mailing Address - Zip Code Vendor Proposal/Contact Mailing Address - Zip Code

1	Vendor Proposal/Contact Phone Number
9	Vendor Proposal/Contact Phone Number (xxx-xxx-xxxx)
	512-801-5268
2	Vendor Proposal/Contact Extension Number
0	Vendor Proposal/Contact Extension Number
	No response
2	Company Website
1	Company Website (www.XXXXX.com)
	www.reliancetruckandequipment.com
2	Purchase Orders Contact Information
2	All Purchase Orders from Cooperative members will be available through the Internet. Vendors need Internet
	access and at least one e-mail address so that notification of new orders can be sent to the Internet contact when a
	new purchase order arrives. An information guide will be provided to Vendors to assist them with retrieving their orders.
	Disconnections helpsy for receipt of Durchese Orders and provide the regulated information.
	Please select options below for receipt of Purchase Orders and provide the requested information:
	I will use the internet to receive Purchase Orders at the following address
	Yes
2	Purchase Order E-mail Address
3	Purchase Order E-mail Address
	ggutierrez@relianceequip.net
2	Purchase Order Contact Name
4	Purchase Order Contact Name
	George Gutierrez
2 5	Purchase Order Contact Phone Number
5	Purchase Order Contact Phone Number (xxx-xxx-xxxx)
	512-801-5268
2	Purchase Order Contact Extension Number
6	Purchase Order Contact Extension Number
	No response
2 7	Alternate Purchase Order E-mail Address
7	Alternate Purchase Order E-mail Address
	No response
2	Alternate Purchase Order Contact Name

No response

Alternate Purchase Order Contact Name

2	Alternate Purchase Order Contact Phone Number
9	Alternate Purchase Order Contact Phone Number (xxx-xxx-xxxx)
	No response
3	Alternate Purchase Order Contact Extension Number
U	Alternate Purchase Order Contact Extension Number
	No response
3	Purchase Orders Contact Information All Purchase Orders from Cooperative members will be available through the Internet. Vendors need Internet access and at least one e-mail address so that notification of new orders can be sent to the Internet contact when a new purchase order arrives. An information guide will be provided to Vendors to assist them with retrieving their orders.
	Please select options below for receipt of Purchase Orders and provide the requested information:
	 Purchase Orders may be received by the Designated Dealer(s) identified on my company's Dealer Designation form as provided to the Cooperative administrator. I understand that my company shall remain responsible for the Contract and the performance of all Designated Dealers under and in accordance with the Contract.
	Yes
3 2	Request for Quotes ("RFQâ€) Cooperative members will send RFQs to you by e-mail. Please provide e-mail addresses for the receipt of RFQs:
3	Request for Quote (RFQ) E-mail Address
3	Request for Quote (RFQ) E-mail Address
	ggutierrez@relianceequip.net
3	Request for Quote (RFQ) Contact Name
•	Request for Quote (RFQ) Contact Name
	George Gutierrez
3 5	Request for Quote (RFQ) Contact Phone Number
	Request for Quote (RFQ) Contact Phone Number (xxx-xxx-xxxx) 512-801-5268
-	
3 6	Request for Quote (RFQ) Contact Extension Number Request for Quote (RFQ) Contact Extension Number
	No response
3	Alternate Request for Quote (RFQ) E-mail Address
3 7	Alternate Request for Quote (RFQ) E-mail Address
	No response
3	Alternate Request for Quote (RFQ) Contact Name
ŏ	Alternate Request for Quote (RFQ) Contact Name
	No response

3	Alternate Request for Quote (RFQ) Contact Phone Number Alternate Request for Quote (RFQ) Contact Phone Number (xxx-xxx-xxxx) No response
40	Alternate Request for Quote (RFQ) Contact Extension Number Alternate Request for Quote (RFQ) Contact Extension Number No response
4	Invoices Your company will be billed monthly for the service fee due under a Contract awarded under this Proposal Invitation. All invoices are available on the BuyBoard website and e-mail notifications will be sent when they are ready to be retrieved.
42	Please choose only one (1) of the following options for receipt of invoices and provide the requested information: (a) Service fee invoices and related communications should be provided directly to my company at: or (b) In lieu of my company, I request and authorize all service fee invoices to be provided directly to the following billing agent: If Vendor authorizes a billing agent to receive and process service fee invoices, in accordance with the General Terms and Conditions of the Contract, Vendor specifically acknowledges and agrees that nothing in that designation shall relieve Vendor of its responsibilities and obligations under the Contract including, but not limited to, payment of all service fees under any Contract awarded Vendor. Service fee invoices and notices direct to company
4 3	Invoice Company Name Invoice Company Name Reliance Truck and Equipment, LLC.
4	Invoice Company Department Name Invoice Company Department Name Accounting
45	Invoice Contact Name Invoice Contact Name Jennifer Lugo
4	Invoice Mailing Address

4 Invoice Mailing Address

Invoice Mailing Address (P.O. Box or Street Address)

9818 Green Road

4 Invoice Mailing Address - City

Invoice Mailing Address - City

Converse

4		
8	Invoice Mailing Address - State	13.
	Invoice Mailing Address - State (Abbreviate State Name)	
	TX	
1	Invoice Mailing Address - Zip Code	
4 9		
	Invoice Mailing Address (Zip Code)	
	78109	
5	Invoice Contact Phone Number	
5 0	Invoice Contact Phone Number (xxx-xxx-xxxx)	
	210-648-3337	
	210-040-3331	
5	Invoice Contact Extension Number	
1	Invoice Contact Extension Number	
	No response	
		1
5 2	Invoice Contact Fax Number	
_	Invoice Contact Fax Number (xxx-xxxx)	
	No response	
5	Invoice Contact E-mail Address	
5 3	Invoice Contact E-mail	
	jlugo@relianceequip.net	
54	Invoice Contact Alternate E-mail Address	
4	Invoice Contact Alternate E-mail Address	
	No response	
_		
5 5	Billing Agent Company Name	
	Billing Agent Company Name	
	No response	
5	Billing Agent Department Name	
5	Billing Agent Department Name	
	No response	
5 7	Billing Agent Contact Name	
•	Billing Agent Contact Name	
	No response	
5	Billing Agent Mailing Address	
5 8	Billing Agent Mailing Address (P.O. Box or Street Address)	
	No response	
5	Billing Agent Mailing Address - City	
9	Billing Agent Mailing Address - City	
	No response	

6 Billing Agent Mailing Address - State

Billing Agent Mailing Address - State (Abbreviate State Name)

Item 13.

No response

6 Billing Agent Mailing Address - Zip Code

Billing Agent Mailing Address - Zip Code

No response

6 Billing Agent Contact Phone Number

Billing Agent Contact Phone Number (xxx-xxx-xxxx)

No response

6 Billing Agent Contact Extension Number

Billing Agent Contact Extension Number

No response

6 Billing Agent Fax Number

Billing Agent Fax Number

No response

Billing Agent Contact E-mail Address

Billing Agent Contact E-mail Address

No response

6 Billing Agent Alternative E-mail Address

Billing Agent Alternative E-mail Address

No response

6 Shipping Via

Common Carrier, Company Truck, Prepaid and Add to Invoice, or Other

Common Carrier

6 Payment Terms

<u>Note</u>: Vendor payment terms must comply with the BuyBoard General Terms and Conditions and the Texas Prompt Payment Act (Texas Government Code Ch. 2251).

Net 30

6 Vendor's Internal/Assigned Reference/Quote Number

Vendor's Internal/Assigned Reference/Quote Number

No response

State or Attach Return Policy

Note: Only return requirements and processes will be deemed part of Vendor's return policy. Any unrelated contract terms, terms of sale, or other information not specifically related to return requirements and processes included in Vendor's return policy shall not apply to any awarded Contract unless specifically included as a deviation in the Deviation and Compliance Form and accepted by the Cooperative.

7	Electronic Payments Are electronic payments acceptable to your company? Yes Item 13.
7 2	Credit Card Payments Are credit card payments acceptable to your company? Yes
73	Texas Regional Service Designation - Refer to Form in Proposal Invitation The Cooperative (referred to as "Texas Cooperative" in this form and in the State Service Designation form) offers vendors the opportunity to service its members throughout the entire State of Texas. If you do not plan to service all Texas Cooperative members statewide, you must indicate the specific regions you will service on this form. If you propose to serve different regions for different products or services included in your Proposal, you must complete and submit a separate Texas Regional Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. By designating a region or regions, you are certifying that you are authorized and willing to provide the proposed products and services in those regions. Designating regions in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract. Additionally, if you
7	do not plan to service Texas Cooperative members (i.e., if you will service only states other than Texas), you must so indicate on this form. Company Name Company Name
7 5	Texas Regional Service Designation Select only one of the following options. If you select "I will NOT serve all Regions of Texas", you must then check the individual Regions you wish to serve. All Regions
7	Region 1 Region 1 - Edinburg Region 1 (1)
7	Region 2 Region 2 - Corpus Christi Region 2 (2)
78	Region 3 Region 3 - Victoria Region 3 (3)
7 9	Region 4 Region 4 - Houston Region 4 (4)
80	Region 5 Region 5 - Beaumont Region 5 (5)

8	Region 6 Region 6 - Huntsville Region 6 (6)	Item 13.
8 2	Region 7 Region 7 - Kilgore Region 7 (7)	
8 3	Region 8 Region 8 - Mount Pleasant Region 8 (8)	
8 4	Region 9 Region 9 - Wichita Falls Region 9 (9)	
85	Region 10 Region 10 - Richardson Region 10 (10)	
86	Region 11 Region 11 - Fort Worth Region 11 (11)	
8 7	Region 12 Region 12 - Waco Region 12 (12)	
88	Region 13 Region 13 - Austin Region 13 (13)	
8 9	Region 14 Region 14 - Abilene Region 14 (14)	
9	Region 15 Region 15 - San Angelo □ Region 15 (15)	
9	Region 16 Region 16 - Amarillo Region 16 (16)	
9 2	Region 17 Region 17 - Lubbock Region 17 (17)	

9	Region 18 Region 18 - Midland Region 18 (18)	Item 13.
94	Region 19 Region 19 - El Paso Region 19 (19)	
95	Region 20 Region 20 - San Antonio Region 20 (20)	
96	State Service Designation - Refer to Form in Proposal Invitation. As set forth in the Proposal Invitation, it is the Cooperative's intent that other governmental entities in the U States have the opportunity to purchase goods or services awarded under the Contract, subject to applica law, through a piggy-back award or similar agreement through the National Purchasing Cooperative BuyBo you plan to service the entire United States or only specific states, you must complete this form accordingly If you plan to service Texas Cooperative members, be sure that you complete the Texas Regional Service Designation form.) In addition to this form, to be considered for a piggy-back award by the National Purchasing Cooperative, you must have an authorized representative sign the National Purchasing Cooperative Vendor Award Agreement that follows this form. If you serve different states for different products or services included in your Proposal, you must complete submit a separate State Service Designation form for each group of products and clearly indicate the prod services to which the designation applies. By designating a state or states, you are certifying that you are authorized and willing to provide the proposed products and services in those states. Designating states in you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract.	ble state pard. If v. (Note:
97	Company Name Company Name Reliance Truck and Equipment	
98	State Service Designation Select only one of the following options. If you select "I will NOT serve all States", you must the the individual States you wish to serve. All States	n check
9	Alabama Alabama Alabama (AL)	
1 0 0	Alaska Alaska Alaska (AK)	
1 0 1	Arizona Arizona Arizona (AZ)	

1 0 2	Arkansas Arkansas Arkansas (AR)	Item 13.
1 0 3	California California (Public Contract Code 20118 & 20652) California (CA)	
1 0 4	Colorado Colorado Colorado (CO)	
105	Connecticut Connecticut Connecticut (CT)	
106	Delaware Delaware □ Delaware (DE)	
1 0 7	District of Columbia District of Columbia District of Columbia (DC)	
1 0 8	Florida Florida □ Florida (FL)	
109	Georgia Georgia □ Georgia (GA)	
1 1 0	Hawaii Hawaii Hawaii (HI)	
1 1 1	Idaho Idaho Idaho Idaho (ID)	
1 1 2	Illinois Illinois (IL)	
1 1 3	Indiana Indiana Indiana (IN)	

1 1 4	lowa lowa lowa (IA)	Item 13.
1 1 5	Kansas Kansas □ Kansas (KS)	
1 1 6	Kentucky Kentucky □ Kentucky (KY)	
1 1 7	Louisiana Louisiana (LA)	
1 1 8	Maine Maine □ Maine (ME)	
1 1 9	Maryland Maryland □ Maryland (ME)	
1 2 0	Massachusetts Massachusetts Massachusetts (MA)	
1 2 1	Michigan Michigan □ Michigan (MI)	
1 2 2	Minnesota Minnesota Minnesota (MN)	
1 2 3	Mississippi Mississippi □ Mississippi (MS)	
1 2 4	Missouri Missouri Missouri (MO)	
1 2 5	Montana Montana □ Montana (MT)	

1 2 6	Nebraska Nebraska Nebraska (NE)	Item 13.
1 2 7	Nevada Nevada Nevada (NV)	
1 2 8	New Hampshire New Hampshire New Hampshire (NH)	
1 2 9	New Jersey New Jersey New Jersey (NJ)	
1 3 0	New Mexico New Mexico New Mexico (NM)	
1 3 1	New York New York New York (NY)	
1 3 2	North Carolina North Carolina North Carolina (NC)	
1 3 3	North Dakota North Dakota North Dakota (ND)	
1 3 4	Ohio Ohio Ohio (OH)	
1 3 5	Oklahoma Oklahoma Oklahoma (OK)	
1 3 6	Oregon Oregon Oregon (OR)	
1 3 7	Pennsylvania Pennsylvania Pennsylvania (PA)	

1 3 8	Rhode Island Rhode Island □ Rhode Island (RI)	Item 13.
1 3 9	South Carolina South Carolina South Carolina (SC)	
1 4 0	South Dakota South Dakota South Dakota (SD)	
1 4 1	Tennessee Tennessee □ Tennessee (TN)	
1 4 2	Texas Texas Texas (TX)	
1 4 3	Utah Utah □ Utah (UT)	
1 4 4	Vermont Vermont □ Vermont (VT)	
1 4 5	Virginia Virginia □ Virginia (VA)	
1 4 6	Washington Washington □ Washington (WA)	
1 4 7	West Virginia West Virginia □ West Virginia (WV)	
1 4 8	Wisconsin Wisconsin Wisconsin (WI)	
1 4 9	Wyoming Wyoming Wyoming (WY)	

Bid Lines

Section I: Sewer Cleaning Equipment, Products, and Supplies - Discount (%) off catalog/pricelist for Combination Sewer Cleaners, Single Engine, Attachments, Accessories, and related products.

Catalog/Pricelist MUST be included or proposal will not be considered.

Item 13.

No Bid

Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:

- Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

Item Attributes

1. State Name of Catalog/Pricelist Proposed with Discount Percentage

NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

2 Section I:Sewer Cleaning Equipment, Products, and Supplies - Discount (%) off catalog/pricelist for Combination Sewer Cleaners, Dual Engine, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.

No Bid

Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:

- Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

Item Attributes

1. State Name of Catalog/Pricelist Proposed with Discount Percentage

NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

Section I:Sewer Cleaning Equipment, Products, and Supplies - Discount (%) off catalog/pricelist for Units, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or propunot be considered.

Item 13.

No Bid

Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:

- Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

Item Attributes

1. State Name of Catalog/Pricelist Proposed with Discount Percentage

NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

4 <u>Section I:Sewer Cleaning Equipment, Products, and Supplies</u> - Discount (%) off catalog/pricelist for Trailer Jetter Units, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.

No Bid

Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:

- Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

Item Attributes

1. State Name of Catalog/Pricelist Proposed with Discount Percentage

NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

Section I:Sewer Cleaning Equipment, Products, and Supplies - Discount (%) off catalog/pricelist for Vacuum Excavation Equipment and related products. Catalog/Pricelist MUST be included or proposed be considered.

Item 13.

No Bid

Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:

- Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

Item Attributes

1. State Name of Catalog/Pricelist Proposed with Discount Percentage

NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

6 Section I:Sewer Cleaning Equipment, Products, and Supplies - Discount (%) off catalog/pricelist for All Other Sewer Cleaning Equipment, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.

No Bid

Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:

- Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

Item Attributes

1. State Name of Catalog/Pricelist Proposed with Discount Percentage

 $\underline{\text{NOTE}} : \textbf{Do not include SKU}, \ \textbf{Reference Numbers}, \ \textbf{Websites}, \ \textbf{and/or "See Attached/Enclosed"}.$

,	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist
	Portable Mini Sewer Inspection Systems, Attachments, Accessories and related
	products. Catalog/Pricelist MUST be included or proposal will not be considered.
	Total: 5%
	Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
	the information as follows or proposal may not be considered:
	 Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
	ριοροσσα
	Vendor's must list one specific percentage discount for each manufacturer and/or
	catalog/pricelist listed
	Item Attributes
	1. State Name of Catalog/Pricelist Proposed with Discount Percentage
	NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".
	2022 BuyBoard Contract Price B
3	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related
3	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5%
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5%
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed • Vendor's must list one specific percentage discount for each manufacturer and/or
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed • Vendor's must list one specific percentage discount for each manufacturer and/or
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed Item Attributes 1. State Name of Catalog/Pricelist Proposed with Discount Percentage
3	Mainline Portable Mini Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

9	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist
	Lateral and Mainline Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.
	Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
	the information as follows or proposal may not be considered:
	 Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
	 Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
	Item Attributes
	1. State Name of Catalog/Pricelist Proposed with Discount Percentage
	NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".
	2022 BuyBoard Contract Price B
1	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.
1	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories,
	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.
	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or
	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or
	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist for Vehicle/Trailer Mounted TV Sewer Inspection and Rehabilitation Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed • Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

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1	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/price Sewer Inspection Cameras, Attachments, Accessories, and related products. Catalog/Pricelist	
	included or proposal will not be considered.	IVIQ
	Total:	5%
	Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item the information as follows or proposal may not be considered:	must submit
	Select "Add Alternate" for each additional manufacturer product line and/or catalog proposed	/pricelist
	Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed	
	Item Attributes	
	1. State Name of Catalog/Pricelist Proposed with Discount Percentage	
	NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".	
	2022 BuyBoard Contract Price B	
1	ocwer inspection camera transporters, Attachments, Accessories, and related	list for
1 2	Sewer Inspection Camera Transporters, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.	
1 2	Sewer Inspection Camera Transporters, Attachments, Accessories, and related	5%
1 2	Sewer Inspection Camera Transporters, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item	5%
1 2	Sewer Inspection Camera Transporters, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item	5% must submit
1 2	Sewer Inspection Camera Transporters, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog	5% must submit
1 2	Sewer Inspection Camera Transporters, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog proposed Vendor's must list one specific percentage discount for each manufacturer and/or	5% must submit
1 2	Sewer Inspection Camera Transporters, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog proposed Vendor's must list one specific percentage discount for each manufacturer and/or	5% must submit
1 2	Sewer Inspection Camera Transporters, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog proposed • Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed	5% must submit
12	Sewer Inspection Camera Transporters, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog proposed • Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed	5% must submit

1	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist Portable Video Inspection Cameras, Attachments, Accessories and related products. Catalog/Pr MUST be included or proposal will not be considered.
	Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
	the information as follows or proposal may not be considered:
	 Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
	 Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
	Item Attributes
	1. State Name of Catalog/Pricelist Proposed with Discount Percentage
	NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".
	2022 BuyBoard Contract Price B
1	<u>Section II: Sewer Inspection Equipment, Products and Supplies</u> - Discount (%) off catalog/pricelist for Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.
1	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered.
1	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be
1 4	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
14	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit
1 4	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist
1 4	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed • Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
1 4	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or
1 4	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed • Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
14	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
14	Lateral Cleaning Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed • Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed Item Attributes 1. State Name of Catalog/Pricelist Proposed with Discount Percentage

4			
	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog		tem 13.
5	Lateral Reinstatement Cutters, Attachments, Accessories, and related products. Catalog.	/Pricelist	.0111 10.
	be included or proposal will not be considered.		-
	Total:		5%
	Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered:	item must	submit
	 Select "Add Alternate" for each additional manufacturer product line and/or caproposed 	atalog/price	elist
	 Vendor's must list one specific percentage discount for each manufacturer and/ catalog/pricelist listed 	or	
	Item Attributes		
	State Name of Catalog/Pricelist Proposed with Discount Percentage		
	NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".		
	2022 BuyBoard Contract Price B		
	2022 BuyBoard Goritract Frice B		
1	<u>Section II: Sewer Inspection Equipment, Products and Supplies</u> - Discount (%) off catalog/ Profiling Systems, Attachments, Accessories, and related products. Catalog/Pricelist MUS	•	r
	proposal will not be considered.	T be includ	
	proposal will not be considered. Total:	T be includ	
			ded or 5%
	Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line		ded or 5%
	Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line	item must	5% submit
	Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist per line the information as follows or proposal may not be considered:	item must	5% submit
	Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or caproposed • Vendor's must list one specific percentage discount for each manufacturer and/	item must	5% submit
	Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or caproposed • Vendor's must list one specific percentage discount for each manufacturer and/catalog/pricelist listed	item must	5% submit
	Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or caproposed • Vendor's must list one specific percentage discount for each manufacturer and/catalog/pricelist listed Item Attributes	item must	5% submit
	Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or caproposed • Vendor's must list one specific percentage discount for each manufacturer and/catalog/pricelist listed	item must	5% submit
	Total: Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered: • Select "Add Alternate" for each additional manufacturer product line and/or caproposed • Vendor's must list one specific percentage discount for each manufacturer and/catalog/pricelist listed Item Attributes	item must	5% submit

1	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog		m 13.
	Gravity Pipeline Inspection Systems, Attachments, Accessories, and related products. C	atalog/F	<i>III 10.</i>
	MUST be included or proposal will not be considered.		
	Total:		5%
	Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered:	item must s	ubmit
	 Select "Add Alternate" for each additional manufacturer product line and/or caproposed 	atalog/priceli	ist
	 Vendor's must list one specific percentage discount for each manufacturer and/ catalog/pricelist listed 	or	
	Item Attributes		
	State Name of Catalog/Pricelist Proposed with Discount Percentage		
	NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".		
	2022 BuyBoard Contract Price B		
	ZOZZ Bayboara Goritraot Frice B		
18	<u>Section II: Sewer Inspection Equipment, Products and Supplies</u> - Discount (%) off catalog/ Pipeline Condition Assessment Software and related products. Catalog/Pricelist MUST be proposal will not be considered.		
	Total:		5%
	Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line the information as follows or proposal may not be considered:	item must s	uhmit
			domit
			domi
	 Select "Add Alternate" for each additional manufacturer product line and/or caproposed 	atalog/priceli	
	·		
	proposed • Vendor's must list one specific percentage discount for each manufacturer and/		
	Vendor's must list one specific percentage discount for each manufacturer and/catalog/pricelist listed		
	Vendor's must list one specific percentage discount for each manufacturer and/catalog/pricelist listed Item Attributes		
	Vendor's must list one specific percentage discount for each manufacturer and/catalog/pricelist listed		
	Vendor's must list one specific percentage discount for each manufacturer and/catalog/pricelist listed Item Attributes		

9	Section II: Sewer Inspection Equipment, Products and Supplies - Discount (%) off catalog/pricelist Other Sewer Inspection Systems, Attachments, Accessories, and related products. Catalog/Price MUST be included or proposal will not be considered.
	Total: 5%
	Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:
	 Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed
	 Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
	Item Attributes 4. State Name of Catalog/Brigglist Brancoad with Discount Baragatage
	State Name of Catalog/Pricelist Proposed with Discount Percentage
	NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".
	2022 BuyBoard Contract Price B
200	Section III: Repair and Replacement Parts - Discount (%) off catalog/pricelist for Repair/Replacement Parts for Sewer Cleaning and Inspection Equipment. Catalog/Pricelist MUST be included or proposal will not be considered. Total: 5% Item Notes: Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:
	 Select "Add Alternate" for each additional manufacturer product line and/or catalog/pricelist proposed Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed Item Attributes
	 Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed
	Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed Item Attributes
	 Proposed Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed Item Attributes State Name of Catalog/Pricelist Proposed with Discount Percentage
2	Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed Item Attributes 1. State Name of Catalog/Pricelist Proposed with Discount Percentage NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed". Reliance BuyBoard Pricing - Ca Section IV: Installation and Repair Service - Hourly Labor Rate for Installation/Repair Service of Sewer Cleaning, Inspection Products, Equipment and Related Items Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.
2	Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed Item Attributes 1. State Name of Catalog/Pricelist Proposed with Discount Percentage NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed". Reliance BuyBoard Pricing - Ca Section IV: Installation and Repair Service - Hourly Labor Rate for Installation/Repair Service of Sewer Cleaning, Inspection Products, Equipment and Related Items Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.

2	<u>Section IV: Installation and Repair Service</u> Assessments, Products, Equipment and Re	nstallation and Repair Service - Hourly Labor Rate for Service of Pipeline Conditions, Products, Equipment and Related Items Not to Exceed hourly labor rate for				
	Installation/Repair Service of Equipment and Products.					
	Quantity: 1 UOM: Hourly Labor Rate	Price:	\$155.00	Total:		\$155.00

Response Total: \$310.00

P.O. Box 400, Austin, Tex

July 31, 2023

Sent via email to: ggutierrez@relianceequip.net

George Gutierrez Reliance Truck & Equipment, LLC 9818 Green Rd. Converse TX 78109

Re: Sewer Inspection and Cleaning Products

BuyBoard Contract 676-22

The Local Government Purchasing Cooperative (BuyBoard) awarded your company a contract under Sewer Inspection and Cleaning Products, Contract 676-22 effective 10/1/2022 through September 30, 2023, with two possible one-year renewals. At this time the BuyBoard is renewing your contract through September 30, 2024.

All discounts, terms, and conditions of your contract will remain the same. If you agree to this renewal, there is nothing you need to do. However, if you do not agree to this renewal, you must notify me via email at contractadmin@buyboard.com prior to the start of the renewal term.

Reminder: Once a BuyBoard contract is awarded, vendors must generate a minimum of \$15,000 annually or they may not be offered a contract renewal.

If you have questions or comments concerning this renewal, please contact me as soon as possible at contractadmin@buyboard.com . We appreciate your interest in The Local Government Purchasing Cooperative.

Sincerely,

Jim Tulberg

Jim Tulberg Contract Administrator

1st renewal v.02.13.2020







ADDITIONAL TERMS AND CONDITIONS UNDER COOPERATIVE CONTRACT 676-22

AGREEMENT: This set of Additional Terms and Conditions is incorporated into BuyBoard Contract 676-22 (the "BuyBoard Contract") in its entirety and, upon execution by New Braunfels Utilities, a Texas municipally owned utility ("NBU"), and Reliance Truck & Equipment, LLC, a Texas limited liability company ("Vendor"), constitutes the Parties' Agreement ("Agreement"). All other terms and conditions of the BuyBoard Contract, and all documents incorporated therein, not modified or amended by this set of Additional Terms and Conditions shall remain in full force and effect. No change, modification or revision to the Agreement shall be binding unless made in writing and signed by the Parties.

COMPLETION: Time is of the essence in the performance of this Agreement. If Vendor fails to effect delivery or performance of the associated goods or services required by NBU in accordance with the requirements of this Agreement, in addition to its other rights and remedies hereunder, NBU shall have the right to terminate this Agreement by notice effective when received by Vendor or after the expiration of five (5) days from the date of mailing of such notice, whichever occurs first. Such termination shall be effective as to goods not yet received by NBU or services not yet rendered, regardless of their transit status.

PRICES: Vendor warrants that the prices quoted to NBU in the Quote # QUO9096 dated September 20, 2023, ("Quote") at the time of sale includes all costs incurred by Vendor for shipment of all goods under this Agreement. In the event of any price reduction between execution of the Agreement and delivery of the goods, NBU shall be entitled to such reduction, which shall be reflected as a deduction on the next invoice or refunded to NBU within 30 days, whichever is sooner.

SHIPMENT AND DELIVERY: All goods made the subject hereof are to be suitably prepared and packaged for shipment in accordance with good commercial practice so as to effect safe delivery and freedom from weather or other damage and to meet the carrier's requirements. All damages to such goods occurring prior to delivery will be charged to Vendor. No charges will be allowed for packing, crating or carriage unless stated in the Agreement. If, in order to comply with NBU's required delivery date, it becomes necessary for Vendor to ship by a more expensive way than specified in the Agreement any such increased transportation costs shall be paid by Vendor. All deliveries shall be f.o.b. point designated in these Additional Terms and Conditions or as specified in writing by NBU. Cost of all return shipments, for whatever reason returned, shall be borne by Vendor with title and risk of loss passing at NBU's point of shipment, unless otherwise specified by NBU at the time of return.

INSPECTION: NBU shall have a reasonable time after delivery or performance to inspect the goods delivered or the services performed. All such goods or services must conform to the specifications, instructions, drawings and data set forth in the Agreement and Quote. NBU may reject and refuse acceptance of any goods or services which do not so conform. NBU shall notify Vendor of such rejection by either written notice or by the return to Vendor of the rejected goods.

Vendor shall be solely responsible for any risk and cost or expenses associated with return of rejected or nonconforming goods.

REJECTION OF MATERIALS AND WORKMANSHIP: NBU shall have the right to reject furnished goods and workmanship that are defective or otherwise fail to meet the terms and conditions of the Agreement and require their correction. Rejected goods shall be satisfactorily replaced with proper goods without charge to NBU, and Vendor shall promptly segregate and remove rejected goods from the point designated. If Vendor does not correct defective workmanship or replace the rejected goods within a reasonable time, NBU may do so and charge all costs, damages, fees, and expenses to Vendor including, without limitation actual, consequential and incidental damages.

SHOP DRAWINGS, SUBMITTALS, QUALITY OF GOODS: Vendor shall confirm that all materials are in strict accordance with the Agreement and Quote. Where required, prior to shipment, Vendor shall provide shop drawings or submittals sufficient to demonstrate compliance with the Agreement for NBU's review and approval. A failure of NBU during the progress of the work to discover or reject goods not in accordance with the Agreement shall not be deemed an acceptance thereof or a waiver of defects therein. No payment or use of goods provided by Vendor shall be construed as an acceptance of goods which are not strictly in accordance with the Agreement.

WARRANTIES / GUARANTEES: Vendor expressly warrants that the items and services covered hereunder shall be free of defects in workmanship and all services shall be performed in a good and workmanlike manner consistent with industry standards ("Services Warranty"). A minimum of a ninety (90)-day product or service guaranty of the manufacturer's standard commercial warranty, whichever is greater, will apply to all goods and services provided under this Agreement. All warranties shall run to NBU, its customers and subsequent owners of goods or services covered hereunder.

Vendor warrants that all goods, including equipment and products, and services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Vendor warrants the equipment, products, and services are suitable for and will perform in accordance with the ordinary use for which they are intended. Vendor's dealers and distributors agree to assist NBU in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the Vendor's warranty will be passed on to NBU.

INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS NBU AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEY'S FEES, E OR OTHER CONSULTANTS' FEES, OF ANY KIND RESULTING FROM VENDOR'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT, FAILURE OF GOODS, OR ACTS RESULTING IN BODILY INJURY OR PROPERTY

DAMAGE, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF VENDOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.

NO DAMAGES FOR DELAY: Vendor shall have no right to claim any damages against NBU, including consequential or incidental damages, as a result of delay. Extension of time for Vendor's performance is conditioned upon NBU's approval of an extension of time to the contract or delays claimed by Vendor. Failure of Vendor to make a claim promptly shall be deemed a waiver of the right to a claim for an extension of time for the particular cause.

TERMINATION: NBU may terminate this Agreement without cause by providing 30 days' written notice to Vendor. NBU may terminate this Agreement or any part thereof for cause in the event of any default by Vendor, or if Vendor fails to comply with any of the terms and conditions of this Agreement. The Uniform Commercial Code of the State of Texas ("UCC") shall apply to NBU's rights and remedies under commercial transactions. NBU reserves all rights, remedies, and warranties, express and implied, under the UCC. Vendor may not terminate this Agreement unless NBU fails to provide payment for goods and/or associated services expressly accepted by NBU.

TAXES: NBU is exempted from all city, state, and federal excise taxes. DO NOT include tax on your invoice. NBU's Federal ID Number is 74-6001783.

INSURANCE: Per the BuyBoard Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the BuyBoard Contract. Promptly, upon execution of this Agreement and upon future request from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

PAYMENT: Invoices will be paid within 30 days after receipt of the goods or completion of required services. Payment for the goods delivered under this Agreement shall not be acceptance of such goods. Goods shall only be deemed accepted when they have actually been counted, inspected, and tested by NBU and found to be in conformance with this Agreement. However, failure to inspect or test by NBU shall not relieve Vendor of any responsibility hereunder.

REMEDIES: The rights and remedies reserved to NBU herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other or further rights and remedies provided by law or equity. No waiver of any breach of these provisions shall be deemed to constitute a waiver of any other breach.

DISPUTE RESOLUTION: The Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws principles. In the event that a dispute arises between NBU and Vendor, the parties agree to submit said disputes to a court of competent jurisdiction in Comal County, Texas for resolution.

TEXAS PUBLIC INFORMATION ACT: Vendor recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations

under this Agreement, Vendor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights.

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

Vendor must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of Vendor on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of Vendor; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Vendor agrees that the Agreement can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

ELECTRONIC SIGNATURES: Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures.

REPRESENTATIONS:

<u>Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia</u>. To the extent this Agreement relates to critical infrastructure in the State of Texas, Vendor represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in Vendor is not held or controlled by:
 - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code, as amended ("designated country"); or
 - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

(B	it is not head	quartered in C	hina, Iran, N	North Korea.	Russia, o	r a designated	country.
1	_	10 10 1100 11000	0.000.000.000		, , , , , , , , , , , , , , , , , , , ,			

The foregoing representation is made solely to comply with Chapter 2274 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

Executed and effective this day o	f		
NBU: NEW BRAUNFELS UTILITIES, a Texas municipally owned utility	VENDOR: RELIANCE TRUCK & EQUIPMENT, LLO a Texas limited liability company		
By:	By:		
Name:	Name:		
Title:	Title:		

Quote #: QUO9096 **Quote Date:** 9-20-23



9818 Green Road Converse, Texas 78109

Prepared By: George Gutierrez

Quote Date: 512-801-5268

Quote Valid Until: 1-15-24

E-Mail: ggutierrez@relianceequip.net

Quote For:

Jacob Tschoepe
New Braunfels – Fleet Facilities Manager
355 FM 306
New Braunfels, Texas 78130
itschoepe@nbutexas.com



BuyBoard Contract Number 676-22

Equipment - Model	Туре	Delivery	Freight	Quote Total Per Unit	
Prebuilt 1050 TVO 2024	Camera	Best Way	Included	\$388,120.00	

Component List:

1 FORD F-550 DIESEL CAB CHASSIS 205" WB 2X4 CHASSIS

- 1 6.7L V8 Diesel Engine
- 1 Automatic Transmission
- 1 19,500 lb. GVWR
- 1 205" Wheel Base
- 1 Cab Air Conditioner

1 16' CARGO BOX FOR CAB/CHASSIS

- 1 LED Light Package Includes Body Clearance and Stop / Tail / Turn
- 1 Full Width Barn Doors with CAM (Pipe) Locks on Each Door
- 2 Laminated Steel Lock
- 1 Kemlite Covering on Inside Rear Doors
- 1 Back up Alarm

1 STORAGE DRAWER/POWER BOOM CRANE DEPLOYMENT SYSTEM

- 1 WIRELESS POWERBOOM CRANE CONTROLLER
- 1 POWER BOOM CRANE WIRELESS CONTROLLER HOLDER

1 SAFE ENTRY/EXIT BUMPER INSTALLED

- 1 Three (3) Steps Evenly Spaced
- 1 Bottom Step Folds Up for Ground Clearance
- 1 Safety Grab Handle

1 KICKPLATE TRANSPORTER STORAGE

- 1 Lockable Storage Compartment for Camera and Transporter
- 1 Sliding Drawer
- 1 Notch in rear door threshold of body for TV cable to pass through to transporter storage

drawer

1 KICKPLATE 2 DRAWER STACK ALUMINUM STORAGE

- 1 BACK-UP COLOR CAMERA SYSTEM [CHASSIS]
- 1 PINTEL HITCH ON CHASSIS
- 1 TV HIGH CUBE VAN EXTERIOR LIGHTING & CONTROL ROOM EVOLUTION 3.0 TO INCLUDE:

- 2 Amber LED Strobe Warning Beacons
- 2 Adjustable LED Floodlights Rear of Vehicle Area

Illumination Control Room Interior:

- 1 Lonseal Lonplate Flooring
- 1 Kemlite covered walls and weather resistant/smooth finished ceiling
- 1 Bulkhead Wall with Passage Door from Control Room to Equipment Room
- 1 Tinted Viewing Window in Bulkhead Wall
- 1 Tinted Viewing Window in Bulkhead Door
- 1 Above Desk Control Console with Rack Mount for Electronic Equipment
- 1 Desktop / Work Area
- 1 12V High Intensity LED Light Fixture
- 1 Multi-Outlet Power Strip with USB Ports
- 1 Fire Extinguisher with Bracket, 10BC Rating
- 1 Operators Chair, Swivel with Casters
- 1 Breaker Box Storage Area with Locking Positive Latch
- 1 Battery Powered Carbon Monoxide Alarm

1 LOW PROFILE, ROOF MOUNTED AIR CONDITIONER WITH HEAT STRIP

- 1 WALL MOUNTED ELECTRIC HEATER
- 1 WALL MOUNTED ELECTRIC HEATER HOUSING
- 1 CURBSIDE DOOR FOR EVO 3.0
- 1 SIDE DOOR STEPS
- 1 BENCH SEAT IN VIEWING ROOM
- 1 CUSHION FOR BENCH SEAT
- 1 CLOSET IN VIEWING ROOM

1 TV HI-CUBE VAN EQUIPMENT ROOM INTERIOR - EVOLUTION 3.0 TO INCLUDE:

- 1 Lonseal Lonplate Flooring
- 1 Kemlite covered walls and weather resistant/smooth finished ceiling
- 1 Electrical Outlet with Dual Receptacles
- 1 12V High Intensity LED Light Fixture
- 1 15 Minute Courtesy Timer Located at Rear Door Area for 12V LED Interior Lights

1 MULTI-OUTLET WORKSTATION WITH LIGHTS AND USB PORTS

1 20-GALLON WASHDOWN SYSTEM TO INCLUDE:

- 1 20-Gallon Fresh Water Tank
- 1 Electric Water Pump
- 1 Retractable Hose Reel with 25'Water Hose and Nozzle

1 UPPER STORAGE CABINET IN EQUIPMENT ROOM

1 PACK RAT STORAGE DRAWER READY LOWER CABINET IN EQUIPMENT ROOM

- 1 Lower Storage Cabinet / Work Top with Sink and Faucet
- 1 Pack Rat Storage Drawer Ready

1 PACK RAT DRAWER UNIT FOR EQUIPMENT ROOM LOWER CABINET

- 1 5-DRAWER TOOL CHEST, MODULINE
- 1 4 1/2" VISE, BENCH MOUNT
- 1 FIRST AID KIT
- 1 UNIVERSAL PAPER TOWEL HOLDER IN EQUIPMENT ROOM
- 1 ER STRIP, 6 OULET 2 USB, 10FT CORD (LEFT WALL BY SYS SELECT)

1 32" REAR FLAT SCREEN MONITOR MOUNTED IN BULKHEAD WALL

- 1 Flat Screen Monitor
- 1 Cable Assembly Video Monitor to Monitor in Control Room
- 1 Electrical Outlet

1 7500 WATT QUIET DIESEL ONAN GENERATOR

- 1 120 Volt 60 HZ 7500 Watt (Minimum) Commercial Grade "Quiet" Generator
 - 1 Diesel Powered
 - 1 Electric Start

1 GENERATOR COMPARTMENT [UNDER CHASSIS MOUNT]

- 1 Generator Storage Compartment with Lockable External Access Door
- 1 Commercial Power Supply Receptacle
- 1 Electrical Supply Center with Circuit Breaker Box
- 1 Commercial power and Generator Power Connectors
- 1 Automatic Power Transfer Switch

1 SYSTEM ENGINEERING PANEL, FOR POWER INFORMATION AND GENERATOR FUNCTIONS, RACK MOUNTED, TO INCLUDE:

- 1 Four Function AC Power Meter displaying Critical Power Information including:
 - 1 Voltage
 - 1 Hertz
 - 1 Amperage
 - 1 Active Power (Watts)
- 1 Front panel Selector Switch for two modes of operation:
 - 1 Fixed reading
 - 1 Continuous Auto-cycling
- 1 Generator Battery Meter to Display Starting and Charging Voltage
- 1 Generator Hour Meter
- 1 Generator Remote Start/Stop Control Switch
- 1 On/Off Switch for Emergency Warning beacons (Switch to Illuminate When On)

1 25' 110V SHORE POWER CABLE

1 OZ2 P&T ZOOM M/C LED CAMERA

- 1 Solid State Color Sewer TV Camera
- 1 Pan & Rotate Camera Head, 320:1 Optical/Digital Zoom
- 1 NTSC Color Standard with Automatic Iris / Focus
- 1 4 x 5W Cluster LED's for 6" through 72" lines
- 1 Camera Transportation and Storage Case

1 BUILT-IN SONDE FOR MAINLINE CAMERA TO INCLUDE:

1 Built In Transmitter, 512 Hz

1 21" TRAC TRANSPORTER M/C TO INCLUDE:

- 1 6" Trac Transporter with Freewheel and Powered Reverse
- 1 Y Eliminator

1 8"-15" EXTENDERS FOR 21" TRAC TRANSPORTER

1 SPARE PARTS KIT FOR TRAC TRANSPORTER TO INCLUDE:

1 Additional Chain Links and Rubber Cleats

1 12/5/4 ADAPTER CABLE

1 18" - 24" TRAC TRANSPORTER EXTENSION KIT

1 1500' CABLE ASSEMBLY, M/C 12PIN METAL

- 1 1500' Gold Multi Conductor Kevlar Fiber Armored Combination TV Transmission / Tow Cable
- 1 .450 Diameter
- 1 Metal Splice Chamber with Pigtail
- 1 Cable Strain Relief

1 TV REEL ASSEMBLY, MECHANICAL FOOTAGE FOR SUMMIT .450 CABLE

- 1 Black Thermoplastic Powder Coated Frame (not available with BRAKE option)
- 1 Power Levelwind & Multi Ratio Manual Transmission
- 1 Footage Meter with Local Counter and Remote Electronic Counter
- 1 Transmission Control at Viewing Station
- Local Reel Mount Electrical and Mechanical Control

- 1 Sealed Continuous Contact Collector Assembly
- 1 Removable Drip Pan for Cleaning (not available with BRAKE option)
- 1 AUTOMATIC PAYOUT SYSTEM FOR REEL INSTALLED
- 1 PCU ASSEMBLY [RACK MOUNT]
- 1 CCU ASSEMBLY [RACK MOUNT]
 - 1 Alpha Numeric Information Display, with Multi Paging and Defect Coding
 - 1 Remote "QWERTY" Keyboard
 - 1 On Screen Footage Display
- 1 WIRED & WIRELESS CONTROLLER
 - 1 Joystick Control for Pan and Tilt Zoom Camera to Include:
 - 1 360 Degree Rotate
 - 1 330 Degree Optical Pan
 - 1 Joystick Control for All Steering Functions & Forward / Reverse Directions for Transporter
 - 1 Camera Lift Control for Optional Electronic Camera Lift
 - 1 All Other Controls for Camera to Include:
 - 1 Camera Iris and Focus Override & Zoom
 - 1 Camera Lights & Shutter Control for Light Enhancement
 - 1 Camera Diagnostics & Auto Home
 - 1 Cruise Control to Set Speed of the Transporter for Hands off Operation
 - 1 All Reel Controls to Include: Retrieve, Release, and Variable Speed
- 1 8.7" MINI KEYBOARD
- 1 SHORTING PLUG
- 1 TEST CABLE
- 2 22" (MINIMUM) FLATSCREEN COLOR INDUSTRIAL TV MONITOR NTSC / PAL COLOR STANDARDS
- 2 MOUNTING HARDWARE FOR MONITOR to include Bracket(s), and / or Mount(s), and Miscellaneous hardware required to secure monitor for optimal safety and viewing.
- 1 COMPUTER ONLY [NO Granite SOFTWARE] TO INCLUDE (MINIMUM):* **
 - 1 Motherboard LGA 1200 Socket and Intel Z590 Chipset
 - 1 Intel Core i7-11700 2.5-4.9 GHz Processor
 - 1 16 GB LP/DDR4 2666 RAM
 - 1 USB Video Capture Device for MPEG 1 / 2 / 4 /WMV
 - 2 LAN, On Board Network Connections, 2.5GbE (2.5Gbit/1 Gbit/100Mbit)
 - 6 USB 3.2 Ports / Back
 - 2 USB 3.0 Ports / front
 - 1 USB Type C--Thunderbolt
 - 2 RS232 Serial Ports
 - 1 Bluetooth v5.1
 - 1 Wi-Fi a/b/g/n/ac/ax, 2.4/5 GHz Dual-Band
 - 5 On Board Audio Ports
 - 1 1 TB M.2 Solid State Drive
 - 1 500 GB M.2 Solid State Drive
 - 1 500 Watt 1U ATX Power Supply
 - 1 Industrial Hardened Case Slim 2u (88mm) Design for 19" (482.6mm) Rack
 - 1 Windows 10 Professional 64-bit Operating System
 - 1 USB C 12 in 1 docking station
 - *Spec for computers can change without notice
 - **International Configuration may vary to comply with the U.S. Department of Commerce, Bureau of Industry & Security regulations on export of technology
- 1 GRANITENET BASIC INSPECTION SOFTWARE KIT
- 1 PACP MODULE Granite Net SOFTWARE

- 1 SOFTWARE, CITYWORKS INTER MODUL GNET
- 1 ESRI INTERFACE MODULE Granite Net SOFTWARE
- 1 KIT, GRANITENET OFFICE
- 1 ESRI IMPORT OFFICE MODULE Granite Net SOFTWARE
- 1 Granite Net BASIC SUPPORT PLAN
- 1 Granite Net OFFICE SUPPORT PLAN
- 1 KEYBOARD AND MOUSE COMBO, WIRED
- 1 COLOR PRINTER
- 1 ALL NECESSARY CABLING AND COMPONENTS TO COMPLETE THE INTERFACE BETWEEN THE DATA ACQUISITION SYSTEM, PERIPHERALS, AND THE VIDEO INSPECTION EQUIPMENT
- 1 KIT, UPS, W/MOUNT TO INCLUDE THE FOLLOWING:
 - 1 Input 120-Volt / Output 120-Volt
 - 1 Cord Management Straps
- 1 Cues Accupoint Kit

MS611 (Locates all sondes and has line trace modes). Sonde frequencies 512 Hz/ 8kHz / 33kHz Line trace frequencies 512 Hz/ 8kHz / 33 kHz/ 65 kHz Includes MS611, 04/ACCUPOINTBAG, CS775 D-CELL BATTERY, 90/ACCU-UG/01 USER GUIDE

- 1 30" MANHOLE HOOK
- 1 KIT, DOWNHOLE, STD
 - 1 Toproller Assembly, Manhole, TV Only, Al
 - 1 Claw Hook, Manhole Adapter, f/WT319
 - 1 Hook Assembly, Retrieval (SNGL, SHTY/LMP/PR)
 - 6 Pole Assembly, Retrieval / Downhole tl, 58"
 - 1 Roller Assembly, Invert f/ WT319
- 1 TIGER TAIL
- 1 MULTI CONDUCTOR TV ONLY TOOL KIT
 - 1 Milliamp meter Tool
 - 1 Electrical Tape
 - 1 Needle Nose Pliers
 - 1 Six-In-One Screwdriver
 - 1 6" Adjustable Wrench
 - 1 Anti Seize Grease
 - 1 9-Piece Allen Wrench kit
 - 1 Solder Iron Kit
 - 1 Pliers
 - 1 5/32 T-Handle Hex Wrench
- 3 DAYS FIELD TRAINING FOR ID SYSTEM
- 1 TRUCK DELIVERY-TEXAS



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Adam Willard, P.E. Reviewed by: Michael Short, P.E.

Chief Engineer of Water Director of Water Services and

Systems Compliance

Submitted by: Michael Short, P.E. **Approved by:** Ryan Kelso

Director of Water Services Interim Chief Executive Officer

and Compliance

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Professional Services Agreement with Freese and Nichols, Inc. for Program Management and Staff Augmentation for Engineering and Engineering Related Services in Support of New Braunfels Utilities'

Water and Wastewater Capital Improvement Plan

BACKGROUND

On January 26, 2023, New Braunfels Utilities ("NBU") issued a request for qualifications for Program Management and Staff Augmentation for Engineering and Engineering Related Services (the "Services"). The Services include (i) program management, (ii) staff augmentation, (iii) development review assistance, (iv) construction observation services, (v) water and wastewater modeling, (vi) project planning, design or operation support services, (vii) land acquisition management and policy modifications, (viii) Guadalupe-Blanco River Authority ("GBRA") Gonzales-Carrizo Water Supply ("GCWS") project representative, (ix) City of New Braunfels street project design services, (x) aging infrastructure design services, and (xi) survey services for fiscal year ("FY") 2024 through FY 2026 to support Water Engineering in program management and staff augmentation for the water and wastewater capital improvement plan and development review.

On March 7, 2023, NBU received three (3) Statements of Qualification ("SOQ") for the Services during the public procurement process. The team evaluated the SOQs and recommends the selection of Freese and Nichols, Inc. ("FNI"). FNI was selected as the respondent who provides the best value to NBU based on the selection criteria and the ranking evaluation, including their past performance and similar services, overall qualifications, available resources, corporate history, and references.

NBU staff requests that the Board of Trustees approve the Professional Service Agreement (the "Agreement") with FNI for the Services.

This item is being presented to the Board because the total amount of this contract exceeds \$500,000.

FINANCIAL IMPACT

The total financial impact of the Contract with FNI for the Services is \$10,578,296 for the three-year term of this agreement. The contract amount includes \$3,361,467 for FY 2024, \$3,611,684 for FY 2025, and \$3,605,145 for FY 2026. The Project is budgeted within the FY 2024 NBU Board approved Capital Improvements Projects Budget. The costs for the Services will be updated within the proposed fiscal year 2025 through fiscal year 2029 Capital Improvements Projects Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

- 1. Professional Services Agreement with FNI
- 2. Recommendation Concurrence
- 3. Bid Evaluation Matrix RFQ (02660)

	Bid Evaluation Matrix				
Item Criteria		Freese and	Plummer	Info Way	
		Nichols, Inc.	Associates, Inc.	Solutions LLC	
1.	Cover Letter	5	5	1	
2.	Qualifications of Respondent	48	46	1	
3.	Qualifications and Availability of Key	22	22	0	
	Personnel				
4.	Past Performance	18	17	0	
	Total Score	93	90	2	

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered by and between NEW BRAUNFELS UTILITIES, a Texas municipally owned utility ("NBU"), and FREESE AND NICHOLS, INC., a Texas corporation (the "Professional"). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. <u>Term of Agreement</u>. This Agreement shall become effective the date on which the last party to this Agreement executes this Agreement and this Agreement shall not be binding until executed by all parties (the "Effective Date"). Once this Agreement is executed by both parties, this Agreement shall remain in effect until the completion date specified in Exhibit A, unless terminated as provided for in this Agreement. Subject to Section 271.904 of the Texas Local Government Code, as amended, Exhibit A shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks related to the Services (hereinafter defined).

Section 2. Scope of Services.

- (A) The Professional shall perform the services described in Exhibit A (the "Services") within the timeframe specified therein. The time limits for the Services stated in Exhibit A are of the essence of the Agreement. By executing this Agreement, the Professional confirms that the timeframe in Exhibit A is a reasonable period for performing the Services. The scope of work described in the Services constitutes the "Project."
- (B) The quality of Services provided hereunder shall be of the level of professional quality performed by professionals regularly rendering this type of service.
- (C) The Professional shall perform the Services in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Professional may rely upon the accuracy of reports and surveys provided to it by NBU except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

- (A) <u>Amount</u>. The Professional shall be paid the amount set forth in Exhibit B as described herein.
- (B) <u>Billing Period</u>. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

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the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

(C) <u>Reimbursable Expenses</u>. Any and all reimbursable expenses related to the Project shall be described in the Services defined in Exhibit A and accounted for in the total compensation amount in Exhibit B. If these items are not specifically accounted for in both Exhibit A and Exhibit B, NBU shall not be required to pay such amounts unless otherwise agreed to in writing by both parties or unless agreed to pursuant to Section 4 of this Agreement.

Section 4. Changes to the Project Work; Additional Work.

- (A) Changes to Work. The Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If NBU finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by NBU and such services shall be considered as additional work and paid for as specified under the following paragraph.
- (B) Additional Work. NBU retains the right to make changes to the Services at any time by a written contract amendment. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by contract amendment before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Services described in Exhibit A and therefore constitutes additional work, the Professional shall promptly notify NBU of that opinion in writing. If NBU agrees that such work does constitute additional work, then NBU and the Professional shall execute a contract amendment for the additional work and NBU shall compensate the Professional for the additional work on the same basis of the rates for the Services contained in Exhibit B. If the changes deduct from the extent of the scope of work for the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by the Professional not previously approved as additional work shall be at risk of the Professional.
- Section 5. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by NBU shall be delivered to and become the property of NBU. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to NBU without restriction or limitation on the further use of such materials; however, such materials are not intended or represented to be suitable for reuse by NBU or others. Any reuse of the materials related to the Services without prior verification or adaptation by the Professional for the specific purpose intended will be at NBU's sole risk and without liability to the Professional. Where applicable, the Professional shall retain all pre-existing proprietary rights in the materials provided to NBU but shall grant to NBU a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at the Professional's expense, have copies made of the documents or any other data furnished to NBU under or pursuant to this Agreement.

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Section 6. <u>Personnel</u>. The Professional shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Professional agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Professional shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

Section 7. <u>Licenses; Materials</u>. The Professional shall maintain in current status all federal, state, and local licenses and permits required for the Professional to perform the Services and operate its business. NBU has no obligation to provide the Professional, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Professional.

Section 8. Professional's Seal; Standard of Care. To the extent the Professional has a professional seal, the Professional shall place such seal on all final documents and data furnished by the Professional to NBU. Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date on the title sheet of bound engineering reports, specifications, details, calculations or estimates, and each sheet of plans or drawings regardless of size or binding. As required by Section 271.904 of the Texas Local Government Code, as amended, all services provided under this Agreement will be performed with the professional skill and care ordinarily provided by competent engineers or architects, as applicable, practicing under the same or similar circumstances and professional license. The Professional shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as applicable. The plans, specifications, and data provided by the Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by NBU and the Professional. NBU acknowledges that the Professional does not have control over the methods or means of work or the costs of labor, materials, or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

Section 9. Indemnification.

(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:

- i. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY THE PROFESSIONAL, ITS AGENT, EMPLOYEE, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- ii. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF PROFESSIONAL'S STANDARD OF CARE, BY THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- iii. CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- iv. DUE TO THE FAILURE OF THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL TO PAY THEIR CONSULTANTS OR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR
- V. OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.
- (B) REIMBURSEMENT OF NBU'S FEES IN DEFENSE OF CLAIMS. TO THE EXTENT NBU INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST NBU THAT ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF THE PROFESSIONAL DESCRIBED IN THIS SECTION, THE PROFESSIONAL SHALL REIMBURSE NBU ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE PROFESSIONAL'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

The obligations of the Professional under this Section shall survive the termination of this Agreement.

Section 10. Insurance.

(A) General.

- i. <u>Insurer Qualifications</u>. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. <u>Coverage Term</u>. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. <u>Primary Insurance</u>. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. <u>Claims Made</u>. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. <u>Waiver</u>. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery

(subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

- viii. <u>Policy Deductibles and/or Self-Insured Retentions</u>. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.
- ix. <u>Use of Subcontractors</u>. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- х. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.
- (B) <u>Required Insurance Coverage</u>. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.
 - i. <u>Commercial General Liability</u>. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be

specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- ii. <u>Auto Liability</u>. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers' Compensation and Employer's Liability Insurance. The Professional shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- (C) <u>Cancellation and Expiration Notice</u>. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to NBU.

Section 11. Termination.

(A) <u>For NBU's Convenience</u>. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services

performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.

- (B) For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the nondefaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Professional for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.
- (C) Non-Collusion. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.
- (D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement.

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The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

- (A) <u>Independent Contractor</u>. The Professional acknowledges that the Professional is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Professional shall not represent, either expressly or through implication, that the Professional is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Professional.
- (B) <u>Governing Law; Venue</u>. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- (C) <u>Compliance with Laws</u>. The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish satisfactory proof of compliance to NBU.
- (D) <u>Amendments</u>. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.
- (E) <u>Provisions Required by Law</u>. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- (F) <u>Severability</u>. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- (G) <u>Entire Agreement; Interpretation; Parol Evidence</u>. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and

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superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.

- (H) <u>No Assignment</u>. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.
- (I) <u>Subcontractors</u>. The Professional shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Professional.
- (J) Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (K) <u>Attorneys' Fees</u>. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.
- (L) <u>Liens</u>. All materials or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.

(M) Offset.

i. Offset for Damages. In addition to all other remedies at law or equity, NBU may offset from any money due to the Professional any amount the Professional owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.

- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.
- (N) <u>Notices</u>. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities Attn: Director of Water Services 263 Main Plaza New Braunfels, TX 78130

With copy to:

Purchasing Manager New Braunfels Utilities 355 FM 306 New Braunfels, TX 78130

If to the Professional:

Freese & Nichols, Inc. 10431 Morado Circle Building 5, Suite 300 Austin, Texas 78759

or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in the manner set forth in this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

(O) <u>Confidentiality of Records</u>. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as

required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.

- (P) Right to Audit. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- (Q) <u>Paragraph Headings</u>; <u>Construction</u>. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- (R) <u>Binding Effect</u>. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- (S) <u>Gender</u>. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- (T) <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- (U) <u>Exhibits</u>. Except as specified in Subsection (V) of this Section, all exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- (V) <u>Conflicting Terms</u>. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern. The Exhibits are intended to detail the technical scope of services, fee schedule, and the term of the contract only and shall not dictate Agreement terms.
- (W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

- (X) <u>No Third-Party Beneficiaries</u>. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (Y) <u>Non-Exclusive Contract</u>. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. <u>Dispute Resolution</u>. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. <u>First</u>, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. <u>Second</u>, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. <u>Third</u>, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 15. <u>Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire</u>. The Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.

Section 16. <u>Information Technology</u>

- (A) Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the Professional with non-exclusive, limited access to NBU's information technology infrastructure. The Professional understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Professional shall reasonably enforce such policies, standards, regulations and restrictions with all the Professional's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Professional's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Professional agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Professional. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- (B) <u>Data Confidentiality</u>. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.
- (C) <u>Data Security</u>. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Professional must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- (D) <u>Compromised Security</u>. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. To the Extent Permitted by Section 271.904 of the Texas Local Government Code, as amended, the Professional shall indemnify and hold NBU harmless from any Claims resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed in connection with the performance of this Agreement by the Professional, its officers, employees, consultants, agents, any tier of subcontractor, or any entity over which the Professional exercises Control.

(E) <u>Survival</u>. The obligations of the Professional under this Section shall survive the termination of this Agreement.

Section 17. Prohibition on Contracts with Companies Boycotting Israel. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 18. <u>Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited.</u> The Professional represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Professional and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 19. <u>Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia</u>. If the Professional is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Professional represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in the Professional is not held or controlled by:
 - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended ("designated country"); or

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- ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. "Affiliate," with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

Section 20. <u>Prohibition on Contracts with Companies Boycotting Energy Companies</u>. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2276 of the Texas Government Code, as amended

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott energy companies" has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 21. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 22. <u>Texas Public Information Act</u>. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its

obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in Section 12(P).

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

The Professional must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Professional on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Professional; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Professional agrees that the Agreement can be terminated if the Professional knowingly or intentionally fails to comply with a requirement of that subchapter.

Section 23. <u>Electronic Signatures</u>. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the day of, 20
NBU: NEW BRAUNFELS UTILITIES, a Texas municipally owned utility
By:
Name: Ryan Kelso
Title: Interim CEO
PROFESSIONAL: FREESE AND NICHOLS, INC.,
a Texas corporation
By:
Name: Anne Hoskins
Title: Principal

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide program management, staff augmentation and general engineering support for implementation of the NBU fiscal year ("FY") 2024 through FY 2026 water and wastewater capital improvement plan ("W/WW CIP").

The Professional shall perform the Services in accordance with the tasks described herein.

- **Task 1. Program Management.** The Professional shall provide program management services to NBU that are associated with the management of the W/WW CIP as described below:
 - 1.1. perform program controls and reporting associated with the W/WW CIP;
 - 1.2. conduct weekly capital project update meetings with the Capital Project Delivery ("CPD") team;
 - 1.3. assist CPD team with incorporation of Smartsheet;
 - 1.4. attend meetings for key projects as required;
 - 1.5. manage the CPD management system and develop CPD reports;
 - 1.6. review project schedules, assist in managing overall W/WW CIP cash flow, and verify cost estimates based on historical bid tabs and construction trends;
 - 1.7. assist with write-ups for the NBU Board of Trustees' approval;
 - 1.8. provide input and assistance on Texas Water Development Board ("TWDB") funding opportunities for select CIP projects;
 - 1.9. update NBU's existing Project Delivery Manual;
 - 1.10. assist NBU with updating its standard professional services agreement ("PSA");
 - 1.11. in collaboration with the Engineer of Record ("EOR") and NBU, conduct a risk assessment on strategic projects and develop mitigation plans and contingencies in a risk register. The risk management effort will begin during the project design phase and continue until the project is commissioned. Risk management workshops will include the Professional's program manager, the Professional's W/WW Planning staff, EOR, contractor, NBU Project Manager, and NBU Operations staff.
 - 1.12. coordinate with NBU's Water Department Chief Engineer, Director, and Chief Operations Officer as required to convey the status of the overall program;
 - 1.13. assist NBU in developing the following year's W/WW CIP including cost estimating,

- project descriptions and estimated schedule; and
- 1.14. provide program management services based on the following manpower assumptions:
 - 1.14.1. Program Manager at up to 9 hours per week;
 - 1.14.2. Engineer VI at 5 hours per week;
 - 1.14.3. Project Principal time at 2 hours per month;
 - 1.14.4. Project Controls Coordinator at a total 80 hours per year to maintain the CPD management system; and
 - 1.14.5. Project Accountant at 2 hours per month for monthly invoicing.
- **Task 2. Staff Augmentation.** The Professional and its subconsultant shall provide project management staff to NBU to augment existing NBU staff in the delivery of the W/WW CIP. The primary purpose of the Professional's staff augmentation is to assist in managing/leading NBU's W/WW CIP. Within the allotted staff augmentation hours, the Professional shall also assist NBU directly in managing capital projects. The Professional's assumed level of staff augmentation and duties are described herein.
 - 2.1. Primary Project Management. The Professional shall provide one full-time primary project manager for FY 24 and up to 1.5 full-time primary project managers for FY 25 through FY 26. The project manager shall serve as NBU's representative for design and construction projects. For assigned projects, the duties include developing an approval for expenditure and project management plan, managing schedule and budget, communication with consulting engineers and contractors, communication with internal operations and construction management staff, and internal reporting to NBU's Chief Engineer.
 - 2.2. <u>Project Management Support</u>. The Professional shall provide one additional project manager for an average of 5 hours per week for FY 24 through FY 26. The project manager shall train the primary project manager as needed on NBU processes to assist in transition between project managers from one FY to the next.
- **Task 3. Development Review Assistance.** The Professional and its subconsultant shall provide development review services to NBU to augment existing NBU staff. Development review services shall be supplied in FY 25 through FY 26. Development review services shall be limited to 30 hours per week.
 - 3.1. The Professional shall review construction plans and reports and compare against NBU, Texas Commission on Environmental Quality ("TCEQ"), and checklist requirements.
 - 3.2 The Professional shall provide comment response memos and coordinate with development engineers as necessary.

Task 4. Construction Observation Services. The Professional shall provide all labor, material, and equipment necessary to provide construction management services in the form of project management and construction phase services for the construction management and inspection for select FY 24 through FY 26 NBU W/WW CIP.

4.1 <u>Construction Project Management.</u>

- 4.1.1. Schedule. The Professional shall develop a baseline design schedule and prepare updated schedules on a monthly basis on or before the 25th day of each month for submission to NBU's Project Manager in portable document format ("PDF") via email for the purpose of monitoring progress and project milestone dates.
- 4.1.2. <u>Quality Control</u>. The Professional shall develop a quality assurance/quality control ("QA/QC") program, which shall be explained in detail via a written document and provided to NBU's Project Manager in PDF within 30 days of the notice to proceed issued in connection with each project.
- 4.1.3. <u>Progress Reports.</u> The Professional shall provide NBU with electronic monthly project progress reports and submit written invoices in PDF on or before the 25th day of each month for the previous month's effort.
- 4.1.4. <u>Project Controls</u>. The Professional shall manage the project integration, scope, schedule, cost, quality, staff resources, communications, risk analysis, and oversight.
- 4.1.5. <u>Construction Management.</u> The Professional shall provide inspector and construction manager QA/QC oversite.

4.2 Construction Phase Services.

4.2.1. Communication.

- 4.2.1.1. The Professional shall establish communication procedures for all parties involved in the project. The communication procedures shall detail the amount of time all parties have to respond to questions, submittals, or other documents, and the most efficient transmission of communication (via email, phone, etc.). These procedures shall be provided in writing and reviewed with NBU's EOR, and the contractor. NBU's Project Manager shall approve all communication procedures.
- 4.2.1.2. The Professional shall conduct monthly progress meetings with NBU, the EOR, and the contractor to exchange information regarding the progress of construction, the status of submittals, the status of modifications, and/or to address any project-related issues.
- 4.2.1.3. The Professional shall prepare and distribute an agenda prior to the progress meetings and record the meeting minutes. The Professional

- shall email the meeting minutes to the NBU Project Manager in PDF, within one week after the meeting.
- 4.2.1.4. The Professional shall submit monthly reports of the construction progress to NBU's Project Manager in PDF. The reports shall describe the construction progress and summarize project costs, cash flow, construction schedule, pending and approved contract modifications, change order status, and any other outstanding issues.

4.3. Construction QA/QC.

- 4.3.1. The Professional shall observe the contractor's work to determine if the work is proceeding in accordance with the contract. The Professional shall prepare daily reports to be submitted electronically to NBU's Project Manager in PDF, documenting the Professional's observations.
- 4.3.2. The Professional shall document when non-conforming work is observed and submit this documentation via email in PDF to NBU and the contractor. The Professional shall verify and document when the observed non-conforming work has been corrected and submit to the NBU Project Manager documentation to that effect via email in PDF.
- 4.3.3. The Professional shall review documents submitted by the contractor, including test reports, equipment installation reports, or other documents required by the contract.
- 4.3.4. The Professional shall coordinate the completion of materials testing by testing laboratories and confirm the testing has been conducted in accordance with applicable testing and inspection bureaus that set standards for the testing of materials, witness tests, and factory testing.
- 4.3.5. The Professional shall provide 2.5 full-time on-site representatives per FY for a total of 100 hours per week to inspect future capital improvement projects ("CIP").
- 4.3.6. The Professional shall provide a construction manager that shall be responsible for the overall management of the project. The Professional's construction manager shall visit project sites a total of 20 hours per week.
- 4.3.7. <u>General Construction Management and/or On-Site Representative Tasks</u>. The Professional shall perform general construction management and/or inspection tasks as assigned by NBU including:
 - 4.3.7.1. Bac-T testing for construction of potable water facilities;
 - 4.3.7.2. completion of NBU Retirement Forms for past and current CIP;
 - 4.3.7.3. on-site representation for emergency projects or projects with critical

construction issues; and

4.3.7.4. conduct warranty inspections for projects where the warranty period is expiring.

4.4. <u>Document Management</u>.

- 4.4.1. The Professional shall establish and maintain an electronic project management information system utilizing the web based FN*i*Manager System.
- 4.4.2. The Professional shall manage the processing of contractor submittals, including the filing and retrieval of all the project documentation. The Professional shall receive contractor submittals including requests for information, modification requests, shop drawings, schedules, and other submittals. The Professional shall perform an initial review of the submittals and electronically send the submittals to the EOR and/or NBU's Project Manager for a detailed review and response.
- 4.4.3. The Professional shall monitor the progress of (i) the contractor in sending and processing submittals, including obtaining signatures from all required parties for documents, and (ii) the EOR in reviewing and responding to submittals. The Professional shall verify that documentation is being processed according to the schedule.
- 4.4.4. The Professional shall prepare monthly reports that monitor the status of all submittals in the review process. The Professional shall submit an electronic copy of the report in PDF to NBU's Project Manager once a month.

4.5. Schedule Management.

4.5.1. The Professional shall review the baseline, the projected, and the monthly construction progress schedules submitted by the contractor. The Professional shall monitor the progress of the work completed relative to the planned progress and address any identified schedule delays by promptly emailing the EOR, NBU's Project Manager, and the contractor.

4.6. Cost Management.

- 4.6.1. The Professional shall review the schedule of values and payment requests prepared by the contractor. The Professional shall establish with NBU and the contractor procedures to review the monthly quantities of work in place and the corresponding payment requests for work completed.
- 4.6.2. The Professional shall prepare monthly cash flow requirements based upon information provided by the contractor. The Professional shall update cash flow reports monthly and include these reports with the monthly updates to NBU.
- 4.6.3. The Professional shall verify quantities of work in place, review the payment

requests and supporting documentation, and provide an email to NBU with an opinion of whether the payment requested matches the work completed.

4.7 Issues Management.

- 4.7.1. The Professional shall provide an initial interpretation of the drawings and specifications when questions arise concerning the definition of the drawings and specifications. The Professional shall coordinate a resolution to these issues based upon a final interpretation of the drawings and specifications by the EOR, NBU, and the contractor.
- 4.7.2. The Professional shall track and document issues, procure a resolution, and promptly email notification to the EOR, NBU, and the contractor.

4.8. <u>Change Management</u>.

- 4.8.1. The Professional shall establish and document procedures for administering changes to the construction contract.
- 4.8.2. The Professional shall prepare documentation of the requested contract modifications. The Professional shall coordinate with the EOR for technical review and approval of any design modifications. All design modification documents shall have the EOR's Texas Engineering Seal affixed.
- 4.8.3. The Professional shall process contract modifications and negotiate with the contractor on behalf of NBU to determine the cost and time impacts of these changes. The Professional shall prepare change order documents for approved changes and have them executed by NBU. The documentation of field orders that do not impact cost or schedule shall also be prepared and submitted to NBU.
- 4.8.4. The Professional shall receive and evaluate notices of contractor claims and make recommendations to NBU on the merit and value of the claim.

4.9. <u>Project Completion</u>.

- 4.9.1. The Professional shall coordinate the start-up and commissioning of the facility and all the process systems with the EOR, the contractor, and NBU. The Professional shall provide engineering and technical assistance to the contractor during the commissioning process.
- 4.9.2. The Professional shall conduct a review of the project to determine conformance or non-conformance with the project design and construction documents when the contractor requests that substantial completion be granted for the project (or applicable portions thereof). The Professional shall determine if a review of the work is required by the EOR, and if so, shall schedule the reviews of the work with the EOR. The Professional shall prepare a list of deficiencies to be corrected by the contractor before substantial completion is granted and any partial release or reduction of retainage is approved. The Professional shall

- prepare a certificate of substantial completion that includes a list of work to be completed prior to issuance of a final completion certificate.
- 4.9.3. The Professional shall conduct a final review of the project for conformance with all the project documents. The Professional shall confirm work is complete and in accordance with the project documents prior to recommending final payment.
- 4.9.4. The Professional shall assist NBU in obtaining permits, warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the contractor. The Professional shall review and confirm that the contractor has submitted all required documents to NBU prior to recommending the final payment.

4.10. Material Transfer.

- 4.10.1. The Professional shall manage and coordinate the transfer of and acceptance by the contractor of any NBU furnished equipment or materials.
- 4.10.2. The Professional shall manage and coordinate the transfer of and acceptance by NBU of any contractor furnished spare parts, materials, keys, etc.

4.11. Record Drawings.

4.11.1. The Professional shall receive and review as-built drawings from the contractor. The Professional shall electronically transmit drawings and other documents to the EOR for the preparation of the record drawings. These drawings shall include notations that reflect as-built project components and conditions. The record drawings shall include the Professional's on-site representative's notes, the contractor's field notes, and NBU's field notes made during the construction process.

4.12. <u>Limitations of Authority of Resident Project Representative.</u>

- 4.12.1. The Professional shall not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items), unless authorized by NBU and the EOR in writing.
- 4.12.2. The Professional shall not exceed the limitations of the EOR's authority as set forth in the agreement or the contract documents.
- 4.12.3. The Professional shall not undertake any of the responsibilities of the contractor, subcontractor, suppliers, or the contractor's superintendent.
- 4.12.4. The Professional shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the contract documents.

- 4.12.5. The Professional shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the work or any activities or operations of NBU or the contractor.
- 4.12.6. The Professional shall not accept shop drawings or sample submittals from anyone other than the contractor.
- 4.12.7. The Professional shall not participate in a specialized field, laboratory tests, or inspections conducted by others, except as specifically authorized by NBU and the EOR.
- **Task 5. Water and Wastewater Modeling.** The Professional shall perform modeling services that include water and wastewater hydraulic analysis necessary for the operational assessment, development reviews, and regulatory compliance related to the water distribution and wastewater collection system. The Professional's scope of work shall include the services described herein for FY 24 through FY 26.

5.1. Water Modeling Services.

- 5.1.1. The Professional shall perform tasks related to review of new developments. The new development review tasks shall include:
 - 5.1.1.1. calculating average day, maximum day, and peak hour demands for new developments;
 - 5.1.1.2. adding proposed water lines and nodes to model;
 - 5.1.1.3. assigning water demands; running the hydraulic model at maximum day demand for required fire flow;
 - 5.1.1.4. writing a memorandum detailing results of model runs and proposed recommendations; and
 - 5.1.1.5. submitting reports and memoranda described in this section to NBU.
- 5.1.2. The Professional shall perform tasks related to operational assessments, water system modifications, and investigations. Investigations shall include:
 - 5.1.2.1. researching operational options;
 - 5.1.2.2. conducting field investigations when necessary and as approved by NBU;
 - 5.1.2.3. modeling various operational scenarios,
 - 5.1.2.4. writing a memorandum detailing results of model runs, and proposed recommendations; and

- 5.1.2.5. submitting reports as described in this section.
- 5.1.3. The Professional shall update the water system "available connection" methodology to be consistent with the updated water and wastewater master plan.
- 5.2. Wastewater Modeling Services.
 - 5.2.1. The Professional shall perform a development review to include calculating average day and peak wet weather wastewater loads for new developments. The Professional shall perform a hydraulic analysis by adding proposed wastewater lines and nodes to the existing model, assigning roughness coefficients, wastewater loads and elevations and running the model under peak wet weather to determine:
 - 5.2.1.1. impact of the development on downstream infrastructure;
 - 5.2.1.2. off-site improvements to serve the proposed development;
 - 5.2.1.3. potential oversizing of off-site improvements;
 - 5.2.1.4. on-site pipe sizing; and
 - 5.2.1.5. maximum capacity of recommended pipes.
 - 5.2.2. The Professional shall update the wastewater system "available connection" methodology to be consistent with the updated water and wastewater master plan.
- 5.3. The Professional shall provide operational assessments related to the wastewater system modifications and investigations shall include:
 - 5.3.1 researching operational options;
 - 5.3.2 conducting field investigations when necessary and as approved by NBU;
 - 5.3.3 modeling various operational scenarios and writing a memorandum detailing results of model runs and proposed recommendations; and
 - 5.3.4 submitting reports and any memoranda to NBU described in this section.
- **Task 6. Project Planning, Design, or Operation Support Service.** The Professional shall perform engineering services associated with analysis and/or the design of specific infrastructure projects as well as support related to overall management and operation of the water and wastewater systems, as assigned by the NBU Chief Engineer or Project Manager. The specific assignments, as directed by NBU may include the tasks listed below and shall be performed from FY 24 through FY 26:

- 6.1. Project Planning and/or Design.
 - 6.1.1. The Professional will evaluate feasibility, cost, and/or schedule for upcoming capital projects.
 - 6.1.2. The Professional will perform design for small or expedited projects.
 - 6.1.3 The Professional will provide technical support needed by the NBU project managers and/or chief engineer.
 - 6.1.4 The Professional will provide operational and management support.
 - 6.1.5. The Professional will provide updates to the NBU Board of Trustees on system performance, system demands, and/or CIP program status.
 - 6.1.6. The Professional will coordinate with operations staff for system optimization and control settings.
 - 6.1.7. The Professional will provide regulatory review and consultation.
- **Task 7.** Land Acquisition Management and Policy Modifications. The Professional shall help manage the land acquisition process for CIP projects for FY 24 and FY 25. The Professional shall perform the tasks listed below:
 - 7.1. develop and manage acquisition tracking/status spreadsheet for all projects requiring easements;
 - 7.2. meet with existing contractors and NBU ("Right of Way") ROW staff weekly or as required based on project; and
 - 7.3. meet with Water Engineering staff weekly to discuss land rights status.
- Task 8. Guadalupe-Blanco River Authority ("GBRA") Gonzales-Carrizo Water Supply ("GCWS") Project Representative. The Professional shall serve in an advisory role on matters related to the GBRA GCWS Project and subsequent delivery of water to NBU through July 30, 2026. The Professional shall perform the services described below:
 - 8.1. <u>Meetings</u>. The Professional shall attend the following meetings and provide monthly summaries to NBU with pertinent information:
 - 8.1.1. GBRA/Alliance Regional Water Authority's ("ARWA") Project Advisory Committee (monthly).
 - 8.1.2. ARWA Technical Committee (monthly).
 - 8.1.3. ARWA Board meetings (monthly).
 - 8.1.4. miscellaneous ARWA and/or GBRA users meeting (monthly); and

- 8.1.5. NBU status updates (quarterly).
- 8.2. <u>Technical Review</u>. The Professional shall perform the following technical reviews:
 - 8.2.1. review tasks;
 - 8.2.2. review milestone cost estimates from ARWA/GBRA consultants;
 - 8.2.3. review NBU delivery point facilities; and
 - 8.2.4. review operational procedures and NBU water delivery requirements from the GBRA contract.
- 8.3. <u>Reporting & Communication</u>. The Professional shall provide the following electronic documents to NBU via email:
 - 8.3.1. reporting documents and deliverables;
 - 8.3.2. monthly updates on project status to NBU;
 - 8.3.3. relevant documents from meetings attended; and
 - 8.3.4. technical memorandum with findings and recommendations from technical reviews.
- **Task 9. Design Services Associated with City of New Braunfels Roadway Projects.** The Professional shall provide design services for replacement and/or relocation of water and wastewater utilities associated with the City of New Braunfels ("CONB") street improvement projects. The Professional shall perform the following tasks as dictated by the specific project assigned for FY 24 through FY 26:
 - 9.1. coordinate with NBU and CONB staff to identify utility replacement and/or relocation needs;
 - 9.2. prepare scope and estimated fee for improvements requiring design;
 - 9.3. prepare technical memorandum documenting design assumptions and requirements;
 - 9.4. prepare construction bid documents;
 - 9.5. prepare opinion of probable construction costs ("OPCC"); and
 - 9.6. provide construction administration support.
- **Task 10.** Aging Infrastructure Design Services. The Professional shall provide design services for replacement and/or rehabilitation of aging water and wastewater infrastructure as identified by NBU. The Professional shall perform the following tasks as dictated by the specific project assigned:

- 10.1. coordinate with NBU and CONB staff to identify utility replacement and/or relocation needs;
- 10.2. prepare scope and estimated fee for improvements requiring design;
- 10.3. prepare technical memorandum documenting design assumptions and requirements;
- 10.4. prepare construction bid documents;
- 10.5. prepare OPPC; and
- 10.6. provide construction administration support.

Task 11. Survey

- 11.1. The Professional shall provide the following property owner notification and Right of Entry ("ROE") services:
 - 11.1.1. coordinate with NBU to determine proposed alignment;
 - 11.1.2. compile a working list of property owners that may be impacted by the proposed utility improvements;
 - 11.1.3. request current contact information for impacted property owners from NBU;
 - draft notification and ROE letters, defining reason for notification, approximate effort, and timeline;
 - 11.1.5. upon NBU approval, deliver ROE letters to property owners via standard USPS mail, conduct follow up phone calls to non-responsive property owners; and
 - 11.1.6. manage and document received ROE letters and communications related to ROE request.
- 11.2. The Professional shall provide the following topographic survey services:
 - 11.2.1. The Professional shall tie in all existing surface topographic features and structures within the survey limits. This shall include: tops of curbs, edges of pavement, pavement materials, driveways, sidewalks, retaining walls, drainage structures (top, edges and flow line), channels and drainage ways (tops, toes and flow lines), manholes (rim, flow lines and diameters of pipes, type of material and photographs of the inside of manholes and drainage structures), including the same survey data for upstream and downstream manholes and structures that are outside of the survey limits for all gravity wastewater and drainage lines within the survey limits, visible valves, meters, clean-outs, slabs, utility signs, utility poles and structures, fences, landscaping features, shrubbery, trees (including the approximate drip-line), tree canopies, buildings (edges within the survey limits), and mailboxes, etc. Trees shall be tagged and

tabulated by size and species specific in compliance with the CONB Tree Preservation ordinance as defined in the CONB Zoning Ordinance Chapter 5.3-5i. The survey limits shall extend approximately 100 feet on intersecting streets. The Professional shall provide sufficient ground shots to create one (1) foot contours.

- 11.2.2. The Professional shall survey across rivers including the bottom profile.
- 11.2.3. The Professional shall conduct a utility survey and locate existing utilities. The Professional shall contact all utility service providers by calling Texas 811 and NBU to coordinate flagging of existing franchise utilities. The Professional shall request drawings of existing agency and municipal owned utilities and shall include locations of these utilities in the survey. The Professional shall tie in the locations of the existing utilities on the survey.
- 11.2.4. The Professional shall locate geotechnical borings and tie them into the survey.
- 11.2.5. The Professional shall set and install control points and/or benchmarks as required for the survey work (minimum 1,000-foot intervals). The Professional shall provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum, and show the benchmarks on the survey drawing.
- 11.2.6. The Professional shall research and review adjoining plats and deeds. The Professional shall locate property corners and identify existing ROW based on found monuments and record documents.
- 11.2.7. The Professional shall provide the following deliverables:
 - 11.2.7.1. The Professional shall provide a 3D surface model, compatible with AutoCAD Civil 3D; electronic and hard copy text file listing all surveying points; and electronic file of digital terrain model in format requested by NBU. The electronic file shall include the location of underground utilities based on the field information and record drawings.
 - 11.2.7.2. The Professional shall provide one (1) hard copy and PDF format electronic copies of all field notes, pictures, and sketches prepared by the Professional.
 - 11.2.7.3. The Professional shall provide one (1) AutoCAD DWG electronic file. The drawing shall include all survey points and descriptions, existing utilities and improvements, the items tied in, the 3D surface, reference benchmarks, project benchmarks, break lines, and elevation contours at 1-foot intervals.
- 11.3. The Professional shall provide the following geotechnical surveying services:

- 11.3.1. The Professional shall locate or stake geotechnical boring along the survey corridor within the project area.
- 11.4. The Professional shall provide the following easement surveying services:
 - 11.4.1. perform deed, plat, and courthouse record research;
 - 11.4.2. request title report and obtain copies of deeds and easement documents;
 - 11.4.3. survey existing property corners, fences, and appurtenant property evidence;
 - 11.4.4. prepare a metes and bounds description with exhibit for proposed easements;
 - 11.4.5. show ownership and adjoined ownership data for adjacent properties;
 - 11.4.6. revise parcel descriptions and field notes per NBU review comments; and
 - 11.4.7. monument final easements as shown on the approved exhibit.
- 11.5. The Professional shall provide the following deliverables:
 - 11.5.1. Written metes and bounds description and survey exhibit prepared in compliance with state surveying standards, signed and sealed by a Professional Land Surveyor licensed in the State of Texas; and
 - 11.5.2. Legal descriptions and exhibit plats shall be produced on paper no larger than 8.5 inches x 14 inches.
- 11.6. The Professional shall provide the following platting services as required for submittal to the CONB, Comal County, and/or Guadalupe County:
 - 11.6.1. review plat requirements and easement issues or concerns;
 - 11.6.2. acquire written approval from the County Floodplain Coordinator;
 - 11.6.3. request comment letters from servicing utilities;
 - 11.6.4. coordinate with NBU for storm water drainage analyses;
 - 11.6.5. coordinate with Texas Department of Transportation;
 - 11.6.6. coordinate and respond as required for properties located over the Edwards Aquifer Recharge, Transition and Contributing Zones;
 - 11.6.7. document preliminary plat meetings and comments;
 - 11.6.8. review and respond to CONB staff comments;
 - 11.6.9. attendance at Planning and Zoning Commission meeting;

- 11.6.10. obtain deed showing current ownership of property;
- 11.6.11. recover or establish property boundary;
- 11.6.12. request and review title report for easements of record;
- 11.6.13. prepare the plat showing the proposed lot(s);
- 11.6.14. prepare existing improvements exhibit;
- 11.6.15. complete the plat application and checklist;
- 11.6.16. handle submittal/re-submittal and processing of the plat application, plat and required accompanying documents;
- 11.6.17. review, address, and respond to NBU staff comments;
- 11.6.18. coordinate owners' signature after approval; and
- 11.6.19. sign and deliver approved plat for circulation and signatures by the controlling jurisdiction(s).
- 11.7. The Professional shall provide the following construction survey and staking services:
 - 11.7.1. horizontal and vertical controls;
 - 11.7.2. proposed limits of construction for clearing;
 - 11.7.3. proposed utility improvements including services and other appurtenances;
 - 11.7.4. staking for rough and final grade;
 - 11.7.5. proposed pads, foundations, and structures;
 - 11.7.6. roads, drives, walks, fences, signs, and other improvements;
 - 11.7.7. collection and application of as-constructed facilities;
 - 11.7.8. preliminary alignments for viewing and easement valuations;
 - 11.7.9. easements prepared by others; and
 - 11.7.10. boundaries prepared by others.
- 11.8. The Professional shall provide the following aerial imagery and lidar services:
 - 11.8.1. utilization of unmanned aerial system ("UAS") to obtain current highresolution aerial imagery and lidar within accessible airspace; and

- 11.8.2. process and develop an orthorectified mosaic image and classified point cloud for feature extraction, digital terrain modeling, asset management and construction monitoring.
- 11.9. The Professional shall provide the following hydrographic surveying services:
 - 11.9.1. utilize conventional hydrographic survey methods or remotely operated hydrographic survey drone boat to obtain current topography of river, lake, and pond bottoms; and
 - 11.9.2. process collected data to develop topography showing contours and/or spot elevations, for use in planning, design, or volume calculations.
- 11.10. The Professional shall provide the following 3D laser scanning survey services:
 - 11.10.1. utilization of terrestrial and mobile 3D laser scanning and imaging to obtain point cloud data and spherical imagery; and
 - 11.10.2. process and develop a classified point cloud for feature extraction, digital terrain modeling, asset management, and construction monitoring.
- 11.11. The Professional shall provide the following Land Title survey services as requested by NBU:
 - 11.11.1. perform boundary surveys in compliance with the current Texas Society of Professional Surveyors Manuel of Practice requirements for a Category 1A Land Title Survey; or
 - 11.11.2. perform boundary surveys in compliance with the current American Land Title Association / National Society of Professional Surveyors Minimum Standard Detail Requirement for ALTA/NSPS Land Title Surveys.

Time of Completion

The Professional is authorized to perform the Services as of the Effective Date and agrees to complete the Services by December 31, 2026, unless otherwise specified in this Exhibit.

Exhibit B

Compensation

NBU shall pay the Professional to perform the Services described in Exhibit A in an amount not to exceed \$10,578,296 for the duration of the Agreement, in accordance with the costs in the table below.

FY 2024 Task	Cost
T1: Program Management	\$270,013
T2: Staff Augmentation	\$378,291
T3: Development Review Assistance	\$0
T4: Construction Observation Services	\$1,348,874
T5: Water and Wastewater Modeling	\$325,160
T6: Project Planning, Design, or Operation	\$490,281
Support Services On-Call	
T7: Land Acquisition Management and Policy	\$190,932
Modifications	
T8: GBRA GCWS Project Representative	\$45,712
T9: CONB Street Project Design Services	\$114,710
T10: Aging Infrastructure Design Services	\$111,244
T11: Survey Services	\$86,250
Not to Exceed Total	\$3,361,467

FY 2025 Task	Cost	
T1: Program Management	\$241,834	
T2: Staff Augmentation	\$655,871	
T3: Development Review Assistance	\$165,025	
T4: Construction Observation Services	\$1,348,422	
T5: Water and Wastewater Modeling \$334,487		
T6: Project Planning, Design, or Operation	\$349,781	
Support Services On-Call		
T7: Land Acquisition Management and Policy	\$148,008	
Modifications		
T8: GBRA GCWS Project Representative	\$47,033	
T9: CONB Street Project Design Services	\$117,976	
T10: Aging Infrastructure Design Services	\$114,409	
T11: Survey Services	\$88,838	
Not to Exceed Total	\$3,611,684	

FY 2026 Task	Cost
T1: Program Management	\$251,152
T2: Staff Augmentation	\$685,806
T3: Development Review Assistance	\$173,075
T4: Construction Observation Services	\$1,403,118
T5: Water and Wastewater Modeling	\$347,336
T6: Project Planning, Design, or Operation	\$363,136
Support Services On-Call	
T7: Land Acquisition Management and Policy	\$0
Modifications	
T8: GBRA GCWS Project Representative	\$48,853
T9: CONB Street Project Design Services	\$122,475
T10: Aging Infrastructure Design Services	\$118,769
T11: Survey Services	\$91,425
Not to Exceed Total	\$3,605,145

Schedule of Charges

The schedule of charges is included for information purposes only. All costs and expenses described herein shall be included in (and not in addition to) the not to exceed amounts described in Exhibit B. Notwithstanding any other provision of the Agreement to the contrary, compensation to the Professional for the Services, including any direct expenses relating thereto, shall not exceed \$10,578,296.

COMPENSATION

Compensation to FNI for Services in Exhibit A shall be computed on the basis of the following Schedule of Charges but shall not exceed Ten Million Five Hundred Seventy Eight Thousand Two Hundred Ninety Six Dollars (\$10,578,296).

If FNI sees the Services changing so that Additional Services are needed, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

	Hourly Rat	<u>e</u>
<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional 1	89	174
Professional 2	106	174
Professional 3	126	272
Professional 4	126	310
Professional 5	198	340
Professional 6	218	412
Construction Manager 1	96	113
Construction Manager 2	96	170
Construction Manager 3	136	170
Construction Manager 4	157	218
CAD Technician/Designer 1	68	133
CAD Technician/Designer 2	109	164
CAD Technician/Designer 3	150	218
Corporate Project Support 1	62	133
Corporate Project Support 2	75	191
Corporate Project Support 3	89	351
Intern / Coop	48	82

Rates for In-House Services and Equipment

<u>Mileage</u>	Bulk Printing and Reproduc	tion_	<u>Equipment</u>		
Standard IRS Rates		B&W Color	Valve Crew Vehicle (hour)		\$75
	Small Format (per copy)	\$0.10 \$0.25	Pressure Data Logger (each)		\$200
Technology Charge	Large Format (per sq. ft.)		Water Quality Meter (per day)		\$100
\$8.50 per hour	Bond	\$0.25 \$0.75	Microscope (each)		\$150
	Glossy / Mylar	\$0.75 \$1.25	Pressure Recorder (per day)		\$100
	Vinyl / Adhesive	\$1.50 \$2.00	Ultrasonic Thickness Guage (per day)	\$275
			Coating Inspection Kit (per day)		\$275
	Mounting (per sq. ft.)	\$2.00	Flushing / Cfactor (each)		\$500
	Binding (per binding)	\$0.25	Backpack Electrofisher (each)		\$1,000
				Survey Grade	<u>Standard</u>
			Drone (per day)	\$200	\$100
			GPS (per day)	\$150	\$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multipler of 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2023.



REQUEST FOR QUALIFICATIONS RFQ# 02660

PROGRAM MANAGEMENT AND STAFF AUGMENTATION FOR ENGINEERING SERVICES

The following voting members of the Evaluation Committee (EC) concur with the contents and recommendations as detailed in the Evaluation Report.

Voting Member	Signature
Ashley Zimmerman	Ashley Zimmermann ashleyz@nbutexas.com 2023.05.05 New Braunfels Utilities 09:59:57-05'00'
Michael Perry	Lee Perry Distally signed by Lee Perry Dix Gal-see Perry, C-Livinise Sisters, E-mopery @hobitesas.com, OU-Water Engineering, O-NBU, L-US, CN-Lee Perry, Date: 2023 05.05 10:14:44-0500'
Nick Puckett	Digitally signed by Nicholas Puckett DN: C=US. Nicholas Puckett DN: D=US. Nicholas Puckett DU-Water Engineering, CN=Nicholas Puckett Date: 2023.05.05 11:18:22-05'00'
Brent Lundmark	Brent Digitally signed by Brent Lundmark Date: 2023.05.05 11:23:13 -05'00'
	Shawn T. Digitally signed by Shawn T. Schorn, P.E.
Shawn Schorn	Schorn, P.E. Date: 2023.05.05 11:39:36-05'00'
	Digitally signed by Jesse
Procurement Representative:	Luna Date: 2023.05.05 12:52:08

EVALUATION REPORT

RFQ 02660 PROGRAM MANAGEMENT AND STAFF AUGMENTATION FOR ENGINEERING SERVICES

The Evaluation Committee (EC) evaluated the qualification responses submitted by three (3) firms in response to the Request for Qualifications RFQ# 02660 Program Management and Staff Augmentation for Engineering Services in accordance with pre-established evaluation procedures. These firms are:

Plummer Associates, Inc.

Freese and Nichols, Inc.

Info Way Solutions LLC

Process Followed

The EC is comprised of NBU employees: five (5) voting members and one (1) non-voting member. Each committee member reviewed and evaluated the firms' statement of qualifications in accordance with the RFQ document, and the Evaluation Documents, which define policies and procedures to be followed in evaluating each response.

The evaluation of the statement of qualifications is based on the following criteria list:

Cover Letter (Max 5 Pts.)

Qualifications of Respondent (Max 50 pts.)

Qualifications and Availability of Key Personnel (Max 25 Pts.)

Past Performance (Max 20 Pts.)

In-Person Presentations (Max 25 Pts)

SUMMARY OF FINDINGS

The evaluation resulted in the following ranking:

Evaluation of Statement of Qualifications

Qualified: Plummer & Associates ("Plummer")

Freese & Nichols, Inc. ("FNI")

Not Qualified: Info Ways Solutions

Info Ways Solutions was deemed not qualified to perform the services because it did not demonstrate the required background and experience as a firm to perform the services of this RFQ. This firm is a staffing agency; it did not demonstrate an engineering background or experience in performing on engineering projects.

Overall, both Plummer and FNI were ranked qualified because they met or exceeded the requirements of the RFQ.

Plummer demonstrated a strong business history. They listed ample experience in design, construction management, and project management. Plummer's key personnel demonstrated very good experience in these areas. Plummer's proposal included ProCore as the PMIS system they would use with NBU. As a company, NBU has decided to move to Smartsheet as a project management system and to not use systems like ProCore.

FNI presented a strong statement of qualifications. As a firm, it demonstrated extensive experience and as the incumbent, the key personnel are knowledgeable about NBU operations and have the background and experience to support NBU's process of Smartsheet reporting. FNI also noted several services including risk analysis and process improvement that would be implemented.

Both firms were invited to participate in an in-person presentation. Each firm had the opportunity to present an overview of its statement of qualifications and answer any questions from the EC. The presentations were scheduled for 1 hour each at NBU facilities.

Both firms gave excellent presentations and demonstrated their capabilities to perform the services. FNI is the incumbent and has been performing these services for NBU for approximately five years. The program management, modeling, and project management experience FNI has with other entities and has developed working on NBU projects and with NBU staff gave them the lead in the overall ranking of the firms. The need for program management and staff augmentation is not so much a lack of expertise within NBU, but the lack of resources to perform the services within a required time schedule. The committee unanimously agreed that FNI was the most favorable candidate.

Based on the evaluation above, the EC recommends an award to FNI.



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Brent Lundmark Reviewed by: Michael Short, P.E.

Water Treatment & Director of Water Services and

Compliance Compliance

Submitted by: Michael Short, P.E. **Approved by:** Ryan Kelso

Director of Water Services Interim Chief Executive Officer

and Compliance

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Reuse Water Supply Contract with Sundance Property Owners Associations, Inc. for the Use of Reuse Water Provided by New

Braunfels Utilities

BACKGROUND

On June 29, 2007, the New Braunfels Utilities ("NBU") Board of Trustees approved a fifteen-year contract (the "Original Contract") with Koontz McCombs 1, LTD to supply reuse water for water features and irrigation within a newly developed commercial property. Koontz McCombs 1, LTD later assigned the Original Contract to the Sundance Property Owners Association, Inc. Reuse water from the Gruene Water Reclamation Facility is pumped on-demand to the three holding ponds in the development and is used for irrigation of landscaping. The Sundance Property Owners Association had the option to extend the Original Contract for an additional five-year term in June of 2022 but did not give the proper notice to extend. To meet the Texas Commission on Environmental Quality's requirements, a contract (the "Contract") between the two parties must be in place to enforce regulatory controls on the use of the reclaimed water.

NBU staff requests that the Board of Trustees approve the Contract for a fifteen-year term, with subsequent one-year renewals, which grants Sundance Property Owners Association priority rights to 24,000,000 gallons of reuse water from the Gruene Water Reclamation Facility each year.

FINANCIAL IMPACT

To incentivize the use of reclaimed water from the wastewater treatment systems, the wholesale cost for reuse water is set at 75% of the commercial rate within the Contract. During Fiscal Year 2023, the Sundance Property Owners Association used 20,179,100 gallons of reclaimed water which brought in revenue of \$95,183.40 to NBU.

LINK TO STRATEGIC PLAN

Stewardship

EXHIBITS

- 1. Reuse Water Supply Contract
- 2. Gruene Water Reclamation Facility Reuse Permit

REUSE WATER SUPPLY CONTRACT

- **1.** Parties. The parties to this contract (the CONTRACT) are New Braunfels Utilities (NBU), the operator of the water system of the City of New Braunfels as authorized under Section 11.09 of the City Charter of the City of New Braunfels, with its principal office in New Braunfels, Comal County, Texas, and Sundance Property Owners, Association, Inc., a Texas corporation, with its principal office in New Braunfels, Comal County, Texas. (User).
- **2.** Recitals. User intends to continue to use Reuse Water as a substitute for potable water to maintain lake levels and irrigate certain parts of the Sundance Subdivision located within the City of New Braunfels. As used in this Contract, "Reuse Water" is defined as domestic wastewater which has been treated to a quality suitable for beneficial use. User has requested NBU continue to sell User Reuse Water. User has determined that the purchase and use of and use of Reuse Water is economically feasible for it under the terms of this Contract. NBU and User agree that the use of Reuse Water promotes conservation and helps insure an adequate supply of water resources for present and future needs. In consideration of the mutual promises and covenants contained in this Contract and other good and valuable consideration, the parties mutually agree as set forth in the following paragraphs.
- 3. Design. Construction and Maintenance of Delivery Facilities. "Onsite" as used in this contract means within the property owned by User. NBU and User agree that the onsite infrastructure related to the Reuse water system was designed and constructed in accordance with NBU's requirements. User represents that it holds fee simple title to the land inundated by water stored in the three ponds located within the Sundance Subdivision pursuant to a deed filed as Document No. 200906003970 in the Public Records of Comal County. User agrees to operate, maintain, repair, and replace the onsite infrastructure related to the Reuse water system in accordance with applicable regulatory requirements and any requirements that NBU may impose in accordance with the provisions of NBU's reuse authorization. No connection between User's Reuse water system and User's potable water system will be allowed.
- **4. Point of Diversion.** The Point of Diversion as used in this Contract will continue to be located near the northeast corner of tract of land designated as Parcel No. 146316 by the Comal County Appraisal District:
- **5. Permits.** User agrees the Reuse water system must be operated and maintained in conformance with Reuse Water Authorization Number R 10232-002, issued by the Texas Commission on Environmental Quality (TCEQ). User and NBU will conform to all requirements imposed by the TCEQ, including all signage and storage requirements.
- **6.** <u>Sale and Delivery of Reuse Water.</u> Subject to any terms or conditions specified in this Contract, NBU agrees to sell and deliver to User available Reuse Water produced at NBU's Gruene waste water treatment facility located in New Braunfels, Texas, after consideration of all discharge requirements imposed upon NBU by NPDES permits and other applicable law and

regulations. The maximum monthly withdrawal of Reuse Water available to User under this Contract is 2,000,000.00 gallons with a maximum withdrawal rate not to exceed 200 gallons per minute, provided, however, upon User's request, NBU will consider an increase in the monthly maximum amount.

- **Rates.** User will pay NBU for Reuse Water actually delivered to the Point of Diversion in accordance with the customary NBU billing procedures. The parties acknowledge that the rate and that the rate terms of this Contract are the same rate and terms that were previously approved by the City Council of the City of New Braunfels, Texas pursuant to a prior agreement between NBU and User's assignor and predecessor in title. Both NBU and User agree to the rate provisions set out below.
 - a. User will continue to pay 75% of the NBU commercial water rate for Reuse Water.
 - b. User understands and agrees that the NBU commercial water rate may change from time to time during the term of this Contract and User's rate will be adjusted based on the prevailing commercial water rate at the time a rate change takes effect.
 - c. User understands and agrees that the NBU may adopt a rate for Reuse Water that is separate and apart from NBU's commercial water rate.
- **8.** <u>Use of Water.</u> Reuse Water provided by NBU must be used exclusively by User for irrigation purposes or for other uses permitted by 30 TAC 310.9. User may store Reuse Water on its premises in accordance with applicable rules and ordinances. User is not permitted to resell Reuse Water. However, User shall be permitted to apportion the cost of Reuse Water used by tenants within the subdivision .User shall bear all costs related to sub-metering and billing of its tenants.
- **9.** <u>Metering.</u> The meters and recording devices must permit the accurate determination of quantities of Reuse Water delivered. User must maintain all meters and recording devices in operating condition and must recalibrate, at User's expense all, all such metering and recording equipment from time to time, if required by NBU. A meter registering not more than five percent (5%) above or below calibration test results if deemed to be accurate. NBU must have free access to the meters and recording devices at all reasonable times.
- 10. No Guarantee of Reuse Water. NBU makes no guarantee that Reuse Water will be available at any particular time or place or that the Gruene wastewater treatment facility will be producing Reuse Water at any specific flow at any particular time. Both parties to this Contract acknowledge that the flow of Reuse Water will vary and that this Contract is merely an agreement to allow use of Reuse Water from the Gruene wastewater treatment plant when and if Reuse Water is present and available. User has a priority right to purchase up to a maximum of 24,000,000.00 gallons of Reuse Water each year during the term of this Contract at the withdrawal rates specified in Paragraph 6.

- **11. Priority Rights.** NBU and the User agree and understand that NBU cannot guarantee actual delivery of a specific quantity of water. Nevertheless, NBU will use its best efforts to provide Reuse Water to the User the monthly and annual priority amounts of Reuse Water specified in this Contract.
 - a. NBU agrees that User has a priority right to 24,000,000 gallons of Reuse Water per year produced at the Gruene wastewater treatment facility subject to the use limitations outlined in Paragraph 6. The priority attaches to all Reuse Water whenever produced at that facility up to the priority amount for the applicable year. The rights of any third party to Reuse Water shall be subject to User's priority rights. NBU agrees that during the term of this Contract, or extension hereof, NBU will not grant to a third party any right, title, or interest to the Reuse Water that has a higher priority right than User. User's priority rights are subject to the discharge and other obligations imposed upon NBU by applicable state and federal law, ordinances of the City of New Braunfels, rules of the Texas Commission on Environmental Quality, and current contractual obligations with the Guadalupe-Blanco River Authority and its water permits.
 - b. In the event the User requires more than 24,000,000 gallons a year of Reuse Water and Reuse Water is available in excess of that amount, User has a non-exclusive right to purchase such additional available quantities of Reuse Water at the same rates set forth in Paragraph 7.B. No priority attaches to the User's right to purchase such additional quantities.
- **12.** <u>Indemnity.</u> User indemnifies and will save NBU harmless from any and all claims or demands whatsoever to which NBU may be subjected by reason of any injury to any person or damage to any property resulting from or in any way connected with any and all actions and activities (or failure to act) or User or NBU under this Contract.

NBU indemnifies and holds User harmless from any and all claims or demands whatsoever to which User may be subjected by reason of any injury to any person or damage to any property resulting from or in any way connected with any and all actions and activities (or failure to act) of NBU or User under this Contract.

In no event is either party required to indemnify the other party for injury, death or property damage caused by such other party's own negligence, and further provided User does not indemnify NBU against any damage, injury, or loss caused in whole or in part by reason of the failure of the Reuse Water to meet the quality standards set forth herein.

13. **Quality of Water.**

A. The water to be supplied under this Contract is Reuse Water meeting the standard of 30 TAC 310.9 which relates to use as a source of water supply in a landscape impoundment, restricted recreational impoundment, or ornamental fountain. NBU is not obligated to supply Reuse Water to the extent that such water is of a quality that cannot reasonably be treated to such standard. In the event it is determined that NBU supplied Reuse Water from its Gruene Wastewater

treatment facility which fails to meet the standards of 30 TAC 310.9, User will not be responsible for payment for such water, and is entitled to a reimbursement for any amounts which it may have paid for such substandard Reuse Water. NBU is not liable to User for any damages, direct or indirect or consequential resulting from the delivery of water which fails to meet the standards of 30 TAC 310.9.

B. The parties recognize that treatment standards for use of Reuse Water may be changed. The User may terminate this Contract if the Reuse Water is treated to a less stringent standard than currently provided by 30 TAC 310.9, and the User determines that the change will have a material adverse effect on the User's irrigation activities. In the event the User elects to terminate the Contract under the provisions of this section, the User must give NBU written notice not less than one hundred eighty (180) days prior to such termination.

14. <u>Term.</u>

- A. This Contract is for a term of fifteen (15) years from the date it is signed by authorized representatives of NBU and the User unless the Contract is terminated sooner or extended in accordance with the terms of this Contract. This Contract may be terminated immediately at NBU's option by delivery of written notice to the User (1) if the User fails to pay any monthly statement for Reuse Water as required by this Contract and the applicable customer service policies of NBU, (2) if required by an order, directive, or regulation of the Texas Commission on Environmental Quality (TCEQ), or any state or federal agency. (3) This Contract may be terminated upon 30 days written notice if User at any time fails to comply fully with any other term or condition of this Contract after receiving notice required by this Contract or by the NBU policy in effect at that time and fails to remedy the non-compliance with the term or condition within the 30 day period. This Contract may be terminated by NBU at any time during its term, or any extension thereof, bu providing written notice to User of NBU's intent to terminate this Contract in writing not more than two hundred seventy (270) days or less than ninety (90) days prior to any termination date.
- B. The User shall have the option to extend this Contract for successive one (1) year terms. The provisions and agreements contained in this Contract shall remain in effect during any extension. User must notify NBU in writing not more than two hundred seventy (270) days or less than ninety (90) days prior to any termination date of its intent to exercise its option to extend the term of this Contract.
- **15.** <u>Modification of Contract.</u> The provisions of this Contract may be modified or altered only by written agreement of the parties signed by authorized representatives.
- **16. Assignment.** No assignment of the Contract shall be permitted.
- **17.** <u>Captions.</u> All titles of the sections of this Contract have been inserted for convenience and reference only, are not considered part of this Contract and in no way are they to affect the interpretation of any provisions of this Contract.
- 18. Force Majeure. In the event either party is rendered unable, wholly or in part, by

force majeure, to carry out any of its obligations under this Contract, then the obligations of the party, to the extent they are affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused as to the extent provided, but for no longer period. Such cause shall, as far as possible, be remedied with all reasonable dispatch. The term "Force Majeure" as used herein includes, but is not limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests, and restraints of governments and people, explosions, breakage or damage to machinery, pipelines or canals, and any other liabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

- **19.** Binding Agreement. This Contract binds and benefits the respective parties and their legal successors.
- **20.** Change in Law. This Contract is subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction over the matters contained herein. In the event any change is required in NBU's operations materially affecting its performance under this Contract as a result of a change in laws, orders, rules and regulations and if the User deems such changes to materially and adversely affect the User's operation, the User has the right to terminate this Contract with ninety (90) days prior written notice to NBU.
- **21.** <u>Waiver.</u> The failure of either party hereto to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this Contract, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other party, but the obligation of such other party with respect to such future performance shall continue in full force and effect.
- **22.** Entire Agreement. This Contract, together with the NBU Commercial Service Agreement signed by User and filed with NBU, constitute the sole and only agreements of the parties. It supersedes any prior understandings or written or oral agreements between parties concerning the subject matter of this Contract, other than the NBU Commercial Service Agreement signed by User. This Contract cannot be changed except by written agreement of the parties.
- **23.** <u>Notices.</u> All notices required by this Contract shall be sent by certified, United States Mail, return receipt requested, or by delivery during normal business hours to the parties at the address set out below for each:

New Braunfels Utilities

Attention: Chief Executive Officer 263 Main Plaza New Braunfels, Texas 78130

Sundance Property Owners Association, Inc.

Attention: Juanita C. Seekins Senior Community Manager Associa Hill Country 300 E. Sonterra Blvd., Ste. 250 San Antonio, Tx 78258

	ge its address by written notice to the other party. EXECUTED this, 2023, in multiple original counterparts.
ATTEST:	
	New Braunfels Utilities
	By: Chief Executive Officer
	Sundance Property Owners Association, Inc. A Texas Corporation
	By: Larry Church, Its President

Bryan W. Shaw, Ph.D., Chairman Buddy Garcia, Commissioner Carlos Rubinstein, Commissioner Mark R. Vickery, P.G., Executive Director



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 5, 2011

Mr. Roger Biggers New Braunfels Utilities P.O. Box 310289 New Braunfels, Texas 78131-0289

Re: New Braunfels Utilities

Reclaimed Water Authorization No. R10232-002

Comal County

CN600522957, RN101700946

Dear Mr. Biggers:

The Texas Commission on Environmental Quality has completed its review of the requested amendments to your reclaimed water authorization. The authorization allows the use of Type I and Type II reclaimed water from the New Braunfels Utilities Gruene's wastewater treatment facility.

The amendment included in this authorization is to increase the Turbidity limit from 3 NTU to 10 NTU. The Commission has reviewed your request under 30 TAC §210.43 and based on the information for your treatment plant and the way the plant is operated we are granting your request.

Thank you for your cooperation during this review process. If you have any questions, please contact Mr. Louis C. Herrin, III, P.E. of my staff at louis.herrin@tceq.texas.gov or (512) 239-4552.

Sincerely

Chris Linendoll, E.I.T., Manager Wastewater Permitting Section

Water Quality Division

CL/LII/ms

AUTHORIZATION FOR RECLAIMED WATER



Authorization No. R10232002 This authorization supersedes and replaces Authorization No. R10232-002 approved June 6, 2008

Producer:

New Braunfels Utilities

P.O. Box 310289

New Braunfels, Texas 78131-0289

Provider:

New Braunfels Utilities

P.O. Box 310289

New Braunfels, Texas 78131-0289

User:

Any user within the service area authorized by the provider

Location:

The wastewater treatment facility is located at 1493 Gruene Road in Comal

County, Texas.

Authorization: Type I and Type II reclaimed water from the New Braunfels Utilities Gruene's

Wastewater Treatment Facility (TPDES Permit No. WQ0010232-002) is

authorized to be used as authorized by 30 TAC 210.32. The service area includes

the following counties: Comal; Hays; and Guadalupe.

This authorization contains the conditions that apply for the use of reclaimed water. The approval of reclaimed water use under Chapter 210 does not affect any existing water rights. If applicable, a reclaimed water use authorization in no way affects the need of a producer, provider, or user to obtain a separate water right authorization from the commission. This authorization does not allow irrigation of any area authorized for irrigation under a Texas Land Application Permit.

Issue Date: October 5, 2011

I. General Requirements

- No producer or provider may transfer reclaimed water to a user without first notifying the commission.
- B. Reuse of untreated wastewater is prohibited.
- C. Food crops that may be consumed raw by humans must not be spray irrigated. Food crops including orchard crops that will be substantially processed prior to human consumption may be spray irrigated. Other types of irrigation that avoid contact of reclaimed water with edible portions of food crops are acceptable.
- D. There must be no nuisance conditions resulting from the distribution, the use, or storage of reclaimed water.
- E. Reclaimed water must not be used in a way that degrades groundwater quality to a degree adversely affecting its actual or potential uses.
- F. Reclaimed water stored in ponds must be prevented from discharging into waters in the state, except for discharges directly resulting from rainfall events or in accordance with a permit issued by the commission. All other discharges are unauthorized.
- G. If an overflow of a holding pond occurs causing discharge into or adjacent to water in the state, the user or provider, as appropriate, shall report the noncompliance. A written submission of pertinent information must be provided to the TCEQ Region 11 office in Austin for Hays County and TCEQ Region 13 office in San Antonio for Comal and Guadalupe Counties and to the TCEQ Enforcement Division (MC-149) in Austin, within five (5) working days after becoming aware of the overflow. The submission must contain:
 - a description of the noncompliance and its cause;
 - 2. the potential danger to human health or safety, or the environment;
 - the period of noncompliance, including exact dates and times;
 - if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - steps taken or planned to reduce, climinate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- H. Unless otherwise provided in this authorization, there must be no off-site discharge, either airborne or surface runoff of reclaimed water from the user's property except to a wastewater treatment collection system or wastewater treatment facility unless the reclaimed water user applies for and obtains a permit from the commission that authorizes discharge of the water.
- I. All reclaimed water piping must be separated from potable water piping when trenched by a distance of at least nine feet for Type II effluent and four feet For Type I. All buried pipe must be manufactured in purple, painted purple, taped with purple metallic tape or bagged in purple. All exposed piping, hose bibs and faucets must be painted purple, designed to prevent connection to a standard water hose, and stenciled with a warning reading "NON-POTABLE WATER."

- J. The design of any new distribution system that will convey reclaimed water to a user requires the approval of the executive director. Materials must be submitted to the executive director in accordance with the Texas Engineering Practice Act (Article 3271a, Vernon's Annotated Texas Statutes). The plans and specifications for any new distribution system constructed pursuant to this authorization must be approved by the executive director. Failure to secure approval before commencing construction or making a transfer of reclaimed water is a violation of this authorization. Each day of a transfer is a separate violation until approval has been secured.
- K. Nothing in this authorization modifies any requirements in 30 TAC Chapter 290, Public Drinking Water.
- L. A major change from a prior notification for use of reclaimed water must be approved by the executive director before it can be implemented. A major change includes:
 - a change in the boundary of the approved service area, not including the conversion
 of individual lots within a subdivision to reclaimed water use;
 - 2. the addition of a new provider;
 - a major change in the intended use, such as conversion from irrigation of a golf course to residential irrigation; or
 - 4. a change from either Type I or Type II use to the other.
- M. The reclaimed water producer, provider, and user shall maintain current operation and maintenance plans on the sites over which they have operational control. The operation and maintenance plan must contain the following, as a minimum:
 - a copy of the signed contract between the user and provider and a copy of the signed contract between the provider and the producer, as applicable;
 - a labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines;
 - the measures that will be implemented to prevent unauthorized access to reclaimed water facilities (e.g., secured valves);
 - procedures for monitoring reclaimed water;
 - a plan for how reclaimed water use will be scheduled to minimize the risk of inadvertent human exposure;
 - schedules for routine maintenance;
 - 7. a plan for worker training and safety; and
 - contingency plan for system failure or upsets.
- N. One of the following requirements must be met by the user or provider, for any area where reclaimed water is stored or where there are hose bibs or faucets:
 - Signs having a minimum size of eight inches by eight inches must be posted at all storage areas and on all hose bibs and faucets reading, in both English and Spanish, "Reclaimed Water, Do Not Drink" or similar warning.

- 2. The area must be secured to prevent access by the public.
- O. Where a reclaimed water line parallels a sewer line, the reclaimed water line must be constructed in accordance with subsection (p) or (q) of this section. The horizontal separation distance must be three feet (outside to outside) with the reclaimed water line at the level of or above the sewer line. Reclaimed water lines that parallel sewer lines may be placed in the same benched trench. Where a reclaimed water line crosses a sewer line, the requirement of 30 TAC §290.44(e)(4)(B), Water Line Installation—crossing lines, must be followed with the reclaimed water line substituted for the water line.
- P. Reclaimed water pipes must meet the following requirements:
 - lines that transport reclaimed water under pressure must be sized according to acceptable engineering practices for the needs of the reclaimed water users.
 - reclaimed water force mains must have an expected life of at least as long as that of the associated lift station and must be suitable for the reclaimed water being pumped and operating pressure to which it will be subjected.
 - must be identified in the technical specifications with appropriate American Society for Testing and Materials, American National Standard Institute, or American Water Works Association standard numbers for both quality control (dimensions, tolerance, and installation such as bedding or backfill).
 - pipes and fittings must have a minimum working pressure rating of 150 pounds per square inch.
 - Final plans and specifications must describe required pressure testing for all installed reclaimed water force mains.
 - Minimum test pressure must be 1.5 times the maximum design pressure. Allowable leakage rates must be determined as described in 30 TAC §217.97, Pressure Sewer Systems.
 - Gravity flow reclaimed water lines must meet the requirements of 30 TAC Chapter 217, Subchapter C, Conventional Collection Systems. The provider shall prevent high velocity scouring and maintain adequate fluid velocity to prevent the deposition of solids in the lines.
- Q. All exposed piping and piping within a building must be either purple pipe or painted purple. All exposed piping should be stenciled in white with a warning reading "NON-POTABLE WATER. All exposed or buried reclaimed water piping constructed at a wastewater treatment facility is exempt from the color-coding requirement of this section.
- R. When applicable, in accordance with 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems, the design of the distribution systems that will convey reclaimed water to a user must be submitted to the executive director and must receive an approval before the distribution system may be constructed. The design of the distribution systems must meet the criteria of 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems. When a municipality is the plan review authority for certain sewer systems that transport primarily domestic waste, in lieu of the commission, design

- submittal will not be subject to submittal to the commission and instead must be approved by the municipality.
- S. All ground level and elevated storage tanks must be designed, installed, and constructed in accordance with current AWWA standards with reference to materials to be used and construction practices to be followed, except for health-based standards strictly related to potable water storage and contact practices, where appropriately less restrictive standards may be applied.

II. Storage Requirements for Reclaimed Water

- Storage facilities for retaining reclaimed water prior to use must not be located within a floodway.
- B. Storage ponds must be hydraulically separated from waters in the state.
- C. Any holding pond designed to contain Type I effluent or Type II effluent that is located within a DRASTIC Pollution Potential Index Zone of less than 110, shall conform to the following requirements:
 - 1. Ponds with an earthen liner must meet the following requirements
 - a. A permeability of greater than 1 x 10-4 cm/sec
 - The ponds must be designed and constructed to prevent groundwater contamination;
 - Soils used for pond lining must be free from foreign material such as paper, brush, trees, and large rocks; and
 - d. All soil liners must be of compacted material, at least 24 inches thick, compacted in lifts no greater than 6 inches thick and compacted to 95% of Standard Proctor Density.
 - c. Soil liners must meet the following particle size gradation and Atterberg limits:
 - 30% or more passing a number 200 mesh sieve; and
 - ii. a liquid limit of 30% or greater; and
 - iii. a plasticity index of 15 or greater .;
 - f. In situ liners at least 24 inches thick meeting a permeability less than or equal to 1 X 10⁻⁴ cm/sec are acceptable alternatives; In-situ clay soils meeting the soils liner requirements must be excavated and re-compacted a minimum of 6 inches below planned grade to assure a uniformly compacted finished surface.
- D. Any holding pond containing reclaimed water located within the recharge zone of the Edward Aquifer or designed to contain Type II effluent and is located within a DRASTIC Pollution Potential Index Zone of 110 or greater, shall conform to the following requirements:
 - 1. Ponds with an earthen liner must meet the following requirements

- a. A permeability of greater than 1 x 10 7 cm/sec
- The ponds must be designed and constructed to prevent groundwater contamination;
- Soils used for pond lining must be free from foreign material such as paper, brush, trees, and large rocks; and
- All soil liners must be of compacted material, at least 24 inches thick, compacted in lifts no greater than 6 inches thick and compacted to 95% of Standard Proctor Density;
- e. Soil liners must meet the following particle size gradation and Atterberg limits:
 - i. 30% or more passing a number 200 mesh sieve; and
 - ii. a liquid limit of 30% or greater; and
 - iii. a plasticity index of 15 or greater .;
- f. In situ liners at least 24 inches thick meeting a permeability less than or equal to 1 X 10⁻⁷ cm/sec are acceptable alternatives; In-situ clay soils meeting the soils liner requirements must be excavated and re-compacted a minimum of 6 inches below planned grade to assure a uniformly compacted finished surface.
- E. Synthetic membrane linings must have a minimum thickness of 40 mils and have a leak detection system
- F. Certification by a Texas licensed professional engineer must be furnished stating that the pond liner meets the appropriate criteria prior to use of the facilities;
- G. Soil embankment walls must have a top width of at least five feet. The interior and exterior slopes of soil embankment walls must be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are used. All soil embankment walls must be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion stops and water seals must be installed on all pipe penetrating the embankments; and
- H. An alternative method of pond lining that provides equivalent or better water quality protection than provided under this section may be utilized with the prior approval of the executive director; and
- Reclaimed water may be stored in leak-proof, fabricated tanks.
- J. Subsequent holding ponds utilized for the receipt and storage of reclaimed water of a quality that could cause or causes a violation of a surface water quality standard or impairment of groundwater for its actual or intended use will be also subject to the storage requirements of this section.

III. Specific Uses and Quality Standards for Reclaimed Water

A. Numerical parameter limits pertaining to specific reclaimed water use categories are contained in this section. These limits apply to reclaimed water before discharge to initial holding ponds or a reclaimed water distribution system.

- B. The reclaimed water producer shall establish that the reclaimed water meets the quality limits at the sample point for the intended use in accordance with the monitoring requirements identified in Section IV, Sampling and Analysis.
- C. Types and quality standards for reclaimed water.
 - Type I Reclaimed Water Use. The use of Type I reclaimed water is for situations
 where the public may come in contact with the reclaimed water. The uses allowed by
 this authorization are:
 - a. Irrigation: landscape, public parks, schoolyards, athletic fields, golf courses, pastures land for milking animals, food crops
 - b. Fire protection, (internal sprinkler system of external fire hydrants)
 - maintenance of impoundments or natural water bodies where recreational activities, such as wading or fishing, are anticipated;
 - d. Maintenance any off channel water bodies where recreational activities, such as wading or fishing, are anticipated even though the water body was not specifically designed for such a use.
 - e. Toilet or urinal flush water.
 - f. Type I reclaimed water may also be used for any of the Type II.
 - 2. The following conditions apply to Type I use of reclaimed water. At a minimum, the reclaimed water producer shall transfer only reclaimed water of the following quality as described for Type I reclaimed water use. Type I reclaimed water on a 30-day average must have a quality of no more than:

Table 1. Type I Quality Requirements

Parameter	Limit	Limit Type
Turbidity	10 NTUs	30-day average
CBOD ₅	5 mg/l	30-day average
E. coli	20/100 ml	30-day geometric mean (MPN or CFU)
E. coli	75/100 ml	maximum single grab sample (MPN or CFU)

- Type II Reclaimed Water Use. The use of Type II reclaimed water is for situations where the public will not be exposed to the reclaimed water. The uses allowed by this authorization are:
 - a. Irrigation of sod farms; silviculture; limited access highway rights of way; animal feed crops other than pasture for milking animals; food crops if the reclaimed water is not likely to have direct contact with the edible part of the crop, or if the food crop undergoes pasteurization prior to distribution for consumption; and area where the public is not present during the times when irrigation operations are in progress, such as golf courses, cemeteries, and landscaped areas surrounding commercial or industrial complexes.
 - Maintenance of an off channel water bodies where direct human contact is not likely.
 - Soil compaction or dust control in construction areas where application procedures minimize aerosol drift to public areas.
 - d. Cooling tower makeup water. Use for cooling towers that produce significant aerosols adjacent to public access areas may have special requirements.

- e. Industrial process water.
- 4. The following conditions apply to Type II use of reclaimed water. At a minimum, the reclaimed water producer shall transfer only reclaimed water of the following quality. Type II reclaimed water on a 30-day average must have a quality of no more than:

Table 2. Type II Quality Requirements

Parameter	Limit	Limit Type
CBOD ₅	15, mg/l	30-day average
E. coli	200/100 ml	30-day geometric mean (MPN or CFU)
E. coli	800/100 ml	maximum single grab sample (MPN or CFU)

D. Test Procedures

- Test procedures for the analysis of pollutants must comply with procedures specified in 30 TAC §§319.11 - 319.12. Measurements, tests, and calculations must accurately represent the reclaimed water.
- All laboratory tests submitted to demonstrate compliance with this authorization must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

IV. Sampling and Analysis

- A. The reclaimed water producer shall sample the reclaimed water prior to distribution to the entity that first received the reclaimed water after it leaves the wastewater treatment facility (provider or user) to assure that the water quality meets the standard for the contracted use.
- B. Analytical methods must be in compliance with 30 TAC Chapter 319, Monitoring and Reporting.
- C. The minimum sampling and analysis frequency for Type I reclaimed water is twice per week when reclaimed water is being produced and shall be reported as outfall 800.
- D. The minimum sampling and analysis frequency for Type II reclaimed water is once per week when reclaimed water is being produced and shall be reported as outfall 900.
- E. .The monitoring must be done after the final treatment unit.
- F. The records of the monitoring must be kept on a monthly basis and be available at the facility site for inspection by representatives of the Commission for at least five years.

V. Record Keeping and Reporting

- A. The reclaimed water provider and user shall maintain records on site for a period of at least five years.
- B. The producer shall maintain the following records:
 - copies of notifications made to the commission concerning reclaimed water projects;

Page 8

- as applicable, copies of contracts with each reclaimed water user (this requirement does not include reclaimed water users at residences that have separate distribution lines for potable water);
- records of the volume of water delivered to each reclaimed water user per delivery (this requirement does not apply to reclaimed water users at residences that have separate distribution lines for potable water); and
- 4. reclaimed water quality analyses.
- C. The reclaimed water provider or producer shall report to the commission on a monthly basis the following information on forms furnished by the executive director. The reports are due by the 20th day of the month following the reporting period.
 - 1. volume of reclaimed water delivered to each user; and
 - quality of reclaimed water delivered to a user or provider reported as a monthly average for each quality criteria, except those listed as "not to exceed" that must be reported as individual analyses.

VI. Transfer of Reclaimed Water

- A. Reclaimed water must transferred from a provider to a user on a demand only basis. A reclaimed water user may refuse delivery of reclaimed water at any time.
- B. All reclaimed water transferred to a user must be of at least the quality specified in Section IV, Sampling and Analysis.
- C. Transfer must be by pipes or tank trucks.
- D. The transfer of reclaimed water must be terminated immediately if a provider becomes aware of the misuse of the reclaimed water by the user, regardless of contract provisions.

VII. Restrictions

- This authorization does not convey any property right and does not grant any exclusive privilege.
- B. This authorization does not allow the use of reclaimed water on land that is authorize as a disposal site under either a Texas Pollutant Discharge Elimination System (TPDES) permit or a Texas Land Application Permit (TLAP).

VIII. Responsibilities and Contracts

- A. The producer of reclaimed water is not liable for misapplication of reclaimed water by users, except as provided in this section. Both the reclaimed water provider and user have at least but are not limited to the following responsibilities:
 - 1. The reclaimed water producer shall:

- a. transfer reclaimed water of at least the minimum quality required by this chapter at the point of delivery to the user;
- sample and analyze the reclaimed water and report the analyses in accordance with Section IV, Sampling and Analysis, and Section V, Recordkeeping and Reporting; and
- c. notify the executive director in writing within five (5) days after obtaining knowledge of reclaimed water use not authorized by the executive director.
- 2. The reclaimed water provider shall:
 - ensure construction of reclaimed water distribution systems in accordance with 30 TAC Chapter 217, Design of Domestic Wastewater Systems, and in accordance with approved plans and specifications;
 - transfer reclaimed water of at least the minimum quality required by this authorization at the point of delivery to the user;
 - notify the executive director in writing within five (5) days after obtaining knowledge of reclaimed water use not authorized by the executive director; and
 - d. not be found in violation of this chapter for the misuse of the reclaimed water by the user if transfer of such water is shut off promptly upon knowledge of misuse regardless of contract provisions.
- 3. The reclaimed water user shall:
 - a. use the reclaimed water in accordance with this authorization; and
 - maintain and provide records as required by Section V, Record Keeping and Reporting.

IX. Enforcement

If the producer, provider, or user fail to comply with the terms of this authorization, the executive director may take enforcement action provided by the Texas Water Code §26.019 and §26.136.

X. Standard Provisions

- A. This authorization is granted in accordance with the rules and orders of the commission and the laws of the state of Texas.
- B. Acceptance of this authorization constitutes an acknowledgment and agreement that the producer, provider and user will comply with all the terms, provisions, conditions, limitations and restrictions embodied in this authorization and with the rules and other orders of the commission and the laws of the state of Texas. Agreement is a condition precedent to the granting of this authorization.



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Brent Lundmark Reviewed by: Michael Short, P.E.

Water Treatment & Director of Water Services and

Compliance Compliance

Submitted by: Michael Short, P.E. **Approved by:** Ryan Kelso

Director of Water Services Interim Chief Executive Officer

and Compliance

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Professional Services Agreement with Wallgren Environmental Service, Inc. DBA Pollution Control Services for Laboratory Testing Services for New Braunfels Utilities' Water and Wastewater Facilities in Connection with Regulatory and Compliance Testing

Requirements

BACKGROUND

On August 21, 2023, New Braunfels Utilities ("NBU") issued a request for bids ("RFB") to award to one or more respondents for laboratory and biomonitoring testing services for water and wastewater regulatory and compliance requirements (the "Services").

On September 7, 2023, NBU received five (5) bids during the public solicitation process. A copy of the bid tabulation is included as an Exhibit below. NBU staff evaluated the responses and determined three of the five bidders to be the most advantageous to NBU considering the relative importance of price. NBU staff recommends the selection of Guadalupe-Blanco River Authority ("GBRA"), Wallgren Environmental Services, Inc., and Bio-Aquatic Testing, Inc. for the Services. NBU presented the Professional Services Agreement with GBRA as a separate agenda item. The Agreement with Bio-Aquatic Testing does not meet the threshold for Board level approval.

NBU staff requests the Board of Trustees to approve the professional services agreement with Wallgren Environmental Services, Inc.

This item is presented to the Board because the total amount of the contract exceeds \$250,000.

FINANCIAL IMPACT

The total contract amount for the Agreement with Wallgren Environmental Services, Inc. is \$500,000 with a not to exceed amount of \$100,000 for the initial contract term and \$100,000 for each of the additional

one-year terms. The Agreement is budgeted with the Water Treatment & Compliance Operations and Maintenance Budget ("O&M Budget") for fiscal year 2024 and will be budgeted in the O&M Budgets of fiscal year 2025 through fiscal year 2028.

LINK TO STRATEGIC PLAN

Financial Excellence

Stewardship

EXHIBITS

- 1. Contract with Wallgren Environmental Services, Inc.
- 2. Summary of Recommendation
- 3. Bid Tabulation

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility ("NBU"), and **WALLGREN ENVIRONMENTAL SERVICES, INC., DBA POLLUTION CONTROL SERVICES**, a Texas corporation (the "Professional"). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. <u>Term of Agreement</u>. This Agreement will be effective on the latest date subscribed below (the "Effective Date") and will remain in full force and effect for a period of one (1) year from January 1, 2024, to December 31, 2024 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a "Renewal Term"), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond December 31, 2028.

Section 2. Scope of Services.

- (A) The Professional shall perform the services described in Exhibit A (the "Services") within the timeframe specified therein. The scope of work described in the Services constitutes the "Project."
- (B) The quality of Services provided hereunder shall be of the level of professional quality performed by professionals regularly rendering this type of service.
- (C) The Professional shall perform the Services in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Professional may rely upon the accuracy of reports and surveys provided to it by NBU except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

- (A) <u>Amount</u>. The Professional shall be paid the amount set forth in Exhibit B as described herein.
- (B) <u>Billing Period</u>. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

(C) <u>Reimbursable Expenses</u>. Any and all reimbursable expenses related to the Project shall be described in the Services defined in Exhibit A and accounted for in the total compensation amount in Exhibit B. If these items are not specifically accounted for in both Exhibit A and Exhibit B, NBU shall not be required to pay such amounts unless otherwise agreed to in writing by both parties or unless agreed to pursuant to Section 4 of this Agreement.

Section 4. Changes to the Project Work; Additional Work.

- (A) <u>Changes to Work.</u> The Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If NBU finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by NBU and such services shall be considered as additional work and paid for as specified under the following paragraph.
- (B) Additional Work. NBU retains the right to make changes to the Services at any time by a written contract amendment. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by contract amendment before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Services described in Exhibit A and therefore constitutes additional work, the Professional shall promptly notify NBU of that opinion in writing. If NBU agrees that such work does constitute additional work, then NBU and the Professional shall execute a contract amendment for the additional work and NBU shall compensate the Professional for the additional work on the same basis of the rates for the Services contained in Exhibit B. If the changes deduct from the extent of the scope of work for the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by the Professional not previously approved as additional work shall be at risk of the Professional.
- Section 5. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by NBU shall be delivered to and become the property of NBU. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to NBU without restriction or limitation on the further use of such materials; however, such materials are not intended or represented to be suitable for reuse by NBU or others. Any reuse of the materials related to the Services without prior verification or adaptation by the Professional for the specific purpose intended will be at NBU's sole risk and without liability to the Professional. Where applicable, the Professional shall retain all pre-existing proprietary rights in the materials provided to NBU but shall grant to NBU a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at the Professional's expense, have copies made of the documents or any other data furnished to NBU under or pursuant to this Agreement.

Section 6. <u>Personnel</u>. The Professional shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Professional agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Professional shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

Section 7. <u>Licenses; Materials</u>. The Professional shall maintain in current status all federal, state, and local licenses and permits required for the Professional to perform the Services and operate its business. NBU has no obligation to provide the Professional, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Professional.

Section 8. <u>Performance Warranty</u>. The Professional warrants that the Services provided under this Agreement shall conform to the professional standards performed by professionals regularly rendering this type of service.

Section 9. Indemnification. To the fullest extent permitted by law, the Professional shall indemnify, defend, and hold harmless NBU and each board member, officer, employee or agent thereof (NBU and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by the goods or services provided by the Professional, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below shall in no way be construed as limiting the scope of the indemnity in this Section.

Section 10. Insurance.

(A) General.

i. <u>Insurer Qualifications</u>. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.

- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. <u>Coverage Term</u>. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. <u>Primary Insurance</u>. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. <u>Claims Made</u>. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.
- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. <u>Policy Deductibles and/or Self-Insured Retentions</u>. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be

- applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.
- ix. <u>Use of Subcontractors</u>. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- x. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.
- (B) Required Insurance Coverage. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.
 - i. Commercial General Liability. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$500,000 for each occurrence and a \$500,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

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- ii. Auto Liability. The Professional shall maintain Automobile Liability insurance with a limit of \$100,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- iii. Workers' Compensation and Employer's Liability Insurance. The Professional shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- (C) <u>Cancellation and Expiration Notice</u>. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to NBU.

Section 11. <u>Termination</u>.

- (A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.
- (B) For Cause. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of

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this Agreement and in the event of a second breach or violation, the nondefaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Professional for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.

- (C) <u>Non-Collusion</u>. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.
- (D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

- (A) <u>Independent Contractor</u>. The Professional acknowledges that the Professional is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Professional shall not represent, either expressly or through implication, that the Professional is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Professional.
- (B) <u>Governing Law; Venue</u>. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.

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- (C) <u>Compliance with Laws</u>. The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish satisfactory proof of compliance to NBU.
- (D) <u>Amendments</u>. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.
- (E) <u>Provisions Required by Law</u>. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- (F) <u>Severability</u>. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- (G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.
- (H) <u>No Assignment</u>. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.
- (I) <u>Subcontractors</u>. The Professional shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Professional.
- (J) <u>Waiver</u>. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the

same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- (K) <u>Attorneys' Fees</u>. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.
- (L) <u>Liens</u>. All materials or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.

(M) Offset.

- i. Offset for Damages. In addition to all other remedies at law or equity, NBU may offset from any money due to the Professional any amount the Professional owes to NBU for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.
- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.
- (N) <u>Notices</u>. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities Attn: Director of Water Services 263 Main Plaza New Braunfels, TX 78130

With copy to:

Purchasing Manager New Braunfels Utilities 355 FM 306 New Braunfels, TX 78130

If to the Professional:

Wallgren Environmental Services, Inc. 1532 Universal City Blvd, Suite 100 Universal City, Texas 78148

or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in the manner set forth in this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- (O) <u>Confidentiality of Records</u>. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.
- (P) <u>Right to Audit</u>. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- (Q) <u>Paragraph Headings; Construction</u>. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- (R) <u>Binding Effect</u>. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

- (S) <u>Gender</u>. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- (T) <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- (U) <u>Exhibits</u>. Except as specified in Subsection (V) of this Section, all exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- (V) <u>Conflicting Terms</u>. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern. The Exhibits are intended to detail the technical scope of services, fee schedule, and the term of the contract only and shall not dictate Agreement terms.
- (W) <u>Relationship of Parties</u>. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
- (X) <u>No Third-Party Beneficiaries</u>. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (Y) <u>Non-Exclusive Contract</u>. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.
- Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of

performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. <u>Dispute Resolution</u>. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. <u>First</u>, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. <u>Second</u>, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. <u>Third</u>, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 15. <u>Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire</u>. The Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.

Section 16. Information Technology

Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the (A) Professional with non-exclusive, limited access to NBU's information technology infrastructure. The Professional understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Professional shall reasonably enforce such policies, standards, regulations and restrictions with all the Professional's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Professional's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Professional agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Professional. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

- (B) <u>Data Confidentiality</u>. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.
- (C) <u>Data Security</u>. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Professional must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- (D) <u>Compromised Security</u>. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. The Professional shall indemnify, defend, and hold NBU harmless from any Claims resulting from the Professional's failure to comply with its obligations under this Section.
- (E) <u>Survival</u>. The obligations of the Professional under this Section shall survive the termination of this Agreement.
- Section 17. <u>Prohibition on Contracts with Companies Boycotting Israel</u>. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 18. <u>Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited.</u> The Professional represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Professional and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 19. <u>Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia</u>. If the Professional is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Professional represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in the Professional is not held or controlled by:
 - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended ("designated country"); or
 - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. "Affiliate," with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

Section 20. <u>Prohibition on Contracts with Companies Boycotting Energy Companies</u>. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2276 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable

federal and State law. As used in the foregoing verification, "boycott energy companies" has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 21. <u>Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries</u>. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 22. <u>Texas Public Information Act</u>. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in Section 12(P).

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

The Professional must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Professional on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Professional; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Professional agrees that the Agreement can be terminated if the Professional knowingly or intentionally fails to comply with a requirement of that subchapter.

Section 23. <u>Electronic Signatures</u>. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

(The remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the day
of, 20
NBU:
NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility
By:
Name: Ryan Kelso
Title: Interim CEO
PROFESSIONAL:
WALLGREN ENVIRONMENTAL SERVICES, INC.,
DBA POLLUTION CONTROL SERVICES,
a Texas corporation
a remain verperanter
By:
Name: Chuck Wallgren
Title: CEO
THIC. CLO

Exhibit A

Services

- I. The Services. The Professional shall provide all labor, material, and equipment necessary to provide laboratory ("Lab") testing for NBU's water and wastewater facilities in connection with regulatory testing requirements applicable to NBU.
 - A. The following terms and conditions apply to the provision of the Services.
 - 1) The Professional shall use testing methods that comply with all federal law, state law, and local statutory and regulatory requirements relating to the Services. The Professional shall provide testing in accordance with Title 40, of the United States Code of Federal Regulations ("CFR"), Part 136. Routine and repeat total coliform results shall be reported directly to the Texas Commission on Environmental Quality ("TCEQ") through the E2 Reporting System and to NBU electronically via email.
 - 2) The Professional shall be responsible for disposal of all samples, in accordance with all federal and state regulatory requirements.
 - 3) The Professional shall be responsible for furnishing the container, labor, materials, and equipment necessary to perform the testing and analysis of water and wastewater samples, in accordance with the Professional's pricing form set out in Exhibit B.
 - 4) Lab Testing Services.
 - a. General Procedures:
 - i) All composite sample collections shall be collected by NBU personnel or its designated representatives;
 - ii) NBU personnel or its designated representatives shall prepare and deliver or ship all samples using a delivery service of its choice to the Professional; and
 - iii) NBU personnel or its designated representatives shall prepare a chain of custody ("COC") report with the Professional's name and any other required information and submit the information with the sample.
 - b. The Professional's analytical results turnaround time ("TAT") for the samples is as follows:
 - i) standard TAT: analytical results must be returned to NBU within seven to ten (7-10) calendar days after receipt of sample(s);
 - ii) rush TAT: analytical results must be returned to NBU within three (3) calendar days after receipt of sample(s); and
 - iii) emergency TAT: analytical results must be returned to NBU within twenty-four (24) hours after receipt of sample(s).
 - c. The Professional shall procure all permits and licenses, pay all charges, costs, and fees, and give all notices necessary and incident to performance of the Services.

d. The Professional's analysis and reporting of data shall follow the Texas Commission on Environmental Quality ("TCEQ") Regulatory Guidance Remediation Division RG-366/TRRP-13 requirements, and shall include a laboratory review checklist with every data package. Data packages shall be submitted electronically to NBU via email.

e. Document Control:

- i) The Professional shall maintain and provide to NBU the following critical documents related to the analysis of NBU's samples:
 - (1) a narrative explanation of the level of analytical data review used by the Professional and resulting data qualifiers, indicating direction of bias based on the assessment of quality-controlled samples (e.g., blanks, field and Lab spikes);
 - (2) results for each analyte and sample qualified for analytical limitations;
 - (3) sample quantification limits and detection limits for undetected analytes, with an explanation of the detection limits reported and any qualifications;
 - (4) instrument printouts and logbooks, spectra, and raw data;
 - (5) full descriptions of all deviations from analytical standard operation procedures ("SOPs"), a sampling and analysis plan, and a quality assurance project plan; and
 - (6) Lab custody records.
- f. The National Environmental Laboratory Accreditation Program ("NELAP") and the National Voluntary Laboratory Accreditation Program ("NVLAP") Accreditation.
 - i) The Professional's Lab personnel (including subcontractors) must be NVLAP accredited under the National Institute of Standards and Technology.
 - ii) The Professional's personnel must comply with accreditation requirements established in accordance with the CFR, Title 15, Part 285, NVLAP Procedures and General Requirements, and encompass the requirements of the International Organization for Standardization/the International Electrotechnical Commission # 17025.2005, International Standard for Testing and Calibration Laboratory accreditation.
 - iii) The Professional's personnel and subcontractors, if any, must maintain accreditation throughout for the entire term of the Agreement.
- g. The Professional's Laboratory must maintain NELAP accreditation and follow the NELAP Laboratory Quality Assurance and Quality Control ("QA/QC") standards which must include:
 - i) defined QA/QC protocols;
 - ii) an overall QA/QC Plan including:
 - (1) standard SOPs and analytical methods;

- (2) internal QA/QC procedures and logs; and
- (3) data review procedures.
- iii) the Professional's Lab shall be required to handle samples and follow COC protocols that are in accordance with federal and state regulatory requirements for Lab quality assurance; and
- iv) the Professional shall analyze all samples using EPA standard methods, and/or TCEQ approved methods and technology.

Exhibit B

Compensation

NBU agrees to pay the Professional for the Services rendered under this Agreement in an amount not to exceed \$100,000 for each year of the Term, with a total not to exceed amount of \$500,000 for the duration of this Agreement.

The Professional shall not increase the rates set forth below during the Initial Term. If the Professional proposes an increase in any of the rates set forth below during any Renewal Term, the Professional shall send written notice to NBU of such request at least one hundred twenty (120) days prior to the expiration of the Initial Term or then current Renewal Term, as applicable, and any such request, is (a) subject to the prior acceptance by NBU and (b) further subject to the condition that the total amount charged to NBU for the Services under this Agreement for any year of the Term will not exceed \$100,000 and the total amount charged to NBU for the Services for the duration of this Agreement will not exceed \$500,000.

Anticipated Frequency of Test

Test	Water ("W")/Wastewater ("WW")	Method	Anticipated Frequency of Test	Unit Price/Test (Standard Turn Around Time)		
	<u>Bacterio</u>	gical Analysis				
Total coliform (P/A)	W	IDEXX Colilert 18 hr	82-100 per month	\$20.00		
E. coli (P/A)	W	IDEXX Colilert 18 hr	82-100 per month	\$0.00		
Lead and Copper	Testing					
Copper/ICP MS mg/L	W	EPA 200.7 / 6010 B	60 tests per year	\$18.00		
Lead/ICP MS mg/L	W	EPA 200.8	60 tests per year	\$18.00		
Water Quality (WQ)						
Bromide_IC	W	EPA 300.0	2/month 3 sample locations	\$18.00		

Bromate (mg/L)	W	EPA 300.0	2/month 3 sample locations	\$50.00
рН	W	SM 4500-H+ B	2/month3 sample locations	\$10.00
Ammonia-N (ISE)	W	SM 4500-NH3 D	2/month 3 sample locations	\$18.00
Chloride_IC	W	EPA 300.0	2/month 3 sample locations	\$18.00
Chlorite_IC	W	EPA 300.1	2/month 3 sample locations	\$28.00
Conductivity, Specific	W	SM 2510B	2/month 3 sample locations	\$14.00
Nitrate-N IC	W	EPA 300.0	2/month 3 sample locations	\$18.00
Nitrite-N_IC	W	EPA 300.0	2/month 3 sample locations	\$18.00
Sulfate_IC	W	EPA 300.0	2/month 3 sample locations	\$18.00
Total Dissolved Solids	W	SM 2540C	2/month 3 sample locations	\$18.00
Total Hardness as CaCO3	W	SM 2340C	2/month 3 sample locations	\$20.00
Fluoride, IC	W	EPA 300.0	2/month 3 sample locations	\$18.00
Alkalinity, Bicarbonate	W	SM 2320B	2/month 3 sample locations	\$18.00
Alkalinity, Total	W	SM 2320B	2/month 3 sample locations	\$18.00

Arsenic/ICP MS	W	EPA 200.8	2/month 3 sample locations	\$17.00
Calcium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00
Iron/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00
Magnesium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00
Potassium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00
Sodium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00
Corrosivity (Langelier's Index)	W	Calculation	2/month 3 sample locations	\$10.00
Dissolved Organic Carbon	W	SM 5310 C	2/month 3 sample locations	\$38.00
Total Organic Carbon	W	SM 5310 C	2/month 3 sample locations	\$32.00
Total Trihalomethanes	W	EPA 501.3	2/month 3 sample locations	\$95.00
Haloacetic Acids	W	EPA 552.3	2/month3 sample locations	\$180.00
Zinc/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00
Aluminum/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00
Sodium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00

Manganese/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	\$14.00
	<u>T</u>	otal Organic Carbon		
Total Organic W Carbon (TOC)		SM 5310 C	1/month 2 sample locations	\$32.00
		<u>Cyanide</u>		
Cyanide, Total	ww	sm4500-CN	1/week	\$50.00
*Cyanide, Amenable	WW	9010	1/week	\$65.00
*only run Amenda	able if Total Cya	nide fails	I	<u>I</u>
		Sludge TCLP- Full		
Mercury	ww	7470A	annual test at 4 locations	\$30.00
Metals (ICP)	ww	6010B	annual test at 4 locations	\$120.00
Volatile Organic Compounds (GC/MS)	ww	8260B	annual test at 4 locations	\$145.00
Chlorinated Acid Herbicides (GC)	ww	8151A	annual test at 4 locations	\$100.00
Pesticides (GC)	ww	8081B	annual test at 4 locations	\$125.00
Semi Volatile Organic Compounds (GC/MS)	ww	8270C	annual test at 4 locations	\$275.00
Wastewater	Treatment To	esting (Pretreatment,	Influent, and E	ffluent)
Phenolics	WW	EPA 420.1	1/week	\$60.00
Mercury/CV AFS	WW	EPA 245.7	semi-annual at 3 locations	\$88.00

Arsenic/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	\$17.00
Barium/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	\$14.00
Cadmium/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	\$14.00
Chromium/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	\$14.00
Copper/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	\$14.00
Lead/ICP MS	WW	EPA 200.8	semi-annual at 3 locations	\$14.00
Aluminum/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	\$14.00
Beryllium/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	\$14.00
Nickel/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	\$14.00
Zinc/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	\$14.00
Antimony/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	\$17.00
Thallium/ICP MS	WW	EPA 200.8	semi-annual at 3 locations	\$17.00
Selenium/ICP MS	WW	EPA 200.8	semi-annual at 3 locations	\$17.00
Silver/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	\$17.00

Hexavalent	ww	SM 3500-Cr D	annual at 3	\$28.00
Chrome	NA 0 A /	EDA 634	locations	64.45.00
Volatiles 624	ww	EPA 624	annual at 3 locations	\$145.00
Nitrate-N_IC	WW	EPA 300.0	annual at 3	\$21.00
			locations	
Fluoride	WW	EPA 300.0	annual at 3	\$21.00
			locations	
Pesticides 617	WW	EPA 617	annual at 3	\$199.00
			locations	
Hexachlorophen	WW	EPA 604.1	annual at 3	\$145.00
е			locations	
Semi Volatiles	WW	EPA 625	annual at 3	\$375.00
625			locations	
Pesticides 608	WW	EPA 608	annual at 3	\$199.00
			locations	
Pesticides 632	WW	EPA 632	annual at 3	\$275.00
			locations	
Pesticides 1657	WW	EPA 1657	annual at 3	\$325.00
			locations	
Herbicides 615	WW	EPA 615	annual at 3	\$199.00
			locations	
Treat	ment Plant Specific	Tests - North Ku	iehler WWTP	
Biochemical	WW	EPA Approved	Two/week	\$28.00
Oxygen Demand		Methods		
(5-day)				
Total Suspended	WW	EPA Approved	Two/week	\$18.00
Solids		Methods		
Total Phosphorus	WW	EPA Approved	Two/week	\$30.00
		Methods		
Free Cyanide	WW	EPA Approved	One/week	\$55.00
		Methods		
E. coli, colony-	WW	EPA Approved	One/week	\$24.00
forming units or		Methods		
most probably				
number per 100				
ml				
Treat	ment Plant Specific	Tests - South Ku	ehler WWTP	
Dia ala anaissi	14/14/	EDA Amazazzasi	True /rue ale	620.00
Biochemical	WW	EPA Approved	Two/week	\$28.00
Biochemical Oxygen Demand (5-day)	ww	EPA Approved Methods	Two/week	\$28.00

Total Suspended	ww	EDA Approved	Two hyook	\$18.00
Solids	VVVV	EPA Approved Methods	Two/week	\$18.00
Total Phosphorus	WW	EPA Approved Methods	Two/week	\$30.00
E. coli, colony- forming units or most probably number per 100	WW	EPA Approved Methods	One/week	\$24.00
ml				
	nt Specific Tests - Sa	ım C. McKenzie.	Jr. Water Red	lamation
<u> </u>		ity WWTF	Jii Water Het	<u>namation</u>
	<u>i den</u>			
Carbonaceous Biochemical Oxygen Demand (5-day)	ww	EPA Approved Methods	Two/week	\$30.00
Total Suspended Solids	WW	EPA Approved Methods	Two/week	\$18.00
Ammonia Nitrogen	WW	EPA Approved Methods	Two/week	\$18.00
Total Phosphorus	WW	EPA Approved Methods	Two/week	\$30.00
E. coli, colony- forming units or most probably number per 100 ml	ww	EPA Approved Methods	One/week	\$24.00
Treatment Plan	nt Specific Tests - G	uene Road Wat	er Reclamatio	n Facility
		<u>VWTF</u>		
Carbonaceous Biochemical Oxygen Demand (5-day)	WW	EPA Approved Methods	Two/week	\$30.00
Total Suspended Solids	ww	EPA Approved Methods	Two/week	\$18.00
Ammonia Nitrogen	WW	EPA Approved Methods	Two/week	\$18.00
Total Phosphorus	WW	EPA Approved Methods	Two/week	\$30.00
E. coli, colony- forming units or most probably	WW	EPA Approved Methods	One/week	\$24.00

number per 100 ml				
Location of Laboratory Center for Testing and Sample Delivery/Shipping:		1532 Universal City Blvd.		
		Universal City, TX 78148		
-	Rush Turnaround Price x Multiplier =	50%		
Cost Multiplier for Turnaround Time Multiplier = Emerg	(Ex. Std Unit Price x	100%		
	,,,-	<u> </u>	J	



September 15, 2023

Brent Lundmark New Braunfels Utilities P.O. Box 310289 New Braunfels, TX 78131

Re: Laboratory Testing and Biomonitoring Services - Recommendation for Award

Dear Mr. Lundmark:

Listed below is the summary of scoring for the Laboratory Testing and Biomonitoring Services request for proposal.

Bidders	Total Group Score
Wallgren Environmental Services, Inc., dba Pollution Control Services	100
GBRA Laboratory	93.75
Bio-Aquatic Testing, Inc.	85
Pace Analytical Services, LLC	66.25
North Water District Laboratory Services, Inc.	63.75

The proposals were reviewed by a selection committee, and based on that evaluation it was recommended that the contract be awarded to the highest scoring respondents. Bio-Aquatic Testing, Inc. offered the best value for specialty biomonitoring work, and both Wallgren Environmental Services, Inc., dba Pollution Control Services and GBRA Laboratory provided the best value and proximity for laboratory services. As such the recommendation of the selection committee is an award to Bio-Aquatic Testing, Inc., Wallgren Environmental Services, Inc., dba Pollution Control Services, and GBRA Laboratory.

If you have any questions or comments, please call me at (512) 646-2238. Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Mason P.E.

TBPE No. F-928

Sean Mason, P.E.

Attachment 1 - Evaluation Summary

Attachment 2 - Bid Tabulation

Evaluation Summary

,	1	1	T
Bio-Aquatic	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	4	50
2. Proximity to NBU for Delivery	30	2	15
3. Firm's experience	20		20
	1	Total:	85
Pace	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	2.5	31.25
2. Proximity to NBU for Delivery	30	2	15
3. Firm's experience	20		20
		Total:	66.25
GBRA	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	3.5	43.75
2. Proximity to NBU for Delivery	30	4	30
3. Firm's experience	20		20
	1	Total:	93.75
Wallgren/Pollution Control Services	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	4	50
2. Proximity to NBU for Delivery	30	4	30
3. Firm's experience	20		20
	_	Total:	100
North Water District Lab Services	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	2.5	31.25
2. Proximity to NBU for Delivery	30	2	15
3. Firm's experience	20		17.5
		Total:	63.75

Owner:	New Braunfels Utilities		Bidder 1		Bidder 2	Bidder 3	Bidder 4	Bidder 5		
KH Job No.:	068614006				Bio-Aquatic Testing, Inc. Pace Analytical Services, LLC		GBRA Laboratory Wallgren Environmental Services, Inc., dba Pollution Control Services		s North Water District Laboratory Services, Inc.	
Project: Date:	RFP 24-0005 Laboratory Testing and Bior September 12, 2023	monitoring Se	ervices		2501 Mayes Road, Suite 100 Carrollton, TX 75006	400 Wes	st Bethany Drive, Suite 190 Allen, TX 75013	933 E. Court St. Seguin, TX 78155	1532 Universal City Blvd Universal City. TX 78148	130 South Trade Center Parkway Conroe, Texas 77385
Date:	September 12, 2023				Carrollton, TX 75006		Allen, 1X /5013	Segun, TX 78155	Universal City, TX 78148	Conroe, Fexas 77385
Services	Test	Water/ Wastewater	Method	Anticipated Frequency of Test	Unit Price/Test (Standard Turn Around Time)	Method	Unit Price/Test (Standard Turn Around Time)	Unit Price/Test Method (Standard Turn Around Time)**	Unit Price/Test (Standard Turn Around Time)	Unit Price/Test (Standard Turn Around Time)
Biomonitoring for Wastewater Treatment Facilities	24-hour Acute survival screen (control & 100% effluent) using Daphnia pulex	ww	EPA 2021	Up to 4 times per year per pemits	\$75.00		\$525.00	No Bid	No Bio	\$75.1
	24-hour Acute survival screen (control & 100% effluent) using Pimephales promelas	ww	EPA 2000	Up to 4 times per year per pemits	\$75.00		Included in the price above	No Bid	No Bio	\$75.1
	48-hour Acute definitive (5 concentration) LC-50	NADA/	EPA 2021	Up to 4 times per year per pemits	\$320.00		\$750.00	No Bid	No Bio	\$400.0
	test using Daphnia pulex 48-hour Acute definitive (5 concentration) LC-50	ww	EPA 2000	Up to 4 times per year per	\$320.00			No Bid	NO BIG	\$400.
	test using Pimephales promelas Chronic Survial and 3rd Brood reproduction	ww		Up to 4 times per year per			Included in the price above			
	using Ceriodaphnia dubia 7-day chronic survival and growwth test using	ww	EPA 1002	pemits Up to 4 times per year per	\$675.00		\$1,695.00	No Bid	No Bid	\$850.
	Pimephales promelas	ww	EPA 1000	pemits "if a 24 hour screen (100%	\$675.00		Included in the price above	No Bid	No Bio	\$850
	24-hour Acute survival definitive Re-test (5 concentrations) using Daphnia pulex	ww	EPA 2021	only) fails, the Re-test must be 5 concentrations	\$100.00		\$750.00	No Bid	No Bio	\$150.
	24-hour Acute survival definitive Re-test (5			"if a 24 hour screen (100% only) fails, the Re-test must						
	concentrations) using Pimephales promelas	ww	EPA 2000	be 5 concentrations	\$100.00		Included in the price above	No Bid	No Bio	\$150
	only run Re-test if 24 hour screen (100% only) f	ails								
Bacteriological Analysis	Total coliform (P/A)	w	IDEXX Colilert 18 hr	82-100 per month	No Bid		\$85.00	\$22.50 E. coli is tested as part of Total	\$20.00	\$10
	E. coli (P/A)	w		82-100 per month	No Bid		\$85.00	coliform	\$0.00	\$10.
Lead and Copper Testing	Copper/ICP MS mg/L Lead/ICP MS mg/L	w	EPA 200.7 / 6010 B EPA 200.8	60 tests per year 60 tests per year	No Bid No Bid		\$17.50 \$19.80	Sub Sub	\$18.00 \$18.00	\$20 \$20
Water Quality (WQ)	Bromide IC	lar.	EPA 300.0	2/month3 sample locations	No Bid		\$20.00	Sub	\$18.00	\$25
water quality (WQ)	Bromate (mg/L)	W	EPA 300.0	2/month3 sample locations	No Bid		\$63.00	Sub	\$50.00	\$38
	pH	W	SM 4500-H+ B	2/month3 sample locations	No Bid		\$20.00	\$13.50 SM 4500 NH3 D	\$10.00	\$6
	Ammonia-N (ISE) Chloride_IC	W	SM 4500-NH3 D EPA 300.0	2/month3 sample locations 2/month3 sample locations	No Bid No Bid	SM4500 NH3 H	\$27.00 \$20.00	EPA 350.1 (1993) \$32.40 \$25.20	\$18.00 \$18.00	\$20 \$25
	Chlorite_IC Conductivity, Specific	w	EPA 300.1 SM 2510B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid	FPA 120 1	\$63.00, Sub to Ormond Beach, FL \$16.00	\$34.20 \$16.20	\$28.00 \$14.00	\$35 \$20
	Nitrate-N IC Nitrate-N IC	W	EPA 300 0	2/month3 sample locations 2/month3 sample locations	No Bid		\$20.00	\$25.20	\$18.00	\$25
	Sulfate_IC Total Dissolved Solids	W	EPA 300.0 EPA 300.0 SM 2540C	2/month3 sample locations 2/month3 sample locations 2/month3 sample locations	No Bid No Bid No Bid		\$20.00 \$20.00 \$20.00	\$25.20 \$25.20 \$25.20	\$18.00 \$18.00 \$18.00	\$25 \$25 \$25 \$20
	Total Hardness as CaCO3	W	SM 2340C	2/month3 sample locations	No Bid		\$25.00	\$27.00	\$20.00	\$38
	Fluoride, IC Alkalinity, Bicarbonate	W	EPA 300.0 SM 2320B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$20.00 \$20.00	\$25.20 \$32.40	\$18.00 \$18.00	\$25 \$35
	Alkalinity, Total Arsenic/ICP MS	W	SM 2320B EPA 200.8	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$20.00 \$26.00	\$23.40	\$18.00 \$17.00	\$36
	(Calcium/ICP (Total)	w	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00	Sub Sub Sub	\$14.00 \$14.00	\$20 \$20 \$20
	Magnesium/ICP (Total) Potassium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00 \$19.00	Sub Sub	\$14.00 \$14.00	\$20 \$20 \$20
	Sodium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid No Bid		\$19.00	Sub \$92.70	\$14.00	\$20 \$80
	Corrosivity (Langelier's Index) Dissolved Organic Carbon	W	Calculation SM 5310 C	2/month3 sample locations 2/month3 sample locations	No Bid		\$25.00 \$48.00	\$92.70 \$49.50 \$40.50	\$10.00 \$38.00	\$60 \$60 \$60
	Total Organic Carbon Total Trihalomethanes	W	SM 5310 C EPA 501.3	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$48.00 \$110.00	Sub	\$32.00 \$95.00	\$175
	Haloacetic Acids Zinc/ICP (Total)	W	EPA 552.3 EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$125.00 \$19.00	Sub Sub	\$180.00 \$14.00	\$17E \$20
	Aluminum/ICP (Total) Sodium/ICP (Total)	W	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00	Sub Sub	\$14.00 \$14.00	\$20 \$21
	Manganese/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00	Sub	\$14.00	\$20
Total Organic Carbon	Total Organic Carbon (TOC)	w	SM 5310 C	1/month2 sample locations	No Bid		\$48.00	\$40.50	\$32.00	\$60
Cyanide	Cyanide, Total	ww	sm4500-CN	1/week	No Bid		\$38.00	Sub	\$50.00	\$60
	*Cyanide, Amenable	ww	9010	1/week	No Bid	SM 4500-CN	\$50.00	Sub	\$65.00	\$60
	only run Amendable if Total Cyanaide fails									
Sludge TCLP - Full	Mercury Metals (ICP)	ww	7470A 6010B	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$85.00 \$69.00	Sub Sub	\$30.00 \$120.00	\$30 \$140
	Volatile Organic Compounds (GC/MS) Chlorinated Acid Herbicides (GC)	ww	8260B 8151A	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$140.00 \$265.00	Sub Sub Sub	\$145.00 \$100.00	\$175 \$200
	Pesticides (GC)	ww	8081B 8270C	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$170.00 \$250.00	Sub Sub	\$125.00 \$275.00	\$200 \$150 \$175
Wastewater Treatment Testing									-	Ţ
(Pretreatment, Influent, and	Phenolics	MANA	EPA 420 1	1/mask	No Bid		\$30.00	2.0	\$60.00	\$75
eue-itj	Mercury/CV AFS	ww	EPA 420.1 EPA 245.7	1/week semi-annual at 3 locations	No Bid	EPA 245.1	\$35.00	Sub Sub	\$88.00	SBI
	Arsenic/ICP MS Barium/ICP (Total)	ww	EPA 200.8 EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$26.00 \$19.00	Sub Sub	\$17.00 \$14.00	\$20 \$20
	Cadmium/ICP (Total) Chromium/ICP (Total)	ww	EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00	Sub Sub Sub	\$14.00 \$14.00	\$20 \$20 \$20
	Copper/ICP (Total) Lead/ICP MS	ww	EPA 200.7 / 6010 B EPA 200.8	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$24.00	Sub Sub	\$14.00 \$14.00	\$20 \$20
	Aluminum/ICP (Total) Beryllium/ICP (Total)	ww	EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00	Sub	\$14.00 \$14.00	\$2
	Nickel/ICP (Total) Zinc/ICP (Total)	ww	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00	Sub Sub Sub	\$14.00 \$14.00	\$21 \$21 \$21 \$22
	Antimony/ICP MS Thallium/ICP MS	ww	EPA 200.8 EPA 200.8	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$24.00	Sub Sub	\$17.00 \$17.00	\$20 \$20
	Selenium/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	No Bid		\$24.00	Sub	\$17.00	\$20
	Silver/ICP MS Hexavalent Chrome	WW WW	EPA 200.8 SM 3500-Cr D	semi-annual at 3 locations annual at 3 locations	No Bid No Bid No Bid	SM3500 Cr B	\$24.00 \$40.00 \$90.00	Sub Sub Sub	\$17.00 \$28.00 \$145.00	\$20 \$60 \$175
	Volatiles 624 Nitrate-N_IC	ww	EPA 624 EPA 300.0	annual at 3 locations annual at 3 locations	No Bid		\$20.00	\$25.20	\$21.00	\$25
<u> </u>	Fluoride_IC Pesticides 617	ww	EPA 300.0 EPA 617	annual at 3 locations annual at 3 locations	No Bid No Bid		\$20.00 No Bid	\$25.20 Sub	\$21.00 \$199.00	\$2f
	Hexachlorophene Semi Volatiles 625	ww	EPA 604.1 EPA 625	annual at 3 locations annual at 3 locations	No Bid No Bid		No Bid \$200.00	Sub Sub	\$145.00 \$375.00	\$6 \$178
	Pesticides 608	WW	EPA 608	annual at 3 locations	No Bid		\$120.00	Sub	\$199.00	\$15
	Pesticides 632 Pesticides 1657	ww	EPA 632 EPA 1657	annual at 3 locations annual at 3 locations	No Bid No Bid		No Bid No Bid	Sub Sub	\$275.00 \$325.00	\$20
	Herbicides 615	ww	EPA 615	annual at 3 locations	No Bid		\$200.00	Sub	\$199.00	\$20
Treatment Plant Specific Tests North Kuehler WWTP	- Biochemical Oxygen Demand (5-day)	ww	EPA Approved Methods	Two/week	No Bid		\$50.00	\$36.00	\$28.00	\$2
	Total Suspended Solids Total Phosphorus	ww	EPA Approved Methods EPA Approved Methods	Two/week Two/week	No Bid No Bid		\$20.00 \$30.00	\$22.50 \$37.80	\$18.00 \$30.00	\$2 \$2
	Free Cyanide E.coli, colony-forming units or most propbably	ww	EPA Approved Methods	One/week	No Bid	Method OAI 1677	\$43.00	Sub	\$55.00	\$6
	number per 100 ml	ww	EPA Approved Methods	One/week	No Bid		\$100.00	\$31.50	\$24.00	\$4
1		1	1	L	l		I.	1		

Owner:	New Braunfels Utilities			Bidder 1 Bidder 2		Bidder 3		Bidder 4	Bidder 5		
KH Job No.:	068614006	Bio-Aquatic Testing, Inc.	Pace	e Analytical Services, LLC	GBRA Laboratory		Wallgren Environmental Services, Inc., dba Pollution Control Services	North Water District Laboratory Services, Inc.			
Project:	RFP 24-0005 Laboratory Testing and Bion		2501 Mayes Road, Suite 100	400 We	est Bethany Drive, Suite 190	933 E. Court St.		1532 Universal City Blvd	130 South Trade Center Parkway		
Date:	September 12, 2023				Carrollton, TX 75006		Allen, TX 75013	Sequin. TX 78155		Universal City, TX 78148	Conroe, Texas 77385
		Water/		Anticipated Frequency of	Unit Price/Test		Unit Price/Test		Unit Price/Test	Unit Price/Test	Unit Price/Test
Services	Test	Wastewater	Method	Test	(Standard Turn Around Time)	Method	(Standard Turn Around Time)	Method	(Standard Turn Around Time)**	(Standard Turn Around Time)	(Standard Turn Around Time)
Treatment Plant Specific Tests - South Kuehler WWTP	Biochemical Oxygen Demand (5-day)	ww	EPA Approved Method		No Bid		\$50.00		\$36.00	\$28.00	****
South Kuehler WWTP			EPA Approved Method EPA Approved Method		No Bid No Bid		\$50.00 \$20.00		\$36.00 \$22.50	\$28.00 \$18.00	\$20.00
			EPA Approved Method		No Bid		\$30.00		\$37.80	\$30.00	\$20.00 \$20.00 \$20.00
	E.coli, colony-forming units or most propbably		Li 777ppiorea inclina	J I WOI WOOK	140 230		\$00.00		401.00	400.00	920.00
		ww	EPA Approved Method	s One/week	No Bid		\$100.00		\$31.50	\$24.00	\$45.00
Treatment Plant Specific Tests -											
Sam C. McKenzie, Jr. Water	Carbonaceous Biochemical Oxygen Demand (5-										
Reclamation Facility WWTF			EPA Approved Method		No Bid		\$50.00		\$37.80	\$30.00	\$20.00
		ww	EPA Approved Method		No Bid		\$20.00		\$22.50	\$18.00	\$20.00
		ww	EPA Approved Method		No Bid		\$27.00		\$32.40	\$18.00	\$20.00 \$20.00
		WW	EPA Approved Method	s Two/week	No Bid		\$30.00		\$37.80	\$30.00	\$20.00
	E.coli, colony-forming units or most propbably number per 100 ml	ww	EPA Approved Method		No Bid		\$100.00		\$31.50	\$24.00	\$45.00
	number per 100 mi	VVVV	EPA Approved Method	s One/week	NO BIG		\$100.00		\$31.50	\$24.00	\$45.00
Treatment Plant Specific Tests -											
	Carbonaceous Biochemical Oxygen Demand (5-										
Facility WWTF		ww	EPA Approved Method	s Two/week	No Bid		\$50.00		\$37.80	\$30.00	\$20.00
	Total Suspended Solids	ww	EPA Approved Method	s Two/week	No Bid		\$20.00		\$22.50	\$18.00	\$20.00 \$20.00
		ww	EPA Approved Method		No Bid		\$27.00		\$32.40	\$18.00	\$20.00
		ww	EPA Approved Method	s Two/week	No Bid		\$30.00		\$37.80	\$30.00	\$20.00
	E.coli, colony-forming units or most propbably										
	number per 100 ml	WW	EPA Approved Method	s One/week	No Bid		\$100.00		\$31.50	\$24.00	\$45.00
L									1		

Location of Laboratory Center for Testing and Sample Delivery/Shipping:	2501 Mayes Road, Ste. 100 Carrollton, TX 75006	Analysical Testing: Pace Altern 400 West Behany Dr., Saite 190 Altern TX 75013 Well Testing: Fornate and Cholinate Testing: Prace Omnord Beach 37 Tower Cir E Omnord Beach TI. 32774 E. coll Testing: Size Libertopidis Dr. Saite A Auditin, TX 78744 Caulier Service and Bettle Kits: Auditins Service Center		1532 Universal City Blvd Universal City, TX 78148	130 South Trinde Certer Parlway Corroe, Texas 77385
Cost Multiplier for Rush Turn-Around-Time (Ex. Std Unit Price x Multiplier = Rush Price):	Zero (0) Rush charges	12	2x Standard Unit Price	50%	3x
Cost Multiplier for Emergency Turn-Around-Time (Ex. Std Unit Price x Multiplier = Emergency Price):	Zero (0) Emergency T-A-T	x5	4x Standard Unit Price	100%	7x
Notes:	NBU will use FedEx. We get 73% discount off FedEx pricing. If that helps NBU, we can use our account and charge return freight back. We have helped numerous	To cover thoratory and administrative costs, a Minimum vivoice Fee of \$50 unit to applied to all final invoices. For ensure that all customer sample intended is disposed or sidely, a Sample Disposal Asia of \$20 cases all the applied. Are Environmental Asia of \$51 cases all the applied. Are Environmental projects in which the fee covers a variety of pollution containment inflatives associated with the management and project disposal do solvents used exclusively in a laboratory environment.	Prices stated reflects 10% discount on our board sproyroud test fee. Herns designated as "Sub" are parameters we do not see a few and to house. However we do have be meanes to subcommand to those parameters to one of a several stationaria. Subcommand to the parameters to one of a several stationaria, Subcommand to the continuation of a 10% discount on our board-approved prices upon annual CRRA commists to the continuation of a 10% discount on our board-approved prices upon annual stationaria, Subcommand our stationaria, Subcommand to the continuation of a 10% discount on our board-approved prices upon annual stationaria, CRRA commists of the continuation of all 10% discount on our board-approved prices are picked up as a single location on trustedly and/or Thursdry during the united term of the contract. Counter fees may be audient to recombination during subcepture treversials subject to recombination during subcepture treversials subcrease to the contract of		

Indicates items needing clarification from vendor

Owner:	New Braunfels Utilities			Bidder 1	Bidder 2		Bidder 3		Bidder 4	Bidder 5	
KH Job No.: 068614006					Bio-Aquatic Testing, Inc.	Pace Analytical Services, LLC		GBRA Laboratory		Wallgren Environmental Services, Inc., dba Pollution Control Services	North Water District Laboratory Services, Inc.
Project:	RFP 24-0005 Laboratory Testing and Bior	rvices		2501 Mayes Road, Suite 100	400 We	est Bethany Drive, Suite 190	933 E. Court St.		1532 Universal City Blvd	130 South Trade Center Parkway	
Date:	September 12, 2023	T	Carrollton, TX 75006		Allen, TX 75013		Seguin, TX 78155	Universal City, TX 78148	Conroe, Texas 77385		
Services	Test	Water/ Wastewater	Method	Anticipated Frequency of Test	Unit Price/Test (Standard Turn Around Time)	Method	Unit Price/Test (Standard Turn Around Time)	Method	Unit Price/Test (Standard Turn Around Time)**	Unit Price/Test (Standard Turn Around Time)	Unit Price/Test (Standard Turn Around Time)
Biomonitoring for Wastewater	24-hour Acute survival screen (control & 100%			Up to 4 times per year per					,	·	
Treatment Facilities	effluent) using Daphnia pulex 24-hour Acute survival screen (control & 100%	WW	EPA 2021	pemits Up to 4 times per year per	\$75.00		\$525.00		No Bid	No Bid	\$75
	effluent) using Pimephales promelas	WW	EPA 2000	pemits	\$75.00		Included in the price above		No Bid	No Bid	\$75
	48-hour Acute definitive (5 concentration) LC-50 test using <i>Daphnia pulex</i>	ww	EPA 2021	Up to 4 times per year per pemits	\$320.00		\$750.00		No Bid	No Bid	\$400
	48-hour Acute definitive (5 concentration) LC-50	ww		Up to 4 times per year per pemits	\$320.00		Included in the price above				\$400
	test using <i>Pimephales promelas</i> Chronic Survial and 3rd Brood reproduction	VVVV	EPA 2000	Up to 4 times per year per	\$320.00		included in the price above		No Bid	No Bid	\$400
	using Ceriodaphnia dubia	WW	EPA 1002	pemits	\$675.00		\$1,695.00		No Bid	No Bid	\$850
	7-day chronic survival and growwth test using Pimephales promelas	ww	EPA 1000	Up to 4 times per year per pemits	\$675.00		Included in the price above		No Bid	No Bid	\$850
	24-hour Acute survival definitive Re-test (5			*if a 24 hour screen (100% only) fails, the Re-test must							
	concentrations) using Daphnia pulex	ww	EPA 2021	be 5 concentrations	\$100.00		\$750.00		No Bid	No Bid	\$15
	04 have Asida avairal deficition De 4-st /5			*if a 24 hour screen (100%							
	24-hour Acute survival definitive Re-test (5 concentrations) using <i>Pimephales promelas</i>	ww	EPA 2000	only) fails, the Re-test must be 5 concentrations	\$100.00		Included in the price above		No Bid	No Bid	\$15
	*only run Re-test if 24 hour screen (100% only) f	ails	1				·				
Bacteriological Analysis	Total coliform (P/A)	W	IDEXX Colilert 18 hr	82-100 per month	No Bid		\$85.00		\$22.50	\$20.00	<u> </u>
									 E. coli is tested as part of Total 		
	E. coli (P/A)	VV	IDEXX Colilert 18 hr	82-100 per month	No Bid		\$85.00		coliform	\$0.00	\$1
Lead and Copper Testing	Copper/ICP MS mg/L	W	EPA 200.7 / 6010 B	60 tests per year	No Bid		\$17.50		Sub	\$18.00	\$2
	Lead/ICP MS mg/L	W	EPA 200.8	60 tests per year	No Bid		\$19.80		Sub	\$18.00	\$2
Water Quality (WQ)		W	EPA 300.0	2/month3 sample locations			\$20.00		Sub	\$18.00	\$2
	Bromate (mg/L) pH	W	EPA 300.0 SM 4500-H+ B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$63.00 \$20.00		Sub \$13.50	\$50.00 \$10.00	\$3 \$
								SM 4500 NH3 D			
	Ammonia-N (ISE) Chloride IC	W	SM 4500-NH3 D EPA 300.0	2/month3 sample locations 2/month3 sample locations	No Bid No Bid	SM4500 NH3 H	\$27.00 \$20.00	EPA 350.1 (1993)	\$32.40 \$25.20	\$18.00 \$18.00	\$2 \$2
	Chlorite_IC	W	EPA 300.1	2/month3 sample locations	No Bid		\$63.00, Sub to Ormond Beach, FL		\$34.20	\$28.00	\$3
	Conductivity, Specific Nitrate-N IC	W	SM 2510B EPA 300.0	2/month3 sample locations 2/month3 sample locations	No Bid No Bid	EPA 120.1	\$16.00 \$20.00		\$16.20 \$25.20	\$14.00 \$18.00	\$2 \$2
	Nitrite-N_IC	W	EPA 300.0	2/month3 sample locations	No Bid		\$20.00		\$25.20	\$18.00	\$2
	Sulfate_IC Total Dissolved Solids	W	EPA 300.0 SM 2540C	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$20.00 \$20.00		\$25.20 \$25.20	\$18.00 \$18.00	\$2 \$2
	Total Hardness as CaCO3	W	SM 2340C	2/month3 sample locations	No Bid		\$25.00		\$27.00	\$20.00	\$3
	Fluoride, IC Alkalinity, Bicarbonate	W	EPA 300.0 SM 2320B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$20.00 \$20.00		\$25.20 \$32.40	\$18.00 \$18.00	\$2 \$3
	Alkalinity, Total	W	SM 2320B	2/month3 sample locations	No Bid		\$20.00		\$23.40	\$18.00	\$3
	Arsenic/ICP MS Calcium/ICP (Total)	W	EPA 200.8 EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$26.00 \$19.00		Sub Sub	\$17.00 \$14.00	\$2 \$2
	Iron/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00		Sub	\$14.00	\$2
	Magnesium/ICP (Total) Potassium/ICP (Total)	W	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$14.00	\$2 \$2
	Sodium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00		Sub	\$14.00	\$2
	Corrosivity (Langelier's Index) Dissolved Organic Carbon	W	Calculation SM 5310 C	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$25.00 \$48.00		\$92.70 \$49.50	\$10.00 \$38.00	\$8 \$6
	Total Organic Carbon	W	SM 5310 C EPA 501.3	2/month3 sample locations	No Bid		\$48.00		\$40.50	\$32.00	\$6
	Total Trihalomethanes Haloacetic Acids	W	EPA 501.3 EPA 552.3	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$110.00 \$125.00		Sub	\$95.00 \$180.00	\$17 \$17
	Zinc/ICP (Total) Aluminum/ICP (Total)	W	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$14.00	\$2 \$2
	Sodium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00		Sub	\$14.00	\$2
	Manganese/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00		Sub	\$14.00	\$2
Total Organic Carbon	Total Organic Carbon (TOC)	W	SM 5310 C	1/month2 sample locations	No Bid		\$48.00		\$40.50	\$32.00	\$6
Cyanide	Cyanide, Total	WW	sm4500-CN	1/week	No Bid		\$38.00		Sub	\$50.00	\$6
Oyumuo						SM 4500-CN					
	*Cyanide, Amenable *only run Amendable if Total Cyanaide fails	WW	9010	1/week	No Bid		\$50.00		Sub	\$65.00	\$6
Sludge TCLP - Full		WW	7470A 6010B	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$85.00 \$69.00		Sub Sub	\$30.00 \$120.00	\$1 \$14
	Volatile Organic Compounds (GC/MS)	WW	8260B	annual test at 4 locations	No Bid		\$140.00		Sub	\$145.00	\$1
	Chlorinated Acid Herbicides (GC) Pesticides (GC)	WW	8151A 8081B	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$265.00 \$170.00		Sub Sub	\$100.00 \$125.00	\$2i \$1:
	Semi Volatile Organic Compounds (GC/MS)	ww	8270C	annual test at 4 locations	No Bid		\$250.00		Sub	\$275.00	\$17
Wastewater Treatment Testing											
(Pretreatment, Influent, and Effluent)	Phenolics	ww	EPA 420.1	1/week	AL DO		\$30.00		2.1	\$60.00	Si
_muelit)	Mercury/CV AFS	WW	EPA 245.7	semi-annual at 3 locations	No Bid No Bid	EPA 245.1	\$35.00		Sub Sub	\$88.00	\$1
	Arsenic/ICP MS Barium/ICP (Total)	WW WW	EPA 200.8 EPA 200.7 / 6010 B	semi-annual at 3 locations	No Bid No Bid	_	\$26.00 \$19.00	_	Sub Sub	\$17.00 \$14.00	\$ \$
	Cadmium/ICP (Total)	WW	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid		\$19.00		Sub	\$14.00	\$
	Chromium/ICP (Total)	WW WW	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$14.00	\$
	Lead/ICP MS	WW	EPA 200.8	semi-annual at 3 locations	No Bid		\$24.00		Sub	\$14.00	\$
		WW WW	EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$14.00	\$ \$
	Nickel/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	No Bid		\$19.00		Sub	\$14.00	\$
	Zinc/ICP (Total)	WW WW	EPA 200.7 / 6010 B EPA 200.8	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$17.00	\$ \$.
	Thallium/ICP MS	WW	EPA 200.8	semi-annual at 3 locations	No Bid		\$24.00		Sub	\$17.00	\$
		WW	EPA 200.8 EPA 200.8	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$24.00 \$24.00		Sub Sub	\$17.00 \$17.00	<u> </u>
	Hexavalent Chrome	WW	SM 3500-Cr D	annual at 3 locations	No Bid	SM3500 Cr B	\$40.00		Sub	\$28.00	\$
	Volatiles 624 Nitrate-N IC	WW	EPA 624 EPA 300.0	annual at 3 locations annual at 3 locations	No Bid No Bid		\$90.00 \$20.00		Sub \$25.20	\$145.00 \$21.00	\$1 \$
	Fluoride_IC	WW	EPA 300.0	annual at 3 locations	No Bid		\$20.00		\$25.20	\$21.00	<i>w</i>
		WW	EPA 617 EPA 604.1	annual at 3 locations annual at 3 locations	No Bid No Bid		No Bid No Bid		Sub Sub	\$199.00 \$145.00	
	Semi Volatiles 625	WW	EPA 625	annual at 3 locations	No Bid		\$200.00		Sub	\$375.00	\$1
		WW	EPA 608 EPA 632	annual at 3 locations annual at 3 locations	No Bid No Bid		\$120.00 No Bid		Sub Sub	\$199.00 \$275.00	\$1
		WW	EPA 1657	annual at 3 locations	No Bid		No Bid		Sub	\$325.00	\$2

Owner:	New Braunfels Utilities				Bidder 1	Bidder 2		Bidder 3		Bidder 4	Bidder 5
KH Job No.:	068614006			<u> </u>	Bio-Aquatic Testing, Inc.		Analytical Services, LLC	GBRA Laboratory		Wallgren Environmental Services, Inc., dba Pollution Control Services	North Water District Laboratory Services, Inc.
Project:	RFP 24-0005 Laboratory Testing and Bion	rvices	2501 Mayes Road, Suite 100	400 We	st Bethany Drive, Suite 190	933 E. Court St.		1532 Universal City Blvd	130 South Trade Center Parkway		
Date:	September 12, 2023			1	Carrollton, TX 75006		Allen, TX 75013		Seguin, TX 78155	Universal City, TX 78148	Conroe, Texas 77385
		Water/		Anticipated Frequency of	Unit Price/Test		Unit Price/Test		Unit Price/Test	Unit Price/Test	Unit Price/Test
Services	Test	Wastewater	Method	Test	(Standard Turn Around Time)	Method	(Standard Turn Around Time)	Method	(Standard Turn Around Time)**	(Standard Turn Around Time)	(Standard Turn Around Time)
	Herbicides 615	WW	EPA 615	annual at 3 locations	No Bid		\$200.00		Sub	\$199.00	\$200.0
Treatment Plant Specific Tests -											
North Kuehler WWTP	Biochemical Oxygen Demand (5-day)	WW	EPA Approved Method		No Bid		\$50.00		\$36.00	\$28.00	\$20.0
	Total Suspended Solids Total Phosphorus	WW	EPA Approved Method EPA Approved Method		No Bid No Bid		\$20.00 \$30.00		\$22.50 \$37.80	\$18.00 \$30.00	\$20.1 \$25.1
	Free Cyanide	WW	EPA Approved Method		No Bid	Method OAI 1677	\$43.00		Sub	\$55.00	\$60.0
	E.coli, colony-forming units or most propbably number per 100 ml	10/10/	EPA Approved Method	ls One/week	No Bid		\$100.00		\$31.50	\$24.00	\$45.1
	number per room	****	El A Approved Metriod	IS ONC/WEEK	NO DIO		\$100.00		φ01.00	φ24.00	у-го. ,
Treatment Plant Specific Tests - South Kuehler WWTP	Biochemical Oxygen Demand (5-day)	ww	EPA Approved Method	ls Two/week	No Bid		\$50.00		\$36.00	\$28.00	\$20.
Sodili Rdenier WWTF	Total Suspended Solids	WW	EPA Approved Method	ls Two/week	No Bid		\$20.00		\$22.50	\$18.00	\$20.
	Total Phosphorus E.coli, colony-forming units or most propbably	WW	EPA Approved Method	ls Two/week	No Bid		\$30.00		\$37.80	\$30.00	\$20.0
	number per 100 ml	ww	EPA Approved Method	ls One/week	No Bid		\$100.00		\$31.50	\$24.00	\$45.
T + + + 1 1 1 1 1 1 1 1 1											
Treatment Plant Specific Tests - Sam C. McKenzie, Jr. Water	Carbonaceous Biochemical Oxygen Demand (5-										
Reclamation Facility WWTF	day)	WW	EPA Approved Method		No Bid		\$50.00		\$37.80	\$30.00	\$20.
	Total Suspended Solids Ammonia Nitrogen	WW	EPA Approved Method EPA Approved Method		No Bid No Bid		\$20.00 \$27.00		\$22.50 \$32.40	\$18.00 \$18.00	\$20.4 \$20.4
	Total Phosphorus	WW	EPA Approved Method		No Bid		\$30.00		\$37.80	\$30.00	\$20.0
	E.coli, colony-forming units or most propbably number per 100 ml	ww	EPA Approved Method	ls One/week	No Bid		\$100.00		\$31.50	\$24.00	\$45.0
										•	
Treatment Plant Specific Tests - Gruene Road Water Reclamation	Carbonaceous Biochemical Oxygen Demand (5-										
Facility WWTF	day)	ww	EPA Approved Method		No Bid		\$50.00		\$37.80	\$30.00	\$20.0
		WW	EPA Approved Method EPA Approved Method		No Bid No Bid		\$20.00 \$27.00		\$22.50 \$32.40	\$18.00 \$18.00	\$20.1 \$20.1
	Total Phosphorus	WW	EPA Approved Method		No Bid		\$30.00		\$37.80	\$30.00	\$20.0
	E.coli, colony-forming units or most propbably number per 100 ml	ww	EPA Approved Method	ls One/week	No Bid		\$100.00		\$31.50	\$24.00	\$45.4
	number per 100 mi	***	LFA Approved Method	IS OTIE/WEEK	NO DIO		\$100.00		φ51.50	\$24.00	, C+O.1
	Location of Laboratory Center for Testing and Sa				Carrollton, TX 75006	Wet Testing: Pace Frontenac 808 West McKay Frontenac, KS 6676 Bromate and Chlori Pace Ormond Beac 8 Tower Cir E Ormond Beach, FL E. coli Testing: Aqua Tech Laborat 3512 Montopolis Dr. Austin, TX 78744 Courier Service and	te Testing: h 32174 ories Suite A	Seguin, TX 78155		Universal City, TX 78148	Conroe, Texas 77385
	0 (11) (5)				7 (0) 5 1 1	Austin Service Cent	er	0.0: 1.111.71		F00/	
	Cost Multiplier for Rush Turn-Around-Time (Ex. S				Zero (0) Rush charges	^<		2x Standard Unit I		3076	<u> </u>
	Cost Multiplier for Emergency Turn-Around-Time	(Ex. Std Unit P	rice x Multiplier = Emerge	ency Price):	Zero (0) Emergency T-A-T	x5		4x Standard Unit F	Price	100%	7x
									lect a 10% discount on our board-		
	Notes:			NBU will use FedEx. We get 73% discount off FedEx pricing. If that helps NBU, we can use our account and charge return freight	ad To cover laboratory and administrative costs, a Minimum Invoice Fee of \$150 will be applied to all it inal invoices. To ensure that all customer sample material is disposed of safely, a Sample Disposal A fee of \$6 / sample will be applied. An Environmental Impact Fee of \$25 / invoice will be applied to all projects in which this fee covers a variety of pollution containment initiatives associated with the management and proper disposal of solvents used exclusively in a laboratory environment.		approved test fees Items designated as "Sub" are parameters we do not test in-house. However we do have the means to subcontract those parameters to one of several qualified laboratories with whom we have a relationship. Subcontracting fees are subject to change based on outsourced laboratory prices. GBRA commits to the continuation of a 10% discount on our board-approved prices upon annual renewal of this contract The GBRA Laboratory courier service will be offered at \$20, normally \$40, if samples are picked up at a single location on Tuesday and/or Thursday during the initial term of the contract. Courier fees may be subject to reconsideration during subsequent renewals of this contract. Normal laboratory operating hours are Monday-Friday 8 am to 5 pm. Weekend fees for Total coliform samples will occur at 2x (normally 3x) the normal test price per sample. Holiday fees for samples will occur at 3x (normally 4x) the normal test price per sample.				



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Brent Lundmark Reviewed by: Michael Short, P.E.

Water Treatment & Director of Water Services and

Compliance Manager Compliance

Submitted by: Michael Short, P.E. **Approved by:** Ryan Kelso

Director of Water Services

Interim Chief Executive Officer

and Compliance

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Professional Services Agreement with Guadalupe-Blanco River Authority for Biomonitoring Testing Services for New Braunfels Utilities' Water and Wastewater Facilities in Connection with

Regulatory and Compliance Testing Requirements

BACKGROUND

On August 21, 2023, New Braunfels Utilities ("NBU") issued a request for bids ("RFB") to award to one or more respondents for laboratory and biomonitoring testing services for water and wastewater regulatory and compliance requirements (the "Services").

On September 7, 2023, NBU received five (5) bids during the public solicitation process. A copy of the bid tabulation is included as an Exhibit below. NBU staff evaluated the responses and determined three of the five bidders to be the most advantageous to NBU considering the relative importance of price. NBU staff recommends the selection of Guadalupe-Blanco River Authority ("GBRA"), Wallgren Environmental Services, Inc., and Bio-Aquatic Testing, Inc. for the Services. NBU presented the Professional Services Agreement with Wallgren Environmental Services, Inc. as a separate agenda item. The Agreement with Bio-Aquatic Testing does not meet the threshold for Board level approval.

NBU staff requests the Board of Trustees to approve the professional services agreement with GBRA.

This item is presented to the Board because the total amount of the contract exceeds \$250,000.

FINANCIAL IMPACT

The total contract amount for the Agreement with GBRA is \$300,000 with a not to exceed amount of \$60,000 for the initial contract term and \$60,000 for each of the additional one-year terms. The Agreement is budgeted with the Water Treatment & Compliance Operations and Maintenance Budget ("O&M

Budget") for fiscal year 2024 and will be budgeted in the O&M Budgets of fiscal year 2025 through fiscal year 2028.

LINK TO STRATEGIC PLAN

Financial Excellence

Stewardship

EXHIBITS

- 1. Contract with GBRA
- 2. Summary of Recommendation
- 3. Bid Tabulation

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility ("NBU"), and **GUADALUPE-BLANCO RIVER AUTHORITY**, a Texas conservation and reclamation district (the "Professional"). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. <u>Term of Agreement</u>. This Agreement will be effective on the latest date subscribed below (the "Effective Date") and will remain in full force and effect for a period of one (1) year from January 1, 2024, to December 31, 2024 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for four (4) successive one-year terms (each, a "Renewal Term"), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond December 31, 2028

Section 2. <u>Scope of Services</u>.

- (A) The Professional shall perform the services described in Exhibit A (the "Services") within the timeframe specified therein. The scope of work described in the Services constitutes the "Project."
- (B) The quality of Services provided hereunder shall be of the level of professional quality performed by professionals regularly rendering this type of service.
- (C) The Professional shall perform the Services in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Professional may rely upon the accuracy of reports and surveys provided to it by NBU except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

- (A) <u>Amount</u>. The Professional shall be paid per test at the rate set forth in Exhibit B as described herein.
- (B) <u>Billing Period</u>. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

(C) <u>Reimbursable Expenses</u>. Any and all reimbursable expenses related to the Project shall be described in the Services defined in Exhibit A and accounted for in the total compensation amount in Exhibit B. If these items are not specifically accounted for in both Exhibit A and Exhibit B, NBU shall not be required to pay such amounts unless otherwise agreed to in writing by both parties or unless agreed to pursuant to Section 4 of this Agreement.

Section 4. Changes to the Project Work; Additional Work.

- (A) <u>Changes to Work.</u> The Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If NBU finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by NBU and such services shall be considered as additional work and paid for as specified under the following paragraph.
- (B) Additional Work. NBU retains the right to make changes to the Services at any time by a written contract amendment. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by contract amendment before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Services described in Exhibit A and therefore constitutes additional work, the Professional shall promptly notify NBU of that opinion in writing. If NBU agrees that such work does constitute additional work, then NBU and the Professional shall execute a contract amendment for the additional work and NBU shall compensate the Professional for the additional work on the same basis of the rates for the Services contained in Exhibit B. If the parties cannot agree on whether the work constitutes additional work, the Professional shall not be required to undertake such tasks. If the changes deduct from the extent of the scope of work for the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by the Professional not previously approved as additional work shall be at risk of the Professional.
- Section 5. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by NBU shall be delivered to and become the property of NBU. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to NBU without restriction or limitation on the further use of such materials; however, such materials are not intended or represented to be suitable for reuse by NBU or others. Any reuse of the materials related to the Services without prior verification or adaptation by the Professional for the specific purpose intended will be at NBU's sole risk and without liability to the Professional. Where applicable, the Professional shall retain all pre-existing proprietary rights in the materials provided to NBU but shall grant to NBU a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at the Professional's expense, have copies made of the documents or any other data furnished to NBU under or pursuant to this Agreement.

Section 6. <u>Personnel</u>. The Professional shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement.

Section 7. <u>Licenses; Materials</u>. The Professional shall maintain in current status all federal, state, and local licenses and permits required for the Professional to perform the Services and operate its business. NBU has no obligation to provide the Professional, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Professional.

Section 8. <u>Performance Warranty</u>. The Professional warrants that the Services provided under this Agreement shall conform to the professional standards performed by professionals regularly rendering this type of service.

Section 9. Insurance.

(A) General.

- i. <u>Insurer Qualifications</u>. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain insurance at its own expense. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right, subject to redaction of confidential information as set out below, to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. <u>Additional Insured</u>. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. <u>Coverage Term</u>. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.

- v. <u>Primary Insurance</u>. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. <u>Waiver</u>. All policies including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- vii. <u>Policy Deductibles and/or Self-Insured Retentions</u>. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.
- viii. <u>Use of Subcontractors</u>. The Professional may use subcontractors to perform the Services in accordance with applicable accreditation standards.
- ix. Evidence of Insurance. Prior to the Effective Date of this Agreement, the Professional shall provide a letter of coverage reasonably satisfactory to NBU, which confirms that all required insurance policies are in full force and effect. Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, letters of coverage, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.
- (B) <u>Required Insurance Coverage</u>. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.
 - i. <u>Commercial General Liability</u>. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$500,000 for each occurrence and a \$500,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be

specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- ii. <u>Auto Liability</u>. The Professional shall maintain Automobile Liability insurance with a limit of \$100,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- iii. Workers' Compensation and Employer's Liability Insurance. The Professional shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- (C) <u>Cancellation and Expiration Notice</u>. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to NBU.

Section 10. Termination.

- (A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services satisfactorily performed to the termination date. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.
- (B) <u>For Cause</u>. If either party violates any provision or fails to perform any obligation of this Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's

nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the nondefaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Professional for the work satisfactorily completed by Professional prior to termination.

- (C) <u>Non-Collusion</u>. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any funds from anyone other than from NBU pursuant to this Agreement for any of the Services performed by the Professional under or related to this Agreement. If any funds are offered to the Professional for Services under this Agreement by anyone other than NBU, the Professional shall immediately report that fact to NBU.
- (D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 11. Miscellaneous.

- (A) <u>Independent Contractor</u>. The Professional acknowledges that the Professional is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Professional shall not represent, either expressly or through implication, that the Professional is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Professional.
- (B) <u>Governing Law; Venue</u>. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The

provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.

- (C) <u>Compliance with Laws</u>. The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish satisfactory proof of compliance to NBU.
- (D) <u>Amendments</u>. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.
- (E) <u>Provisions Required by Law</u>. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- (F) <u>Severability</u>. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- (G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.
- (H) <u>No Assignment</u>. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.
- (I) Subcontractors. The Professional may use subcontractors to perform the Services.
- (J) <u>Waiver</u>. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed

as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- (K) <u>Attorneys' Fees</u>. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.
- (L) <u>Liens</u>. All materials or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.
- (M) <u>Notices</u>. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities Attn: Director of Water Services 263 Main Plaza New Braunfels, TX 78130

With copy to:

Purchasing Manager New Braunfels Utilities 355 FM 306 New Braunfels, TX 78130

If to the Professional:

Guadalupe Blanco River Authority 933 E. Court St. Seguin, Texas 78155

or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in the manner set forth in this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a

party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- (N) <u>Confidentiality of Records</u>. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required by law or to perform the Professional's duties under this Agreement. The Professional shall comply with the Texas Public Information Act requirements regarding providing written notice to NBU in response to a third-party request for any records pertaining to the Services provided to NBU under this Agreement.
- (O) <u>Right to Audit</u>. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- (P) <u>Paragraph Headings; Construction</u>. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- (Q) <u>Binding Effect</u>. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- (R) <u>Gender</u>. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- (S) <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- (T) <u>Exhibits</u>. Except as specified in Subsection (V) of this Section, all exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- (U) <u>Conflicting Terms</u>. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern. The Exhibits are intended

to detail the technical scope of services, fee schedule, and the term of the contract only and shall not dictate Agreement terms.

- (V) <u>Relationship of Parties</u>. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
- (W) <u>No Third-Party Beneficiaries</u>. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (X) <u>Non-Exclusive Contract</u>. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.
- Section 12. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.
- Section 13. <u>Dispute Resolution</u>. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. <u>First</u>, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. <u>Second</u>, if the response does not

reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. Third, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 14. <u>Prohibition on Contracts with Companies Boycotting Israel</u>. The Professional hereby declares that it is exempt from Chapter 2271 of the Texas Government Code, as amended, relating to the prohibition on contracts with companies boycotting Israel.

The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 15. <u>Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited.</u> The Professional hereby declares that it is exempt from Section 2252.152, Texas Government Code, as amended, prohibiting a party from conducting business with a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Professional and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

Section 16. <u>Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia.</u> The Professional hereby declares that it is exempt from Chapter 2275 of the Texas Government Code, as amended, which prohibits companies that are owned or controlled by China, Iran, North Korea, Russia or any other country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended ("designated country") from being given access to critical infrastructure.

The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

Section 17. <u>Prohibition on Contracts with Companies Boycotting Energy Companies</u>. The Professional hereby declares that it is exempt from Chapter 2276 of the Texas Government Code, as amended, relating to the prohibition on contracts with companies boycotting certain energy companies.

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott energy companies" has the meaning used in Section 809.001 of the Texas Government Code, as amended.

Section 18. <u>Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries</u>. The Professional hereby declares that it is exempt from Chapter 2274 of the Texas Government Code, as amended, relating to the prohibition on contracts with companies that discriminate against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 19. <u>Texas Public Information Act</u>. The parties acknowledge and agree that they are both subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of their obligations within this Agreement, the parties agree, at no additional cost to the other, to reasonably cooperate with each other in connection with obligations arising under the PIA.

The Professional must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Professional on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Professional; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

Section 20. <u>Electronic Signatures</u>. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

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		z uay
	AUNFELS UTILITIES, unicipally owned utility	
By:		
Name:	Ryan Kelso	
	Interim CEO	
	SIONAL: UPE-BLANCO RIVER AUTHORITY, onservation and reclamation district	
By:		

Exhibit A

Services

- I. The Services. The Professional shall provide all labor, material, and equipment necessary to provide laboratory ("Lab") testing services for NBU's water and wastewater facilities in connection with regulatory testing requirements applicable to NBU.
 - A. The following terms and conditions apply to the provision of the Services.
 - 1) The Professional shall use testing methods that comply with all federal law, state law, and local statutory and regulatory requirements relating to the Services. The Professional shall provide testing in accordance with Title 40, of the United States Code of Federal Regulations ("CFR"), Part 136. Routine and repeat total coliform results shall be reported directly to the Texas Commission on Environmental Quality ("TCEQ") through the E2 Reporting System and to NBU electronically via email.
 - 2) The Professional shall be responsible for disposal of all samples, in accordance with all federal and state regulatory requirements.
 - 3) The Professional shall be responsible for furnishing the container, labor, materials, and equipment necessary to perform the testing and analysis of water and wastewater samples, in accordance with the Professional's pricing form set out in Exhibit B.
 - 4) Lab Testing Services.
 - a. General Procedures:
 - i) All composite sample collections shall be collected by NBU personnel or its designated representatives;
 - ii) NBU personnel or its designated representatives shall prepare and deliver or ship all samples using a delivery service of its choice to the Professional; and
 - iii) NBU personnel or its designated representatives shall prepare a chain of custody ("COC") report with the Professional's name and any other required information and submit the information with the sample.
 - b. The Professional's analytical results turnaround time ("TAT") for the samples is as follows:
 - i) standard TAT: analytical results must be returned to NBU within seven to ten (7-10) calendar days after receipt of sample(s);
 - ii) rush TAT: analytical results must be returned to NBU within three (3) calendar days after receipt of sample(s);
 - iii) emergency TAT: analytical results must be returned to NBU within twenty-four (24) hours after receipt of sample(s); and
 - iv) the Professional agrees to the required TAT with the exception that should the Professional need to have certain services completed by subcontractors, the aforementioned TATs shall be in accordance with EPA approved method hold times.

- c. The Professional shall procure all permits and licenses, pay all charges, costs, and fees, and give all notices necessary and incident to performance of the Services.
- d. The Professional's analysis and reporting of data shall follow the Texas Commission on Environmental Quality ("TCEQ") Regulatory Guidance Remediation Division RG-366/TRRP-13 requirements, and shall include a laboratory review checklist with every data package. Data packages shall be submitted electronically to NBU via email.

e. Document Control:

- i) The Professional shall maintain and provide to NBU the following critical documents related to the analysis of NBU's samples:
 - (1) a narrative explanation of the level of analytical data review used by the Professional and resulting data qualifiers, indicating direction of bias based on the assessment of quality-controlled samples (e.g., blanks, field and Lab spikes);
 - (2) results for each analyte and sample qualified for analytical limitations;
 - (3) sample quantification limits and detection limits for undetected analytes, with an explanation of the detection limits reported and any qualifications;
 - (4) instrument printouts and logbooks, spectra, and raw data;
 - (5) full descriptions of all deviations from analytical standard operation procedures ("SOPs"), a sampling and analysis plan, and a quality assurance project plan; and
 - (6) Lab custody records.
- f. The National Environmental Laboratory Accreditation Program ("NELAP") and the National Voluntary Laboratory Accreditation Program ("NVLAP") Accreditation.
 - i) The Professional's Lab personnel (including subcontractors) must be NVLAP accredited under the National Institute of Standards and Technology.
 - ii) The Professional's personnel must comply with accreditation requirements established in accordance with the CFR, Title 15, Part 285, NVLAP Procedures and General Requirements, and encompass the requirements of the International Organization for Standardization/the International Electrotechnical Commission # 17025.2005, International Standard for Testing and Calibration Laboratory accreditation.
 - iii) The Professional's personnel and subcontractors, if any, must maintain accreditation throughout for the entire term of the Agreement.
- g. The Professional's Laboratory must maintain NELAP accreditation and follow the NELAP Laboratory Quality Assurance and Quality Control ("QA/QC") standards which must include:
 - i) defined QA/QC protocols;
 - ii) an overall QA/QC Plan including:

- (1) standard SOPs and analytical methods;
- (2) internal QA/QC procedures and logs; and
- (3) data review procedures.
- iii) the Professional's Lab shall be required to handle samples and follow COC protocols that are in accordance with federal and state regulatory requirements for Lab quality assurance; and
- iv) the Professional shall analyze all samples using EPA standard methods, and/or TCEQ approved methods and technology.

Exhibit B

Compensation

NBU agrees to pay the Professional for the Services rendered under this Agreement in an amount not to exceed \$60,000 for each year of the Term, with a total not to exceed amount of \$300,000 for the duration of this Agreement.

The Professional shall not increase the rates set forth below during the Initial Term. If the Professional proposes an increase in any of the rates set forth below during any Renewal Term, the Professional shall send written notice to NBU of such request at least one hundred twenty (120) days prior to the expiration of the Initial Term or then current Renewal Term, as applicable. The total amount charged to NBU for the Services under this Agreement for any year of the Term will not exceed \$60,000 and the total amount charged to NBU for the Services for the duration of this Agreement will not exceed \$300,000. NBU acknowledges that if NBU requests one or more tests from the Professional that will cause the total amount charged for the Services to exceed the maximum figures set out in this paragraph, the Professional may advise NBU that it cannot perform the requested testing without breaching this Agreement.

Anticipated Frequency of Test

Test	Water ("W")/Wastewater ("WW")	Method	Anticipated Frequency of Test	Unit Price/Test (Standard Turn Around Time)
		Bacteriogical Analy	sis	
Total coliform (P/A)	W	IDEXX Colilert 18	82-100 per month	\$22.50
E. coli (P/A)	W	IDEXX Colilert 18 hr	82-100 per month	E. coli tested as part of Total coliform
Lead and Copper To	esting			•
Copper/ICP MS mg/L	W	EPA 200.7 / 6010 B	60 tests per year	SUB
Lead/ICP MS mg/L	W	EPA 200.8	60 tests per year	SUB

Water Quality (WQ)							
Bromide_IC	W	EPA 300.0	2/month 3 sample locations	SUB			
Bromate (mg/L)	omate (mg/L) W EPA 300.0		2/month 3 sample locations	SUB			
рН	W SM 4500-H+ B		2/month3 sample locations	\$13.50			
Ammonia-N (ISE)	W	SM 4500-NH3 D EPA 350.1 (1993)	2/month 3 sample locations	\$32.40			
Chloride_IC	W	EPA 300.0	2/month 3 sample locations	\$25.20			
Chlorite_IC	W	EPA 300.1	2/month 3 sample locations	\$34.20			
Conductivity, Specific	W	SM 2510B	2/month 3 sample locations	\$16.20			
Nitrate-N IC	-N IC W EPA 300.0		2/month 3 sample locations	\$25.20			
Nitrite-N_IC	W	EPA 300.0	2/month 3 sample locations	\$25.20			
Sulfate_IC	W	EPA 300.0	2/month 3 sample locations	\$25.20			
Total Dissolved Solids	W	SM 2540C	2/month 3 sample locations	\$25.20			
Total Hardness as CaCO3	W	SM 2340C	2/month 3 sample locations	\$27.00			
Fluoride, IC	W	EPA 300.0	2/month 3 sample locations	\$25.20			
Alkalinity, Bicarbonate	W	SM 2320B	2/month 3 sample locations	\$32.40			
Alkalinity, Total	W	SM 2320B	2/month 3 sample locations	\$23.40			
Arsenic/ICP MS	W	EPA 200.8	2/month 3 sample locations	SUB			
Calcium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	SUB			
Iron/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	SUB			
Magnesium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month 3 sample locations	SUB			

Potassium/ICP	W	EPA 200.7 / 6010	2/month		
(Total)	В		3 sample locations	SUB	
Sodium/ICP	W	EPA 200.7 / 6010	2/month		
(Total)		В	3 sample locations	SUB	
Corrosivity	W	Calculation	2/month		
(Langelier's Index)			3 sample locations	\$92.70	
Dissolved Organic	W	SM 5310 C	2/month		
Carbon			3 sample locations	\$49.50	
Total Organic	W	SM 5310 C	2/month		
Carbon			3 sample locations	\$40.50	
Total	W	EPA 501.3	2/month		
Trihalomethanes			3 sample locations	SUB	
Haloacetic Acids	W	EPA 552.3	2/month3 sample locations	SUB	
Zinc/ICP (Total)	W	EPA 200.7 / 6010	2/month		
2		В	3 sample locations	SUB	
Aluminum/ICP	W	EPA 200.7 / 6010	2/month		
(Total)		В	3 sample locations	SUB	
Sodium/ICP	W	EPA 200.7 / 6010	2/month		
(Total)		В	3 sample locations	SUB	
Manganese/ICP	W	EPA 200.7 / 6010	2/month		
(Total)		В	3 sample locations	SUB	
		Total Organic Carbo	<u>on</u>		
Total Organic	W	SM 5310 C	1/month		
Carbon (TOC)			2 sample locations	\$40.50	
		<u>Cyanide</u>	•		
Cyanide, Total	WW	sm4500-CN	1/week		
cyamac, rotar	, vv vv	31114300 CIV	1) Week	SUB	
*Cyanide,	WW	9010	1/week	6115	
Amenable			,	SUB	
*only run Amendab	le if Total Cyanide fail	S	L		
,	•	Sludge TCLP- Full			
Mercury	ww	7470A	annual test at 4 locations	SUB	
Metals (ICP)	WW	6010B	annual test at 4 locations	SUB	
Volatile Organic	WW	8260B	annual test at 4 locations		
Compounds (GC/MS)				SUB	

Chlorinated Acid Herbicides (GC)	WW	8151A	annual test at 4 locations	SUB
Pesticides (GC)	ww	8081B	annual test at 4 locations	SUB
Semi Volatile Organic Compounds	WW	8270C	annual test at 4 locations	SUB
(GC/MS)	 	nt Testing (Pretreatme	ent, Influent, and Effluent)	
<u>vv</u>	astewater Heatine	iit resting (Fretreating	ent, innuent, and Emdent <u>j</u>	
Phenolics	ww	EPA 420.1	1/week	
Mercury/CV AFS	ww	EPA 245.7	semi-annual at 3 locations	SUB
Arsenic/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	SUB
Barium/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	SUB
Cadmium/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	SUB
Chromium/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	SUB
Copper/ICP (Total)	WW	EPA 200.7 / 6010	semi-annual at 3 locations	SUB
Lead/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	SUB
Aluminum/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	SUB
Beryllium/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	SUB
Nickel/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	SUB
Zinc/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	SUB
Antimony/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	SUB
Thallium/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	SUB
Selenium/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	SUB
Silver/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	SUB
Hexavalent Chrome	WW	SM 3500-Cr D	annual at 3 locations	SUB
Volatiles 624	ww	EPA 624	annual at 3 locations	SUB
Nitrate-N_IC	ww	EPA 300.0	annual at 3 locations	\$25.20
Fluoride	ww	EPA 300.0	annual at 3 locations	\$25.20

anr	annua	l at 3 locations	SUB	
anr	annua	l at 3 locations	SUB	
anr	annua	annual at 3 locations		
anr	SUB			
anr	annua	annual at 3 locations		
anr	annua	annual at 3 locations		
anr	annua	l at 3 locations	SUB SUB	
- North K	North Kuel	hler WWTP		
ed Two	I Two/w	veek	\$36.00	
ed Two	d Two/w	veek	\$22.50	
ed Two	l Two/w	veek	\$37.80	
ed One	l One/w	veek	SUB	
ed One	d One/w	veek	\$31.50	
- South K	- South Kuel	hler WWTP		
ed Two	I Two/w	veek	\$36.00	
ed Two	I Two/w	veek	\$22.50	
ed Two	l Two/w	veek	\$37.80	
ed One	l One/w	veek	\$31.50	
zie, Jr. Wa	e, Jr. Water	Recl	amation Facility	

Carbonaceous	WW	EPA Approved	Two/week	\$37.80
Biochemical		Methods		757.00
Oxygen Demand				
(5-day)				
Total Suspended	WW	EPA Approved	Two/week	\$22.50
Solids		Methods		
Ammonia	WW	EPA Approved	Two/week	\$32.40
Nitrogen		Methods		
Total Phosphorus	WW	EPA Approved	Two/week	\$37.80
		Methods		
E. coli, colony-	WW	EPA Approved	One/week	¢21 F0
forming units or		Methods		\$31.50
most probably				
number per 100				
ml				
Treatmo	ent Plant Specific Test	s - Gruene Road Wa	ater Reclamation Facility WWT	<u></u> F
	•		•	_
Carbonaceous	WW	EPA Approved	Two/week	¢27.00
Biochemical		Methods	,	\$37.80
Oxygen Demand				
(5-day)				
Total Suspended	WW	EPA Approved	Two/week	\$22.50
Solids		Methods		,
Ammonia	WW	EPA Approved	Two/week	\$32.40
Nitrogen		Methods	,	'
	WW	EPA Approved	Two/week	\$37.80
Total Phosphorus				
Total Phosphorus		Methods	,	φ37.00
·		Methods	·	737.00
E. coli, colony-	WW	Methods EPA Approved	One/week	
E. coli, colony- forming units or		Methods	·	
E. coli, colony- forming units or most probably		Methods EPA Approved	·	
E. coli, colony- forming units or most probably number per 100		Methods EPA Approved	·	\$31.50
E. coli, colony- forming units or most probably number per 100		Methods EPA Approved	·	
E. coli, colony- forming units or most probably number per 100		Methods EPA Approved	·	
E. coli, colony- forming units or most probably number per 100 ml	WW	Methods EPA Approved Methods	·	
E. coli, colony- forming units or most probably number per 100 ml Location of Labora	WW tory Center for	Methods EPA Approved	·	
E. coli, colony- forming units or most probably number per 100 ml Location of Labora	WW	Methods EPA Approved Methods GBRA Laboratory	·	
E. coli, colony- forming units or most probably number per 100 ml Location of Labora	WW tory Center for	Methods EPA Approved Methods GBRA Laboratory 933 E Court St	·	
E. coli, colony- forming units or most probably number per 100 ml Location of Labora	WW tory Center for	Methods EPA Approved Methods GBRA Laboratory	·	

Cost Multiplier for Rush Turn-Around- Time (Ex. Std Unit Price x Multiplier = Rush Price):	2x standard unit price	
Cost Multiplier for Emergency Turn-	4x standard unit	
Around-Time (Ex. Std Unit Price x	price	
Multiplier = Emergency Price):		



September 15, 2023

Brent Lundmark New Braunfels Utilities P.O. Box 310289 New Braunfels, TX 78131

Re: Laboratory Testing and Biomonitoring Services - Recommendation for Award

Dear Mr. Lundmark:

Listed below is the summary of scoring for the Laboratory Testing and Biomonitoring Services request for proposal.

Bidders	Total Group Score
Wallgren Environmental Services, Inc., dba Pollution Control Services	100
GBRA Laboratory	93.75
Bio-Aquatic Testing, Inc.	85
Pace Analytical Services, LLC	66.25
North Water District Laboratory Services, Inc.	63.75

The proposals were reviewed by a selection committee, and based on that evaluation it was recommended that the contract be awarded to the highest scoring respondents. Bio-Aquatic Testing, Inc. offered the best value for specialty biomonitoring work, and both Wallgren Environmental Services, Inc., dba Pollution Control Services and GBRA Laboratory provided the best value and proximity for laboratory services. As such the recommendation of the selection committee is an award to Bio-Aquatic Testing, Inc., Wallgren Environmental Services, Inc., dba Pollution Control Services, and GBRA Laboratory.

If you have any questions or comments, please call me at (512) 646-2238. Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Mason P.E.

TBPE No. F-928

Sean Mason, P.E.

Attachment 1 - Evaluation Summary

Attachment 2 - Bid Tabulation

Evaluation Summary

,	1	1	
Bio-Aquatic	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	4	50
2. Proximity to NBU for Delivery	30	2	15
3. Firm's experience	20		20
	1	Total:	85
Pace	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	2.5	31.25
2. Proximity to NBU for Delivery	30	2	15
3. Firm's experience	20		20
		Total:	66.25
GBRA	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	3.5	43.75
2. Proximity to NBU for Delivery	30	4	30
3. Firm's experience	20		20
	1	Total:	93.75
Wallgren/Pollution Control Services	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	4	50
2. Proximity to NBU for Delivery	30	4	30
3. Firm's experience	20		20
	_	Total:	100
North Water District Lab Services	Weight	Avg Group Score	Weighted Group Score
1. Cost of Work	50	2.5	31.25
2. Proximity to NBU for Delivery	30	2	15
3. Firm's experience	20		17.5
		Total:	63.75

Owner:	New Braunfels Utilities				Bidder 2	Bidder 3	Bidder 4	Bidder 5			
KH Job No.:	068614006				Bio-Aquatic Testing, Inc.		Analytical Services, LLC	GBRA Laboratory Wallgren Environmental Services, Inc., dba Pollution Control Services		s North Water District Laboratory Services, Inc.	
Project: Date:	RFP 24-0005 Laboratory Testing and Bior September 12, 2023	monitoring Se	ervices		2501 Mayes Road, Suite 100 Carrollton, TX 75006	400 Wes	st Bethany Drive, Suite 190 Allen, TX 75013	933 E. Court St. Seguin, TX 78155	1532 Universal City Blvd Universal City. TX 78148	130 South Trade Center Parkway Conroe, Texas 77385	
Date:	September 12, 2023				Carrollton, TX 75006		Allen, 1X /5013	Segun, TX 78155	Universal City, TX 78148	Conroe, Fexas 77385	
Services	Test	Water/ Wastewater	Method	Anticipated Frequency of Test	Unit Price/Test (Standard Turn Around Time)	Method	Unit Price/Test (Standard Turn Around Time)	Unit Price/Test Method (Standard Turn Around Time)**	Unit Price/Test (Standard Turn Around Time)	Unit Price/Test (Standard Turn Around Time)	
Biomonitoring for Wastewater Treatment Facilities	24-hour Acute survival screen (control & 100% effluent) using Daphnia pulex	ww	EPA 2021	Up to 4 times per year per pemits	\$75.00		\$525.00	No Bid	No Bio	\$75.1	
	24-hour Acute survival screen (control & 100% effluent) using Pimephales promelas	ww	EPA 2000	Up to 4 times per year per pemits	\$75.00		Included in the price above	No Bid	No Bio	\$75.1	
	48-hour Acute definitive (5 concentration) LC-50	NADA/	EPA 2021	Up to 4 times per year per pemits	\$320.00		\$750.00	No Bid	No Bio	\$400.0	
	test using Daphnia pulex 48-hour Acute definitive (5 concentration) LC-50	ww	EPA 2000	Up to 4 times per year per	\$320.00			No Bid	NO BIG	\$400.	
	test using Pimephales promelas Chronic Survial and 3rd Brood reproduction	ww		Up to 4 times per year per			Included in the price above				
	using Ceriodaphnia dubia 7-day chronic survival and growwth test using	ww	EPA 1002	pemits Up to 4 times per year per	\$675.00		\$1,695.00	No Bid	No Bid	\$850.	
	Pimephales promelas	ww	EPA 1000	pemits "if a 24 hour screen (100%	\$675.00		Included in the price above	No Bid	No Bio	\$850	
	24-hour Acute survival definitive Re-test (5 concentrations) using Daphnia pulex	ww	EPA 2021	only) fails, the Re-test must be 5 concentrations	\$100.00		\$750.00	No Bid	No Bio	\$150.	
	24-hour Acute survival definitive Re-test (5			"if a 24 hour screen (100% only) fails, the Re-test must							
	concentrations) using Pimephales promelas	ww	EPA 2000	be 5 concentrations	\$100.00		Included in the price above	No Bid	No Bio	\$150	
	only run Re-test if 24 hour screen (100% only) f	ails									
Bacteriological Analysis	Total coliform (P/A)	w	IDEXX Colilert 18 hr	82-100 per month	No Bid		\$85.00	\$22.50 E. coli is tested as part of Total	\$20.00	\$10	
	E. coli (P/A)	w		82-100 per month	No Bid		\$85.00	coliform	\$0.00	\$10.	
Lead and Copper Testing	Copper/ICP MS mg/L Lead/ICP MS mg/L	w	EPA 200.7 / 6010 B EPA 200.8	60 tests per year 60 tests per year	No Bid No Bid		\$17.50 \$19.80	Sub Sub	\$18.00 \$18.00	\$20 \$20	
Water Quality (WQ)	Bromide IC	lar.	EPA 300.0	2/month3 sample locations	No Bid		\$20.00	Sub	\$18.00	\$25	
···Lici Quality (WQ)	Bromate (mg/L)	W	EPA 300.0	2/month3 sample locations	No Bid		\$63.00	Sub	\$50.00	\$38	
	pH	W	SM 4500-H+ B	2/month3 sample locations	No Bid		\$20.00	\$13.50 SM 4500 NH3 D	\$10.00	\$6	
	Ammonia-N (ISE) Chloride_IC	W	SM 4500-NH3 D EPA 300.0	2/month3 sample locations 2/month3 sample locations	No Bid No Bid	SM4500 NH3 H	\$27.00 \$20.00	EPA 350.1 (1993) \$32.40 \$25.20	\$18.00 \$18.00	\$20 \$25	
	Chlorite_IC Conductivity, Specific	w	EPA 300.1 SM 2510B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid	FPA 120 1	\$63.00, Sub to Ormond Beach, FL \$16.00	\$34.20 \$16.20	\$28.00 \$14.00	\$35 \$20	
	Nitrate-N IC Nitrate-N IC	W	EPA 300 0	2/month3 sample locations 2/month3 sample locations	No Bid		\$20.00	\$25.20	\$18.00	\$25	
	Sulfate_IC Total Dissolved Solids	W	EPA 300.0 EPA 300.0 SM 2540C	2/month3 sample locations 2/month3 sample locations 2/month3 sample locations	No Bid No Bid No Bid		\$20.00 \$20.00 \$20.00	\$25.20 \$25.20 \$25.20	\$18.00 \$18.00 \$18.00	\$25 \$25 \$25 \$20	
	Total Hardness as CaCO3	W	SM 2340C	2/month3 sample locations	No Bid		\$25.00	\$27.00	\$20.00	\$38	
	Fluoride, IC Alkalinity, Bicarbonate	W	EPA 300.0 SM 2320B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$20.00 \$20.00	\$25.20 \$32.40	\$18.00 \$18.00	\$25 \$35	
	Alkalinity, Total Arsenic/ICP MS	W	SM 2320B EPA 200.8	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$20.00 \$26.00	\$23.40	\$18.00 \$17.00	\$36	
	(Calcium/ICP (Total)	w	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00	Sub Sub Sub	\$14.00 \$14.00	\$20 \$20 \$20	
	Magnesium/ICP (Total) Potassium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00 \$19.00	Sub Sub	\$14.00 \$14.00	\$20 \$20 \$20	
	Sodium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid No Bid		\$19.00	Sub \$92.70	\$14.00	\$20 \$80	
	Corrosivity (Langelier's Index) Dissolved Organic Carbon	W	Calculation SM 5310 C	2/month3 sample locations 2/month3 sample locations	No Bid		\$25.00 \$48.00	\$92.70 \$49.50 \$40.50	\$10.00 \$38.00	\$60 \$60	
	Total Organic Carbon Total Trihalomethanes	W	SM 5310 C EPA 501.3	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$48.00 \$110.00	Sub	\$32.00 \$95.00	\$175	
	Haloacetic Acids Zinc/ICP (Total)	W	EPA 552.3 EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$125.00 \$19.00	Sub Sub	\$180.00 \$14.00	\$17E \$20	
	Aluminum/ICP (Total) Sodium/ICP (Total)	W	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00	Sub Sub	\$14.00 \$14.00	\$20 \$21	
	Manganese/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00	Sub	\$14.00	\$20	
Total Organic Carbon	Total Organic Carbon (TOC)	w	SM 5310 C	1/month2 sample locations	No Bid		\$48.00	\$40.50	\$32.00	\$60	
Cyanide	Cyanide, Total	ww	sm4500-CN	1/week	No Bid		\$38.00	Sub	\$50.00	\$60	
	*Cyanide, Amenable	ww	9010	1/week	No Bid	SM 4500-CN	\$50.00	Sub	\$65.00	\$60	
	only run Amendable if Total Cyanaide fails										
Sludge TCLP - Full	Mercury Metals (ICP)	ww	7470A 6010B	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$85.00 \$69.00	Sub Sub	\$30.00 \$120.00	\$30 \$140	
	Volatile Organic Compounds (GC/MS) Chlorinated Acid Herbicides (GC)	ww	8260B 8151A	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$140.00 \$265.00	Sub Sub Sub	\$145.00 \$100.00	\$175 \$200	
	Pesticides (GC)	ww	8081B 8270C	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$170.00 \$250.00	Sub Sub	\$125.00 \$275.00	\$200 \$150 \$175	
Wastewater Treatment Testing									-	Ţ	
(Pretreatment, Influent, and	Phenolics	MANA	EPA 420 1	1/mask	No Bird		\$30.00	2.0	\$60.00	\$75	
eue-itj	Mercury/CV AFS	ww	EPA 420.1 EPA 245.7	1/week semi-annual at 3 locations	No Bid	EPA 245.1	\$35.00	Sub Sub	\$88.00	SBI	
	Arsenic/ICP MS Barium/ICP (Total)	ww	EPA 200.8 EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$26.00 \$19.00	Sub Sub	\$17.00 \$14.00	\$20 \$20	
	Cadmium/ICP (Total) Chromium/ICP (Total)	ww	EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00	Sub Sub Sub	\$14.00 \$14.00	\$20 \$20 \$20	
	Copper/ICP (Total) Lead/ICP MS	ww	EPA 200.7 / 6010 B EPA 200.8	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$24.00	Sub Sub	\$14.00 \$14.00	\$20 \$20	
	Aluminum/ICP (Total) Beryllium/ICP (Total)	ww	EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00	Sub	\$14.00 \$14.00	\$2	
	Nickel/ICP (Total) Zinc/ICP (Total)	ww	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00	Sub Sub Sub	\$14.00 \$14.00	\$21 \$21 \$21 \$22	
	Antimony/ICP MS Thallium/ICP MS	ww	EPA 200.8 EPA 200.8	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$24.00	Sub Sub	\$17.00 \$17.00	\$20 \$20	
	Selenium/ICP MS	ww	EPA 200.8	semi-annual at 3 locations	No Bid		\$24.00	Sub	\$17.00	\$20	
	Silver/ICP MS Hexavalent Chrome	WW WW	EPA 200.8 SM 3500-Cr D	semi-annual at 3 locations annual at 3 locations	No Bid No Bid No Bid	SM3500 Cr B	\$24.00 \$40.00 \$90.00	Sub Sub Sub	\$17.00 \$28.00 \$145.00	\$20 \$60 \$175	
	Volatiles 624 Nitrate-N_IC	ww	EPA 624 EPA 300.0	annual at 3 locations annual at 3 locations	No Bid		\$20.00	\$25.20	\$21.00	\$25	
<u> </u>	Fluoride_IC Pesticides 617	ww	EPA 300.0 EPA 617	annual at 3 locations annual at 3 locations	No Bid No Bid		\$20.00 No Bid	\$25.20 Sub	\$21.00 \$199.00	\$2f	
	Hexachlorophene Semi Volatiles 625	ww	EPA 604.1 EPA 625	annual at 3 locations annual at 3 locations	No Bid No Bid		No Bid \$200.00	Sub Sub	\$145.00 \$375.00	\$6 \$178	
	Pesticides 608	WW	EPA 608	annual at 3 locations	No Bid		\$120.00	Sub	\$199.00	\$15	
	Pesticides 632 Pesticides 1657	ww	EPA 632 EPA 1657	annual at 3 locations annual at 3 locations	No Bid No Bid		No Bid No Bid	Sub Sub	\$275.00 \$325.00	\$20	
	Herbicides 615	ww	EPA 615	annual at 3 locations	No Bid		\$200.00	Sub	\$199.00	\$20	
Treatment Plant Specific Tests North Kuehler WWTP	- Biochemical Oxygen Demand (5-day)	ww	EPA Approved Methods	Two/week	No Bid		\$50.00	\$36.00	\$28.00	\$2	
	Total Suspended Solids Total Phosphorus	ww	EPA Approved Methods EPA Approved Methods	Two/week Two/week	No Bid No Bid		\$20.00 \$30.00	\$22.50 \$37.80	\$18.00 \$30.00	\$2 \$2	
	Free Cyanide E.coli, colony-forming units or most propbably	ww	EPA Approved Methods	One/week	No Bid	Method OAI 1677	\$43.00	Sub	\$55.00	\$6	
	number per 100 ml	ww	EPA Approved Methods	One/week	No Bid		\$100.00	\$31.50	\$24.00	\$4	
1		1	1	L	l		I.	1			

Owner:	New Braunfels Utilities		Bidder 1		Bidder 2	Bidder 3		Bidder 4	Bidder 5		
KH Job No.:	068614006	068614006		Bio-Aquatic Testing, Inc.	Pace	e Analytical Services, LLC	GBRA Laboratory		Wallgren Environmental Services, Inc., dba Pollution Control Services	North Water District Laboratory Services, Inc.	
Project:	RFP 24-0005 Laboratory Testing and Biomonitoring Services		2501 Mayes Road, Suite 100	400 We	est Bethany Drive, Suite 190		933 E. Court St.	1532 Universal City Blvd	130 South Trade Center Parkway		
Date:	September 12, 2023				Carrollton, TX 75006		Allen, TX 75013		Seguin, TX 78155	Universal City, TX 78148	Conroe, Texas 77385
					, , , , , , , , , , , , , , , , , , , ,						
		Water/		Anticipated Frequency of	Unit Price/Test		Unit Price/Test		Unit Price/Test	Unit Price/Test	Unit Price/Test
Services	Test	Wastewater	Method	Test	(Standard Turn Around Time)	Method	(Standard Turn Around Time)	Method	(Standard Turn Around Time)**	(Standard Turn Around Time)	(Standard Turn Around Time)
Treatment Plant Specific Tests - South Kuehler WWTP	Biochemical Oxygen Demand (5-day)	ww	EPA Approved Method		No Bird		\$50.00		\$36.00	\$28.00	
South Ruehler WWTP			EPA Approved Method EPA Approved Method		No Bid No Bid		\$50.00 \$20.00		\$36.00 \$22.50	\$28.00 \$18.00	\$20.00
			EPA Approved Method		No Bid		\$30.00		\$37.80	\$30.00	\$20.00 \$20.00 \$20.00
	E.coli, colony-forming units or most propbably		Li 777ppiorea inclina	J I WOI WOOK	140 0.0		\$00.00		401.00	400.00	920.00
		ww	EPA Approved Method	s One/week	No Bid		\$100.00		\$31.50	\$24.00	\$45.00
Treatment Plant Specific Tests -											
Sam C. McKenzie, Jr. Water	Carbonaceous Biochemical Oxygen Demand (5-										
Reclamation Facility WWTF			EPA Approved Method		No Bid		\$50.00		\$37.80	\$30.00	\$20.00
		ww	EPA Approved Method		No Bid		\$20.00		\$22.50	\$18.00	\$20.00
	Ammonia Nitrogen	ww	EPA Approved Method		No Bid		\$27.00		\$32.40	\$18.00	\$20.00
	Total Phosphorus	WW	EPA Approved Method	s Two/week	No Bid		\$30.00		\$37.80	\$30.00	\$20.00
	E.coli, colony-forming units or most propbably number per 100 ml	ww			No Rid		\$100.00		\$31.50	\$24.00	\$45.00
	number per 100 mi	VV VV	EPA Approved Method	s One/week	NO BIG		\$100.00		\$31.50	\$24.00	\$45.00
Treatment Plant Specific Tests -											
	Carbonaceous Biochemical Oxygen Demand (5-										
Facility WWTF			EPA Approved Method	s Two/week	No Bid		\$50.00		\$37.80	\$30.00	\$20.00
	Total Suspended Solids	ww	EPA Approved Method	s Two/week	No Bid		\$20.00		\$22.50	\$18.00	\$20.00 \$20.00
	Ammonia Nitrogen	ww	EPA Approved Method		No Bid		\$27.00		\$32.40	\$18.00	\$20.00
	Total Phosphorus	ww	EPA Approved Method	s Two/week	No Bid		\$30.00		\$37.80	\$30.00	\$20.00
	E.coli, colony-forming units or most propbably										
	number per 100 ml	ww	EPA Approved Method	s One/week	No Bid		\$100.00		\$31.50	\$24.00	\$45.00
L									1		

Location of Laboratory Center for Testing and Sample Delivery/Shipping:	2501 Mayee Road, Ste. 100 Carrollton, TX 75006	Analysical Testing: Pace Allen 400 West Berhamy Dr., Suite 190 AMER TX 75/013 West Testing: Pace Troutenace Pace Troutenace Formation Activities Formation A		1532 Universal City Blvd Universal City, TX 78148	130 South Trade Center Parkway Corroe, Texata 77385
Cost Multiplier for Rush Turn-Around-Time (Ex. Std Unit Price x Multiplier = Rush Price):	Zero (0) Rush charges	1/2	2x Standard Unit Price	50%	3x
Cost Multiplier for Emergency Turn-Around-Time (Ex. Std Unit Price x Multiplier = Emergency Price):	Zero (0) Emergency T-A-T	x5	4x Standard Unit Price	100%	7x
Notes: Notes terms needing clarification from vendor	NBU will use FedEx. We get 73% discount off FedEx pricing. If that helps NBU, we can use our account and charge return freight back. We have helped numerous	To cover theoretizy and administrative costs, a Minimum historic Feed \$150 uith the applied to all final invoices. To ensure that all customer sample instelled is disposed a staffly, a Sample Disposal materials in disposed a staffly, a Sample Disposal through the sample of the samp	Prices stated reflects a 10% discount on our board supproved test feet. Berns designated as 75.0b° are parameters we do not seen in Faculty and the second section of the section of		

Owner:	New Braunfels Utilities				Bidder 1		Bidder 2		Bidder 3	Bidder 4	Bidder 5
KH Job No.:	068614006				Bio-Aquatic Testing, Inc.	Pace	Analytical Services, LLC		GBRA Laboratory	Wallgren Environmental Services, Inc., dba Pollution Control Services	North Water District Laboratory Services, Inc.
Project:	RFP 24-0005 Laboratory Testing and Bior	monitoring Ser	rvices		2501 Mayes Road, Suite 100	400 We	est Bethany Drive, Suite 190		933 E. Court St.	1532 Universal City Blvd	130 South Trade Center Parkway
Date:	September 12, 2023	1	T	1	Carrollton, TX 75006		Allen, TX 75013		Seguin, TX 78155	Universal City, TX 78148	Conroe, Texas 77385
Services	Test	Water/ Wastewater	Method	Anticipated Frequency of Test	Unit Price/Test (Standard Turn Around Time)	Method	Unit Price/Test (Standard Turn Around Time)	Method	Unit Price/Test (Standard Turn Around Time)**	Unit Price/Test (Standard Turn Around Time)	Unit Price/Test (Standard Turn Around Time)
Biomonitoring for Wastewater	24-hour Acute survival screen (control & 100%			Up to 4 times per year per					,	·	
Treatment Facilities	effluent) using Daphnia pulex 24-hour Acute survival screen (control & 100%	WW	EPA 2021	pemits Up to 4 times per year per	\$75.00		\$525.00		No Bid	No Bid	\$75
	effluent) using Pimephales promelas	WW	EPA 2000	pemits	\$75.00		Included in the price above		No Bid	No Bid	\$75
	48-hour Acute definitive (5 concentration) LC-50 test using <i>Daphnia pulex</i>	ww	EPA 2021	Up to 4 times per year per pemits	\$320.00		\$750.00		No Bid	No Bid	\$400
	48-hour Acute definitive (5 concentration) LC-50	ww		Up to 4 times per year per pemits	\$320.00		Included in the price above				\$400
	test using <i>Pimephales promelas</i> Chronic Survial and 3rd Brood reproduction	VVVV	EPA 2000	Up to 4 times per year per	\$320.00		included in the price above		No Bid	No Bid	\$400
	using Ceriodaphnia dubia	WW	EPA 1002	pemits	\$675.00		\$1,695.00		No Bid	No Bid	\$850
	7-day chronic survival and growwth test using Pimephales promelas	ww	EPA 1000	Up to 4 times per year per pemits	\$675.00		Included in the price above		No Bid	No Bid	\$850
	24-hour Acute survival definitive Re-test (5			*if a 24 hour screen (100% only) fails, the Re-test must							
	concentrations) using Daphnia pulex	ww	EPA 2021	be 5 concentrations	\$100.00		\$750.00		No Bid	No Bid	\$15
	04 have Asida avairal deficition De 4-st /5			*if a 24 hour screen (100%							
	24-hour Acute survival definitive Re-test (5 concentrations) using <i>Pimephales promelas</i>	ww	EPA 2000	only) fails, the Re-test must be 5 concentrations	\$100.00		Included in the price above		No Bid	No Bid	\$15
	*only run Re-test if 24 hour screen (100% only) f	ails	1				·				
Bacteriological Analysis	Total coliform (P/A)	W	IDEXX Colilert 18 hr	82-100 per month	No Bid		\$85.00		\$22.50	\$20.00	<u> </u>
									 E. coli is tested as part of Total 		
	E. coli (P/A)	VV	IDEXX Colilert 18 hr	82-100 per month	No Bid		\$85.00		coliform	\$0.00	<u> </u>
Lead and Copper Testing	Copper/ICP MS mg/L	W	EPA 200.7 / 6010 B	60 tests per year	No Bid		\$17.50		Sub	\$18.00	\$2
	Lead/ICP MS mg/L	W	EPA 200.8	60 tests per year	No Bid		\$19.80		Sub	\$18.00	\$2
Water Quality (WQ)		W	EPA 300.0	2/month3 sample locations			\$20.00		Sub	\$18.00	\$2
	Bromate (mg/L) pH	W	EPA 300.0 SM 4500-H+ B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$63.00 \$20.00		Sub \$13.50	\$50.00 \$10.00	\$3 \$
								SM 4500 NH3 D			
	Ammonia-N (ISE) Chloride IC	W	SM 4500-NH3 D EPA 300.0	2/month3 sample locations 2/month3 sample locations	No Bid No Bid	SM4500 NH3 H	\$27.00 \$20.00	EPA 350.1 (1993)	\$32.40 \$25.20	\$18.00 \$18.00	\$2 \$2
	Chlorite_IC	W	EPA 300.1	2/month3 sample locations	No Bid		\$63.00, Sub to Ormond Beach, FL		\$34.20	\$28.00	\$3
	Conductivity, Specific Nitrate-N IC	W	SM 2510B EPA 300.0	2/month3 sample locations 2/month3 sample locations	No Bid No Bid	EPA 120.1	\$16.00 \$20.00		\$16.20 \$25.20	\$14.00 \$18.00	\$2 \$2
	Nitrite-N_IC	W	EPA 300.0	2/month3 sample locations	No Bid		\$20.00		\$25.20	\$18.00	\$2
	Sulfate_IC Total Dissolved Solids	W	EPA 300.0 SM 2540C	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$20.00 \$20.00		\$25.20 \$25.20	\$18.00 \$18.00	\$2 \$2
	Total Hardness as CaCO3	W	SM 2340C	2/month3 sample locations	No Bid		\$25.00		\$27.00	\$20.00	\$3
	Fluoride, IC Alkalinity, Bicarbonate	W	EPA 300.0 SM 2320B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$20.00 \$20.00		\$25.20 \$32.40	\$18.00 \$18.00	\$2 \$3
	Alkalinity, Total	W	SM 2320B	2/month3 sample locations	No Bid		\$20.00		\$23.40	\$18.00	\$3
	Arsenic/ICP MS Calcium/ICP (Total)	W	EPA 200.8 EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$26.00 \$19.00		Sub Sub	\$17.00 \$14.00	\$2 \$2
	Iron/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00		Sub	\$14.00	\$2
	Magnesium/ICP (Total) Potassium/ICP (Total)	W	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$14.00	\$2 \$2
	Sodium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00		Sub	\$14.00	\$2
	Corrosivity (Langelier's Index) Dissolved Organic Carbon	W	Calculation SM 5310 C	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$25.00 \$48.00		\$92.70 \$49.50	\$10.00 \$38.00	\$8 \$6
	Total Organic Carbon	W	SM 5310 C EPA 501.3	2/month3 sample locations	No Bid		\$48.00		\$40.50	\$32.00	\$6
	Total Trihalomethanes Haloacetic Acids	W	EPA 501.3 EPA 552.3	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$110.00 \$125.00		Sub	\$95.00 \$180.00	\$17 \$17
	Zinc/ICP (Total) Aluminum/ICP (Total)	W	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	2/month3 sample locations 2/month3 sample locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$14.00	\$2 \$2
	Sodium/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00		Sub	\$14.00	\$2
	Manganese/ICP (Total)	W	EPA 200.7 / 6010 B	2/month3 sample locations	No Bid		\$19.00		Sub	\$14.00	\$2
Total Organic Carbon	Total Organic Carbon (TOC)	W	SM 5310 C	1/month2 sample locations	No Bid		\$48.00		\$40.50	\$32.00	\$6
Cyanide	Cyanide, Total	WW	sm4500-CN	1/week	No Bid		\$38.00		Sub	\$50.00	\$6
Oyumuo						SM 4500-CN					
	*Cyanide, Amenable *only run Amendable if Total Cyanaide fails	WW	9010	1/week	No Bid		\$50.00		Sub	\$65.00	\$6
Sludge TCLP - Full		WW	7470A 6010B	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$85.00 \$69.00		Sub Sub	\$30.00 \$120.00	\$1 \$14
	Volatile Organic Compounds (GC/MS)	WW	8260B	annual test at 4 locations	No Bid		\$140.00		Sub	\$145.00	\$1
	Chlorinated Acid Herbicides (GC) Pesticides (GC)	WW	8151A 8081B	annual test at 4 locations annual test at 4 locations	No Bid No Bid		\$265.00 \$170.00		Sub Sub	\$100.00 \$125.00	\$2i \$1:
	Semi Volatile Organic Compounds (GC/MS)	ww	8270C	annual test at 4 locations	No Bid		\$250.00		Sub	\$275.00	\$17
Wastewater Treatment Testing											
(Pretreatment, Influent, and Effluent)	Phenolics	ww	EPA 420.1	1/week	AL DO		\$30.00		2.1	\$60.00	Si
_muelit)	Mercury/CV AFS	WW	EPA 245.7	semi-annual at 3 locations	No Bid No Bid	EPA 245.1	\$35.00		Sub Sub	\$88.00	\$1
	Arsenic/ICP MS Barium/ICP (Total)	WW WW	EPA 200.8 EPA 200.7 / 6010 B	semi-annual at 3 locations	No Bid No Bid	_	\$26.00 \$19.00	_	Sub Sub	\$17.00 \$14.00	\$ \$
	Cadmium/ICP (Total)	WW	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid		\$19.00		Sub	\$14.00	\$
	Chromium/ICP (Total)	WW WW	EPA 200.7 / 6010 B EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$14.00	\$
	Lead/ICP MS	WW	EPA 200.8	semi-annual at 3 locations	No Bid		\$24.00		Sub	\$14.00	\$
		WW WW	EPA 200.7 / 6010 B	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$14.00	\$ \$
	Nickel/ICP (Total)	WW	EPA 200.7 / 6010 B	semi-annual at 3 locations	No Bid		\$19.00		Sub	\$14.00	\$
	Zinc/ICP (Total)	WW WW	EPA 200.7 / 6010 B EPA 200.8	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$19.00 \$19.00		Sub Sub	\$14.00 \$17.00	\$ \$.
	Thallium/ICP MS	WW	EPA 200.8	semi-annual at 3 locations	No Bid		\$24.00		Sub	\$17.00	\$
		WW	EPA 200.8 EPA 200.8	semi-annual at 3 locations semi-annual at 3 locations	No Bid No Bid		\$24.00 \$24.00		Sub Sub	\$17.00 \$17.00	<u> </u>
	Hexavalent Chrome	WW	SM 3500-Cr D	annual at 3 locations	No Bid	SM3500 Cr B	\$40.00		Sub	\$28.00	\$
	Volatiles 624 Nitrate-N IC	WW	EPA 624 EPA 300.0	annual at 3 locations annual at 3 locations	No Bid No Bid		\$90.00 \$20.00		Sub \$25.20	\$145.00 \$21.00	\$1 \$
	Fluoride_IC	WW	EPA 300.0	annual at 3 locations	No Bid		\$20.00		\$25.20	\$21.00	<i>w</i>
		WW	EPA 617 EPA 604.1	annual at 3 locations annual at 3 locations	No Bid No Bid		No Bid No Bid		Sub Sub	\$199.00 \$145.00	
	Semi Volatiles 625	WW	EPA 625	annual at 3 locations	No Bid		\$200.00		Sub	\$375.00	\$1
		WW	EPA 608 EPA 632	annual at 3 locations annual at 3 locations	No Bid No Bid		\$120.00 No Bid		Sub Sub	\$199.00 \$275.00	\$1
		WW	EPA 1657	annual at 3 locations	No Bid		No Bid		Sub	\$325.00	\$2

Owner:	New Braunfels Utilities			Bidder 1		Bidder 2	Bidder 3	Bidder 4	Bidder 5	
KH Job No.:	068614006			Bio-Aquatic Testing, Inc.	Pace Analytical Services, LLC 400 West Bethany Drive, Suite 190		GBRA Laboratory	Wallgren Environmental Services, Inc., dba Pollution Control Services 1532 Universal City Blvd	North Water District Laboratory Services, Inc.	
Project:	RFP 24-0005 Laboratory Testing and Bior	rvices		2501 Mayes Road, Suite 100			933 E. Court St.		130 South Trade Center Parkway	
Date:	September 12, 2023				Carrollton, TX 75006		Allen, TX 75013	Seguin, TX 78155	Universal City, TX 78148	Conroe, Texas 77385
		Water/		Anticipated Frequency of	Unit Price/Test		Unit Price/Test	Unit Price/Test	Unit Price/Test	Unit Price/Test
Services	Test	Wastewater	Method	Test	(Standard Turn Around Time)	Method	(Standard Turn Around Time)	Method (Standard Turn Around Time)**	(Standard Turn Around Time)	(Standard Turn Around Time)
	Herbicides 615	WW	EPA 615	annual at 3 locations	No Bio	i	\$200.00	Sul	\$199.00	\$200.00
Treatment Plant Specific Tests -										
North Kuehler WWTP	Biochemical Oxygen Demand (5-day) Total Suspended Solids	WW	EPA Approved Methods EPA Approved Methods	Two/week	No Bio No Bio		\$50.00	\$36.0	\$28.00	\$20.00
	Total Phosphorus	WW	EPA Approved Methods		No Bio		\$20.00 \$30.00	\$22.5i		\$20.00 \$25.00
	Free Cyanide	WW	EPA Approved Methods	One/week	No Bio		\$43.00	Sul		\$60.00
	E.coli, colony-forming units or most propbably number per 100 ml	ww	EPA Approved Methods	One/week	No Bio	1	\$100.00	\$31.5	\$24.00	\$45.00
Treatment Plant Specific Tests - South Kuehler WWTP	Biochemical Oxygen Demand (5-day)	ww	EPA Approved Methods	Two/week	No Bio		\$50.00	\$36.0	\$28.00	\$20.00
Codai Rucilici WWII	Total Suspended Solids	WW	EPA Approved Methods	Two/week	No Bio	i	\$20.00	\$22.5	\$18.00	\$20.00
	Total Phosphorus E.coli, colony-forming units or most propbably	WW	EPA Approved Methods	Two/week	No Bio	i	\$30.00	\$37.8	\$30.00	\$20.00
	number per 100 ml	ww	EPA Approved Methods	One/week	No Bio	1	\$100.00	\$31.5	\$24.00	\$45.00
Treatment Plant Specific Tests - Sam C. McKenzie, Jr. Water	Carbonaceous Biochemical Oxygen Demand (5-									
Reclamation Facility WWTF	day)	ww	EPA Approved Methods	Two/week	No Bio	1	\$50.00	\$37.8	\$30.00	\$20.00
	Total Suspended Solids Ammonia Nitrogen	WW	EPA Approved Methods EPA Approved Methods	Two/week Two/week	No Bio No Bio		\$20.00 \$27.00	\$22.5i	\$18.00 \$18.00	\$20.00 \$20.00
	Total Phosphorus	WW	EPA Approved Methods	Two/week	No Bio		\$30.00	\$37.8i		\$20.00
	E.coli, colony-forming units or most propbably number per 100 ml	ww	EPA Approved Methods	one/week	No Bio		\$100.00	\$31.5	\$24.00	\$45.00
	number per 100 mil	****	LFA Approved Methods	One/week	INO BIO		\$100.00	φ31.3	ψ24.00	φ40.00
Treatment Plant Specific Tests -	Code and a Rical Americal Courses Bornered (F									
Facility WWTF	Carbonaceous Biochemical Oxygen Demand (5- day)	ww	EPA Approved Methods	Two/week	No Bio	1	\$50.00	\$37.8	\$30.00	\$20.00
,	Total Suspended Solids	WW	EPA Approved Methods	Two/week	No Bio		\$20.00	\$22.5	\$18.00	\$20.00
	Ammonia Nitrogen Total Phosphorus	WW	EPA Approved Methods EPA Approved Methods		No Bio No Bio		\$27.00 \$30.00	\$32.4 \$37.8		\$20.00 \$20.00
	E.coli, colony-forming units or most propbably									
	number per 100 ml	WW	EPA Approved Methods	One/week	No Bio	i e	\$100.00	\$31.5	\$24.00	\$45.00
		II.					I	l l		
	Location of Laboratory Center for Testing and Sample Delivery/Shipping:			2501 Mayes Road, Ste. 100 Carrollton, TX 75006	400 West Bethanyl Allen, TX 75013 Wet Testing: Pace Frontenac 808 West McKay Frontenac, KS 667f Bromate and Chlor Pace Ormond Beach 5 Tower Cir E Ormond Beach, FL E. coli Testing: Aqua Tech Laborat 3512 Montopolis Dr Austin, TX 78744 Courier Service and	53 te Testing: th 32174 ories , Suite A	933 E. Court St Seguin, TX 78155	1532 Universal City Blvd Universal City, TX 78148	130 South Trade Center Parkway Conroe, Texas 77385	
						Austin Service Cent				
	Cost Multiplier for Rush Turn-Around-Time (Ex. Std Unit Price x Multiplier = Rush Price):				Zero (0) Rush charges	x2		2x Standard Unit Price	50%	3x
	Cost Multiplier for Emergency Turn-Around-Time	(Ex. Std Unit P	rice x Multiplier = Emerge	ncy Price):	Zero (0) Emergency T-A-T	x5		4x Standard Unit Price	100%	7x
	Notes:				Return Freight not included, I read NBU will use FedEx We get 73% discount off FedEx pricing. If that helps NBU, we can use our account and charge return freight back. We have helped numerous clients save hundreds on freight.	% Invoice Fee of \$150 will be applied to all tinal invoices. To ensure that all customer sample material is disposed of safely, a Sample Disposal At 4 fee of \$6 / sample will be applied. An Environmental Impact Fee of \$25 / invoice will be applied to all		**Prices stated reflect a 10% discount on our board- approved test fees • Items designated as "Sub" are parameters we do not test in-house. However we do have the means to subcontract those parameters to one of several qualified laboratories with whom we have a relationship. Subcontracting fees are subject to change based on outsourced laboratory prices. GBRA commits to the continuation of a 10% discount on our board-approved prices upon annual renewal of this contract * The GBRA Laboratory courier service will be offered at \$20, normally \$40, if samples are picked up at a single location on Tuesday and/or Thursday during the initial term of the contract. Courier fees may be subject to reconsideration during subsequent renewals of this contract. * Normal laboratory operating hours are Monday-Frida 8 am to 5 pm. * Weekend fees for Total coliform samples will occur at 2x (normally 3x) the normal test price per sample. * Holiday fees for samples will occur at 3x (normally 4) the normal test price per sample. * Environmental sampling and mileage fees are	,	

Indicates items needing clarification from vendor



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Jacob Tschoepe Reviewed by: Shawn Schorn

Program Portfolio Manager Director of Business Planning

Submitted by: Shawn Schorn Approved by: Ryan Kelso

Director of Business Planning Interim Chief Executive Officer

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

First Amendment to the Professional Services Agreement with Freese and Nichols, Inc. for Owner's Representative Services for the

New Braunfels Utilities Headquarters Project

BACKGROUND

On June 24, 2021, New Braunfels Utilities ("NBU") entered into a Professional Services Agreement (the "Agreement") with Freese and Nichols, Inc. ("FNI") for Owner's Representative Services to include project management, pre-construction phase services, constructive phase services and close and warranty services ("Original Services") for the NBU Headquarters Project ("NBU HQ"), to be completed by September 30, 2023, (the "Project").

The Project was delayed briefly to allow for the completion of a staffing study, and upon completion of the study, it was determined that a larger site was required to accommodate the additional staff identified.

Upon completion of the staffing study, NBU and FNI identified a need to (i) add alternate site study services and site due diligence assessment services ("New Services"); and (ii) reduce the number of meetings related to supplemental services, and exclude the requirements for coordination with the Trinity Water Treatment Plant and Wellfield Expansion Project.

As a result, NBU staff requests that the Board of Trustees approve the First Amendment to the Agreement (the "First Amendment") to (i) add the New Services, (ii) delete certain services that are no longer needed, (iii) authorize additional compensation for the New Services, and (iv) extend the completion time for the New Services to December 31, 2028; and (v) engage the Supplemental Services, authorize the related compensation, and define a time of completion for the Supplemental Services of December 31, 2027. This item is being presented to the Board because the total amount for the professional services agreement including this amendment, exceeds \$500,000.

FINANCIAL IMPACT

The total financial impact of the First Amendment is \$ 1,398,003. The total contract amount for the Agreement and the First Amendment with FNI for the Project is \$4,539,571. The Project is budgeted within the fiscal year 2023 through fiscal year 2027 NBU Board approved Capital Improvement Projects Budget as NBU Headquaters.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Safety and Security

EXHIBITS

1. First Amendment to the Professional Services Agreement with FNI

FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (HEADQUARTERS PROJECT)

This **FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the "First Amendment") is made and entered into by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility ("NBU"), and **FREESE AND NICHOLS**, **INC.**, a Texas corporation (the "Professional") (collectively, "the Parties").

RECITALS

WHEREAS, NBU and the Professional entered into a Professional Services Agreement dated July 12, 2021 (the "Agreement"), to provide project management, pre-construction phase, construction phase, and close and warranty services (the "Services") as the owner's representative for the NBU Headquarters Project (the "Project") to be completed by September 30, 2023;

WHEREAS, the Agreement included additional relocation planning services and relocation operation services in the amount of \$45,836 as Supplemental Services (the "Supplemental Services") whereby NBU and the Professional would agree in writing to engage such Supplemental Services at a later date, if needed;

WHEREAS, the Project was delayed briefly to allow for the completion of a staffing study, and upon completion of the study, it was determined that a larger site was required to accommodate the additional staff identified;

WHEREAS, in connection with the staffing study, NBU and the Professional identified a need to (i) add alternate site study services and site due diligence assessment services (the "New Services") and (ii) reduce the number of meetings related to supplemental services, exclude the requirement for coordination with the Trinity Water Treatment Plant and Wellfield Expansion Project, and remove the reference to Attachment 1 as the services are no longer necessary and Attachment 1 was inadvertently referenced in the Agreement;

WHEREAS, the New Services requires an increase in the compensation to the Professional and an extension of the completion date;

WHEREAS, NBU and the Professional also desire to engage the Supplemental Services defined in the Agreement, authorize the related compensation, and define a time of completion for the Supplemental Services;

WHEREAS, the Agreement requires NBU and the Professional to agree in writing to amend or modify the Agreement and to engage the Supplemental Services; and

WHEREAS, NBU and the Professional desire to (i) amend the Agreement to add New Services; (ii) delete certain services that are no longer needed; (iii) authorize additional compensation for the New Services; (iv) extend the completion time for the Services to December 31, 2028; and (v) engage the Supplemental Services, authorize the related compensation, and define a time of completion for the Supplemental Services of December 31, 2027.

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NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, as follows:

AGREEMENT

- Section 1. <u>Amendment to Exhibit A</u>. Exhibit A to the Agreement is hereby amended, in part, as described by Exhibit A to this First Amendment as of the effective date of this First Amendment.
- Section 2. <u>Amendment to Exhibit B</u>. Exhibit B to the Agreement is hereby deleted in its entirety and replaced by Exhibit B to this First Amendment as of the effective date of this First Amendment.
- Section 3. <u>Engage Supplemental Services</u>; <u>Authorize Compensation</u>. NBU and the Professional hereby agree to engage the Supplemental Services described in Exhibit A of the Agreement and authorize payment of the Supplemental Services as described in Exhibit B of the Agreement and Exhibit B to this First Amendment.
- Section 4. <u>Remaining Terms</u>. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect.
- Section 5. <u>Entire Agreement</u>. This First Amendment, together with the Agreement, sets forth the entire understanding of NBU and the Professional and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.
- Section 6. <u>Binding Effect</u>. This First Amendment will extend to and be binding upon NBU and the Professional and their respective successors and permitted assigns.
- Section 7. <u>Severability</u>. If any term or provision of this First Amendment is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this First Amendment shall not be affected thereby, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- Section 8. <u>Governing Law</u>. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

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oval and authority, have executed

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide project management, pre-construction phase, construction phase, and relocation support services (collectively the "Services") as the Owner's Representative ("OR") for the NBU Headquarters project.

SERVICES

NO CHANGE

Task 1. Project Management

The Professional shall provide the project management services described herein.

- 1.1. COMMUNICATION.
 - 1.1.1. NO CHANGE
 - 1.1.2. NO CHANGE
 - 1.1.3. NO CHANGE
 - 1.1.4. NO CHANGE
- 1.2. NO CHANGE
- 1.3. NO CHANGE
- 1.4. NO CHANGE
- 1.5. NO CHANGE
- 1.6. NO CHANGE

Task 2. Pre-Construction Phase Services

- 2.1. REVIEW OF DESIGN DELIVERABLES
 - 2.1.1 NO CHANGE
 - 2.1.2 NO CHANGE
- 2.2. DOCUMENT MANAGEMENT
 - 2.2.1. NO CHANGE

2.2.2. NO CHANGE

- 2.3. CMAR PROPOSAL EVALUATION
 - 2.3.1. NO CHANGE
 - 2.3.2. NO CHANGE
 - 2.3.3. NO CHANGE
 - 2.3.4. NO CHANGE
- 2.4. CMAR BID PACKAGE REVIEW
 - 2.4.1. NO CHANGE
 - 2.4.2. NO CHANGE
 - 2.4.3. NO CHANGE
- 2.5. CMAR GUARANTEED MAXIMUM PRICE (GMP) DEVELOPMENT. NO CHANGE
- 2.6. STAKEHOLDER/AGENCY COORDINATION. NO CHANGE
- 2.7. DELIVERABLES. NO CHANGE

Task 2A. Alternate Site Study

- 2.8. SITE STUDY SERVICES
 - 2.8.1 The Professional shall coordinate and facilitate the identification and evaluation of potential alternative sites for the Headquarters Project.
 - 2.8.2 The Professional's evaluation shall include the development of selection criteria considered necessary for a site to possess along with weighting of that criteria, and it shall include a comparison table with criteria scoring and site ranking when compared to all other evaluated sites.
 - 2.8.3 The Professional shall conduct meetings with NBU, AOR, and the CMAR to facilitate the site evaluation process.

Task 2B. Site Due Diligence Assessment

2.9. SITE DUE DILIGENCE ASSESSMENT SERVICES

- 2.9.1 The Professional shall coordinate and facilitate due diligence analysis activities of the site selected through the site evaluation process. Activities conducted by the Professional, the AOR, and the CMAR include the following:
 - a. general site observations;
 - b. category 1A TSPS Title Survey;
 - b. environmental research including delineation of Waters of the U.S., habitat assessment for federally listed species, heritage class trees, Phase I Environmental Site Assessment, and Cultural Resources Survey;
 - d. geotechnical analysis;
 - e. development of conceptual site plan;
 - f. water, wastewater, electric service evaluation;
 - g. research of annexation, platting, and zoning options;
 - h. coordination with TxDOT relating to site access points from TxDOT roadways; and
 - i. development of concept level rough order of magnitude unit pricing of major facility components.
- 2.9.2 The Professional shall conduct meetings with NBU, AOR, CMAR, TxDOT, City of New Braunfels, and other entities as needed to facilitate the due diligence evaluation process.
- 2.9.3 The Professional shall prepare a due diligence report documenting the findings of the due diligence evaluation and provide its professional opinion regarding the feasibility of the site for the intended purpose of accommodating the Headquarters campus, dated November 30, 2023.

Task 3. Construction Phase Services

The Professional shall proceed with the construction phase services described herein.

- 3.1 CONSTRUCTION QUALITY MANAGEMENT
 - 3.1.1 NO CHANGE
 - 3.1.2 NO CHANGE
 - 3.1.3 NO CHANGE
 - 3.1.4 NO CHANGE
 - 3.1.5 NO CHANGE

- 3.1.6 The Professional shall provide on-site construction management and observation to provide sufficient representation for each stage of construction. For budgeting purposes, the following estimate of off-site and on-site personnel has been included based on a projected construction and post-construction period of 122 weeks (28 months):
 - a. Construction Manager 40 hours per week for 122 weeks;
 - b. Site Civil and Utility Inspector —40 hours per week for 52 weeks;
 - c. Building Foundation, Envelope and Finish-Out Inspector 40 hours per week for 88 weeks; and
 - d. Specialty Inspections (Mechanical, Electrical, Plumbing, Building Automation Systems, etc.) 800 hours as needed.
- 3.2 DOCUMENT MANAGEMENT
 - 3.2.1 NO CHANGE
 - 3.2.2. NO CHANGE
 - 3.2.3 NO CHANGE
 - 3.2.4 NO CHANGE
- 3.3 SCHEDULE MANAGEMENT. NO CHANGE
- 3.4 COST MANAGEMENT
 - 3.4.1 NO CHANGE
 - 3.4.2 NO CHANGE
 - 3.4.3 NO CHANGE
 - 3.4.4 NO CHANGE
- 3.5 ISSUES MANAGEMENT
 - 3.5.1 NO CHANGE
 - 3.5.2 NO CHANGE
 - 3.5.3 DELETE
- 3.6 CHANGE MANAGEMENT
 - 3.6.1 NO CHANGE

	3.6.2	NO CHANGE
	3.6.3	NO CHANGE
	3.6.4	NO CHANGE
3.7	PROJEC	T COMPLETION
	3.7.1	NO CHANGE
	3.7.2	NO CHANGE
	3.7.3	NO CHANGE
	3.7.4	NO CHANGE
	3.7.5	NO CHANGE
3.8	MATER	IAL TRANSFER
	3.8.1	NO CHANGE
	3.8.2	NO CHANGE
3.9	RECOR	D DRAWINGS
	3.9.1	NO CHANGE
3.10	LIMITA	TIONS OF AUTHORITY OF OWNER'S REPRESENTATIVE
	3.10.1	NO CHANGE
	3.10.2	NO CHANGE
	3.10.3	NO CHANGE
	3.10.4	NO CHANGE
	3.10.5	NO CHANGE
	3.10.6	NO CHANGE

3.10.7 NO CHANGE

3.11 DELIVERABLES. NO CHANGE

Task 4. Commissioning and Close-Out

- 4.1 NO CHANGE
- 4.2 NO CHANGE
- 4.3 NO CHANGE
- 4.4 NO CHANGE

Task 5. Warranty Services

- 5.1 NO CHANGE
- 5.2 NO CHANGE
- 5.3 NO CHANGE

SUPPLEMENTAL SERVICES

NO CHANGE

TIME OF COMPLETION

Unless otherwise specified herein, the Professional shall complete the Services by December 31, 2028, and the Supplemental Services by December 31, 2027.

Exhibit B

Compensation

NBU agrees to pay the Professional for the Services rendered under this Agreement in accordance with the tables below and made part of this Agreement.

Services

NBU shall pay the Professional to perform the Services described in Exhibit A in an amount not to exceed \$4,539,571 based on the schedule of charges and estimated amounts listed in the table below.

Task	Original Agreement	First Amendment	Balance
T1: Project Management	\$178,420	\$19,283	\$197,703
T2: Pre-Construction Phase Services	\$391,835	\$343,133	\$734,968
T2A: Alternate Site Study	\$0	108,650	108,650
T2B: Site Due Diligence Assessment	\$0	102,750	102,750
T3: Construction Phase Services	\$2,399,229	\$830,154	3,229,383
T4: Commissioning Services	\$94,668	\$0	\$94,668
T5: Warranty Phase Services	\$31,580	\$0	\$31,580
Supplemental Services	\$45,836	(\$5,967)	\$39,869
Total	\$3,141,568	\$1,398,003	\$4,539,571

Supplemental Services

NBU shall pay the Professional for the Supplemental Services in an amount not to exceed \$45,836 as set forth in the schedule above; provided, however, that NBU must provide written approval in the form of a supplemental services agreement or contract amendment, as appropriate, prior to the Professional performing the Supplemental Services.



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Pamela Tarbox Reviewed by: Rachel Leier

Records Manager Director of Legal Services

Submitted by: Connie Lock Approved by: Ryan Kelso

General Counsel Interim Chief Executive Officer

RECOMMENDED ACTION: Authorize Resolution #2023-180 Approving Revisions to the

Records and Information Management Policy, Appointing the New Braunfels Utilities Records Manager as Records Management Officer Pursuant to the Local Government Records Act, and

Approving Other Matters in Connection Therewith

BACKGROUND

On May 27, 1998, the NBU ("NBU") Board of Trustees adopted New Braunfels Utilities Records Management Program by Resolution to comply with the Local Government Records Act. On July 31, 2008, the NBU Board of Trustees adopted the Records Management Program Policy and Procedures and named the NBU Chief Financial Officer as the records management officer (the "Original Policy"). The Board subsequently adopted revisions to the Original Policy on December 9, 2021, and renamed the Original Policy as the Records and Information Management Policy (the "Revised Policy" and, together with the Original Policy, the "Policy"). The Policy primarily addresses the management of physical records, defines the records management officer (the "RMO"), and defines the committees and roles of those involved in the records and information management program.

NBU recently restructured the department responsible for records and information management ("RIM") and added a manager to oversee the department. NBU staff recommends the Policy be amended to address these changes.

The recommended revisions to the Policy are as follows:

- revise the title of the Records and Information Management Administrator to Records Administrator:
- revise the title of the Records and Information Management Analyst to Records Analyst;
- revise the position of the Records and Management Intern to Records Assistant and define the position;
- define the Records and Information Management Team to include General Counsel, Director of Legal Services, Records Manager, Records Administrator, Records Analyst, Records Assistant, and System Administrator – RIM;

- revise the RMO from the Chief Financial Officer to the Records Manager of NBU; and
- revise the title of Technology Systems Application Analyst to the System Administrator-RIM and define the position.

NBU staff presented an overview of the Policy revisions to the RIM Committee at its September 19, 2023 meeting. NBU staff expects to submit a more comprehensive revision of the Policy to the Board of Trustees for consideration in the next year.

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Stewardship

People and Culture

EXHIBITS

- 1. Proposed Records and Information Management (RIM) Policy, with highlighted revisions
- 2. Proposed Records and Information Management (RIM) Policy, final draft
- 3. Resolution



Policy Type		Approval Authorit	ty	Adopted	Effective
Board Approved		NBU Board of Trustees		12/14/2023	
Responsible Executive		Responsible Department		Contact	
Connie Lock		Legal		Pamela Tarbox	
Reviewed/Approved by Chief Financial Officer		Reviewed/Approved by General Counsel & Chief Ethics Officer		Reviewed/Approved by Interim CEO	
Name	Date Signed	Name Date Signed I		Name	Date Signed
Dawn Schriewer		Connie Lock		Ryan Kelso	
Signature		Signature		Signature	

REVISION HISTORY

May 27, 1998: Adopted Records Management Program Resolution;

July 31, 2008: Adopted Records Management Program Policy and Procedures; and

December 9, 2021: Revised, renamed and adopted Records and Information Management Policy.

I. General Provisions

A. Policy Statement

The Board of Trustees of New Braunfels Utilities (NBU) requires all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of NBU to adhere to the Records and Information Management (RIM) Policy. The purpose of this Policy is to define appropriate standards to provide for efficient, economical and effective controls over the creation, distribution, organization, maintenance, use and disposition of all NBU company records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Texas Local Government Records Act, other applicable law and regulations, and accepted records management practice.

B. Authority

The Texas Local Government Records Act, Chapters 201 through 205, Tex. Loc. Gov't Code, requires that each local government establish an active and continuing records management program administered by a Records Management Officer (RMO). A copy of the resolution establishing or amending the program must be filed with the Texas State Library and Archives Commission (TSLAC). As a local government, NBU prescribes this Policy to facilitate proper administration of a RIM Program in accordance with the Texas Local Government Records Act.

Failure to comply with the RIM Program governed by this Policy may constitute a violation of federal, state and/or local laws or regulations that could result in civil and/or criminal penalties against NBU and/or its officers and employees. NBU's declaration of compliance of August 11, 2008, can be found in Appendix B of this Policy. NBU will continue to submit such certification as may be required by law or regulation.

C. Definitions

NBU records consist of all information, regardless of media, format, operating system, application or storage location and regardless of whether public access to it is open or



restricted under the laws of the state, that is created or received by NBU or any of its officers or employees pursuant to law or in the transaction of public business. All such information is hereby declared to be the local government records of NBU and shall be created, maintained, preserved and disposed of in accordance with this RIM Policy and all procedures authorized hereunder.

Separation from employment with NBU does not relieve a former officer or employee of his or her legal obligation as a temporary custodian under the Texas Public Information Act to preserve any NBU record in his or her possession which has not been transferred to an approved Electronic Document and Records Management System (EDRMS), in accordance with this RIM Policy, the Public Information Act Policy, and all procedures authorized hereunder.

NBU local government records shall be created, maintained, and disposed of in accordance with the provisions of this Policy and other applicable federal, state and local laws and regulations.

For additional definitions related to the RIM Program & Policy, see Appendix A – Definitions.

D. Records Management Requirements at NBU

In the performance of their job duties, NBU employees shall at all times follow and abide by all requirements regarding creation of, access to, and/or retention of any and all local government records, as set forth in APPENDIX C - RIM Requirements of this Policy.

II. Adoption

This Policy applies to all NBU employees and shall become effective immediately upon approval, and supersedes all previous records management policies, instructions, or directives.

III. Administrative Matters

A. Ownership

NBU records are the property of NBU. No NBU official or employee has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, alteration, removal or use of such records is prohibited and may result in disciplinary action against the employee, including possible termination of employment, in addition to possible criminal and/or civil liability, as applicable.

B. No Privacy for Personal Information

NBU employees should not expect privacy of any information that is created, transferred or stored using NBU's property and/or technology systems. NBU reserves the right to review, monitor, and audit all technology systems use at any time. For more information about privacy, refer to the NBU Employee Handbook.





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NBU employees shall not store personal information as an Official Company Record. NBU reserves the right to delete any personal information being stored on NBU systems at NBU's sole discretion, without notice.

C. Roles and Committees

The RIM Program is comprised of the following roles and committees. Definitions of each can be found in Appendix A - Definitions of this Policy:

- 1. Roles
 - a. Records Management Officer (RMO)
 - b. Records & Information Management (RIM) Team
 - c. Department Head (executive or director)
 - d. Records Custodian (department manager)
 - e. Records Liaison Officer (RLO)
- 2. *Committees*
 - a. Records & Information Management (RIM) Committee
 - b. Historical Memorabilia Committee

IV. POLICY OMISSIONS AND LIMITATIONS

A. Matters Not Addressed in Policy

Any matters or issues not addressed by this Policy relating to RIM shall be governed by federal, state, local and/or other applicable laws, regulations or policies.

B. Conflicts between Federal Law, State Law, and this Policy

This Policy does not supersede any applicable federal, state, local and/or other applicable laws. In the event of a conflict between a provision of this Policy and any applicable federal, state or local law or regulation, the latter shall control.



APPENDIX A DEFINITIONS

- 1. <u>Convenience Copy:</u> Consists of all duplicate/extra copies of records that are not considered the Official Company Record. Convenience Copies only need to be retained as long as administratively feasible but should be reviewed at a minimum of every two (2) years for potential purging in order to keep record storage systems clean and organized. These records have no present value and should be properly destroyed through shredding and/or recycling, as appropriate.
- 2. <u>Critical Record:</u> See Vital Records.
- 3. **<u>Department Head</u>**: The executive or director responsible for the records and information maintained under his or her Office of Record.
- 4. **Designated Company Record:** See Official Company Record.
- 5. <u>Destruction</u>: The act of permanently and irreversibly destroying records and information, commonly done through the act of:
 - **Electronic Destruction:** Electronic records are destroyed in the EDRMS, but the record metadata is kept as a Disposition Log to track a record's retention history. This act ensures that page and electronic file contents are entirely removed.
 - Recycling: Placing physical media into an unlocked recycle bin typically used to recycle reusable goods such as paper, glass and plastics. As of the date of the policy, NBU does not have a vendor that collects recycling material from recycle bins. Recycling should not be used for media containing Personally Identifiable Information (PII).

Shredding:

- a. Secured Shredding Placing physical media into a locked shred-bin, which is retrieved by a vendor and shredded on-site, at the time of retrieval. Shredded material is then sent to a recycling facility and made into new materials. This is the preferred method of destruction for physical records as it is the most controlled and secured method.
- b. Unsecured Shredding Placing physical media in a machine that will pulverize/cut/chop media to destroy it and render it unreadable. As of the date of the policy, NBU does not have a vendor that collects unsecured shredding material and this material is discarded in the trash.
- <u>Trash:</u> Placing physical media in a trash receptacle that is picked up and taken to a landfill. Trash that ends up in a landfill is open to potential data breaches.



Destruction can also take place from a disastrous and/or disruptive event. Destruction methods may also be used to destroy Non-Records.

- 6. **<u>Digital Record:</u>** See Electronic Record.
- 7. **<u>Digitization:</u>** See Record Conversion.
- 8. **Disaster Recovery Planning:** See Emergency Management Plan.
- 9. **Disposal:** See Destruction.
- 10. **Disposition**: The final action taken on an Official Company Record per the Records Retention Schedule, which is either Destruction or Permanent Retention.
- 11. **Disposition Log**: A detailed listing of all records marked for destruction or permanent archival transfer; reflecting the record series, record title, record description, beginning date, ending date, retention, method of destruction, and the signatures of the Division Manager and RMO. These lists have a permanent retention.
- 12. **Electronic Document and Records Management System (EDRMS)**: A software program or set of programs designed to track and store records. The software can be used to manage the creation and maintenance of records within classification schemes, apply retention and disposal schedules, and control access and use.
- 13. <u>Electronic Record</u>: Information recorded by a software application that is generated with and used by information technology devices.
- 14. <u>Emergency Management Plan</u>: A course of action developed to mitigate the damage of potential events that could endanger NBU's ability to function. Such a plan should include measures that provide for preparedness, response, mitigation, and recovery of records during and after an emergency, disaster, or other disruption. An emphasis is placed on the preservation of Vital Records with the goal of returning NBU to full operational capacity as quickly as possible with as little loss to NBU's business as possible.
- 15. **Employee**: NBU full-time employees, part-time employees, and temporary or seasonal employees.
- 16. **Essential Record:** See Vital Records.
- 17. **Expired Record:** See Convenience Copy, Non-Record and Redundant, Obsolete, Transitory (ROT).



- 18. **Hard Copy:** See Physical Record.
- 19. <u>Historical Memorabilia Committee</u>: A group of NBU employees and volunteer retirees that are convened, as needed, in order to review information stored on various media formats to identify the potential historical relevance of certain records.
- 20. <u>Hold Record</u>: An Official Company Record preserved through the process of temporarily suspending the Retention Period to prevent destruction of potentially relevant information when a legal request for the information is pending or reasonably anticipated.
- 21. **Legal Hold:** See Hold Record.
- 22. Master Record Copy: See Official Company Record.
- 23. **Non-Essential Record:** See Convenience Copy, Non-Record and Redundant, Obsolete, Transitory (ROT).
- 24. **Non-Record**: Any information that does not hold value or provide evidence of NBU's business activities. A non-record has no business value or legal value. Examples include:
 - Personal Email, Junk/Spam and other non-business related Emails,
 - Publicly available articles, magazines, professional publications, trade publications, industry publications, newspapers and general reference material that is generated outside of NBU; where the custodian of the information is not an NBU Representative,
 - Promotional and similar materials from contractors, vendors and other external entities which are publicly available,
 - Personal papers that may be kept in any employee's work area but were not created or received in the course of business and do not relate in any way to the employee's duties,
 - Information received from external websites, including Social Media and networking platforms, where the custodian of the information on the website(s) is not an NBU Representative.

For more information about records and non-records, see Section 201.003(8), Texas Local Government Code.

25. <u>Obsolete Record:</u> See Convenience Copy, Non-Record and Redundant, Obsolete, Transitory (ROT).



- 26. **Office of Record**: The office of the executive or director group at NBU responsible for maintaining the official company records, as opposed to a duplicate.
- 27. **Official Company Record**: The primary record used for business and/or legal purposes. It is the record copy used in order to obtain the most updated information on its specific content and used when pulling data for public information requests, audits, litigation, etc.
- 28. **Open Record:** See Public Information.
- 29. Paper Copy: See Physical Record.
- 30. **Permanent Record**: Official Company Record with a permanent record retention period. Records can also be classified as permanent if they are Vital Records or hold historical value or because the Record Retention Schedule (RRS) allows it. Permanent Records cannot be destroyed.
- 31. **Physical Records**: Information recorded in physical form, such as paper, that can be physically handled and which takes up physical space.
- 32. Physical Record Storage: See Records Center.
- 33. **Preservation:** See Record Retention.
- 34. <u>Public Information</u>: Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business as defined in Section 552.002 of the Public Information Act. Public Information includes Public Records and may include other types of information as well that is subject to disclosure under Chapter 552 Texas Government Code.
- 35. <u>Public Information Act</u> (formerly known as the Texas Open Records Act): The Act can be found in Chapter 552 Texas Government Code and gives the public the right to request access to public information. Act also outlines records that are excepted from disclosure.
- 36. **Public Record**: An Official Company Record that is not confidential and/or does not contain PII.
- 37. **Record Conversion**: The process of converting information into a digital (computer-readable) format. Physical Records are digitized into an Electronic Record.
- 38. **Record Lifecycle**: The life span of a record from its creation or receipt to its final disposition. Records are maintained and used throughout four lifecycle phases: creation, active, inactive, and disposition.



- 39. Record of Truth: See Official Company Record.
- 40. **Record Retention**: Refers to the storage of records that are no longer active. It is the act of keeping records for a specified amount of time or permanently based on a designated Record Retention Schedule.
- 41. **Record Retention Period**: The minimum time that must pass after the creation, recording, or receipt of a record or the fulfillment of certain actions associated with a record, before it is eligible for destruction. The Record Retention Period is defined for each record classification on the Record Retention Schedule. A Record Retention Period should be honored regardless of media or record format.
- 42. **Record Retention Schedule (RRS)**: A document issued by the TSLAC under authority of Chapter 441, Subchapter J, Texas Government Code, establishing mandatory retention periods for local government records. See the Section 441.158 of the Texas Government Code for more information.
 - 1. <u>Records Retention Schedule UT (Records of Utility Services):</u> The retention schedule assigned by the Texas State Library & Archives Commission (TSLAC) to provide retention rules for records of a government utility company.
 - 2. Records Retention Schedule GR (Records Common to All Local Governments): The retention schedule assigned by the Texas State Library & Archives Commission (TSLAC) to provide retention rules for records that are common to all local government organizations/entities.
- 43. **Records Administrator**: A member of the RIM Team responsible for performing the RIM Program functions.
- 44. **Records Analyst**: A member of the RIM Team who assists and supports the responsibility of performing the RIM Program functions.
- 45. **Records Assistant**: A member of the RIM Team who assists and supports the responsibility of performing the RIM Program functions.
- 46. Records and Information Management (RIM) Committee: The Records & Information Management (RIM) Committee meets at least once annually to discuss, review and/or approve topics related to the NBU Records & Information Management Program. This committee consists of the RIM Team, the CEO and a Board Member.
- 47. <u>Records and Information Management (RIM) Program</u>: The NBU initiative consisting of policies, procedures, and processes designed to protect and properly preserve the records of NBU, throughout their lifecycle; reduce administrative and legal costs; and improve the efficiency of recordkeeping.



- 48. <u>Records and Information Management (RIM) Team</u>: A team consisting of General Counsel, Director of Legal Services, Records Manager, Records Administrator, Records Analyst, Records Assistant, and supported by an assigned System Administrator RIM.
- 49. **Records Center**: The location devoted exclusively to Physical Records storage. The area shall provide controlled access to hard copy Official Company Records and shall be specifically designed to comply with storage requirements per state law.
- 50. **Records Custodian**: The manager of a department who is responsible for the records held by that department.
- 51. **Records Liaison Officer (RLO)**: An assigned RIM Program representative for each department.
- 52. <u>Records Management Officer (RMO)</u>: The person who holds the position of Records Manager of NBU, who oversees the entire RIM Program.
- 53. **Records Owner**: The employee responsible for any record, regardless of media, created or received by or on behalf of NBU. The Records Owner is responsible for ensuring that his or her records are stored in accordance with NBU policies and procedures and that the Record Retention Category and Retention Period of their records is identified.
- 54. **Redundant, Obsolete, Transitory (ROT)**: Information that needs to be cleared out of NBU's information systems and EDRMS that has the potential to undermine the accuracy and/or negatively impact the RIM Program.
 - **Redundant:** information that is duplicated in multiple places, whether in the same system or across multiple systems.
 - Obsolete: information that has been replaced (superseded) by other information, is incomplete or outdated.
 - <u>Transitory:</u> data that is created when doing daily business activities but which does not meet the standards of a record. This information is not valuable to NBU and should be deleted when no longer needed by the Record Owner.
- 55. **Required Minimum Storage Conditions:** Texas Local Government Bulletin F, Section 7.164 states that, as local resources permit, local governments should strive to store records under conditions that meet as many of the minimum storage condition recommendations of the Texas Local Government Code as practicable. Examples include monitoring the climate of the records center, having appropriate shelving, and getting pest control services completed on a regular basis.



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- 56. <u>Social Media</u>: The various activities integrating web technology, social interaction, and user-generated content. Social media includes blogs, wikis, social networks, Facebook, Twitter, RSS feeds (outlook), photo libraries, virtual worlds, location-based services, and video sharing sites.
- 57. **Source Document**: The record from which record data is obtained for electronic storage. The term does not include backup copies of the data in any media generated from electronic storage.
- 58. <u>Source System</u>: The system or software where information is originated and electronic records are generated. Source systems provides the most complete, accurate and timely data, nearest to the point of operational entry and can be used to feed other systems; including the EDRMS. NBU has several source systems (e.g. City Works, Northstar, Microsoft Dynamics GP, Paramount, etc.), used by several departments. A source system shall not be used for storing Official Company Records without prior authorization from the RIM Team.
- 59. Storage Location: See Records Center.
- 60. **System Administrator-RIM**: A member of the RIM Team who works within NBU's Data Strategy Department who is responsible for providing support and project management for the application and operations software as related to the RIM Program functions.
- 61. <u>Transitory Records:</u> See Convenience Copy, Non-Record and Redundant, Obsolete, Transitory (ROT).
- 62. **TSLAC**: The Texas State Library and Archives Commission is the agency created by the State of Texas that is charged with adopting rules for retention, storage, and destruction to oversee and assist state agencies and local governments in implementing records and information management programs in accordance with the state law.
- 63. <u>Vital Records</u>: Any record necessary to resume or continue business operations in an emergency or disaster, to the re-creation of the legal and financial status of NBU, or to the protection and fulfillment of obligations to NBU customers. These records are essential to the continued life of the business. All vital records are permanent records.





Item 19.

APPENDIX B DECLARATION OF COMPLIANCE



Texas State Library and Archives Commission

State and Local Records Management Division PO Box 12927 • Austin, Texas 78711-2927 • Telephone 512-421-7200

Declaration of Compliance with the Records Scheduling Requirement of the Local Government Records Act

(Submitted pursuant to § 203.041(a)(2), Local Government Code)

New Braunfels Utilities					
Name of Government					
263 E Main Pla	ıza				
Address	Address				
	830-629-				
New Braunfels, 78131	8400				
City and Zip	Telephone				

As records management officer for the local government or elective county office named, I hereby declare, that in lieu of filing records control schedules, we have adopted records control schedules that comply with minimum requirements established on records retention schedules issued by the Texas State Library and Archives Commission (as checked below) for use in our records management program. In doing so, I also certify that the administrative rules for electronic records, adopted by the commission under § 205.003(a), Local Government Code, will be followed for records subject to the rules. I understand that:

- (1) the validity of this declaration is contingent on its acceptance for filing by the commission;
- (2) if we have previously filed documentation with the commission in which we declared our intent to retain all records permanently, we must attach amended documentation to this declaration before it can be accepted for filing;
- (3) the records control schedules adopted by this declaration may be amended by filing for approval a Supplemental Records Control Schedule (SLR Form 509) on which are listed proposed retention periods for records that do not appear on schedules issued by the commission (as checked below);
- (4) if a Supplemental Records Control Schedule is not filed, we must file a Request for Authorization to Destroy Unscheduled Records (SLR 501) in order to destroy records that do not appear on schedules issued by the commission (as checked below);
- (5) the commission will supply us with subsequent editions of any schedules issued by the commission (as checked below) and supplemental forms for declaring compliance with amended requirements; and
- (6) should we file locally developed records control schedules under § 203.041(a)(1), Local Government Code, retention periods on any approved locally developed schedule shall prevail over those in any schedule adopted by this declaration in the event of any conflict.

	Check those schedules issued by the commission with which your records control schedules, adopted by this declaration, comply:						
	Schedule CC (Records of County Clerks)		Schedule LC (Records of Justice and Municipal Courts)				
	Schedule DC (Records of District Clerks)		Schedule PS (Records of Public Safety Agencies)				
	Schedule EL (Records of Elections and Voter Registration)		Schedule PW (Records of Public Works and Services)				
\boxtimes	Schedule GR (Records Common to All Governments)		Schedule SD (Records of Public School Districts)				
	Schedule HR (Records of Public Health Agencies)		Schedule TX (Records of Property Taxation)				
	Schedule JC (Records of Public Junior Colleges)	\boxtimes	Schedule UT (Records of Utility Services)				
1	cas State Library and Archives Commission Use Only cepted for Filing: SLR508 (1/08)	Name Signat Date:	(printed or typed): Al Kayfmann Ture: Eller				



APPENDIX C RECORDS INFORMATION MANAGEMENT REQUIREMENTS

I. RECORDS RETENTION

Recognizing the importance of efficient management, preservation and convenient access to the public of NBU records, the establishment of uniform standards for the retention of records are necessary to govern records management. For each type of NBU record, the RMO shall adopt a minimum retention period that is at least as restrictive as the applicable record retention period specified in the current record retention schedule promulgated by TSLAC in accordance with Section 441.158 of the Texas Government Code. Specifically, NBU utilizes the Records **Retention Schedule UT** (records of utility services) and **Records Retention Schedule GR** (records common to all local governments), as such schedules may be amended. NBU's declaration of compliance can be found in Appendix B of this Policy. No NBU record may be destroyed except in accordance with the applicable retention schedule, the Texas Local Government Records Act and other applicable law.

II. DESTRUCTION OF RECORDS UNDER SCHEDULE

A record whose retention period has expired according to the applicable Records Retention Schedule shall be destroyed in accordance with this Policy unless a Texas Public Information Act Request involving the record is pending, or the record is classified as a Hold Record due to pending or imminent litigation, government investigation, or audit.

Prior to the destruction of a record in accordance with the applicable Records Retention Schedule, the following must occur:

- A. RIM Team must create an annual Disposition Log of records whose retention period has expired;
- B. RLO must perform an initial review of their documents to ensure the Disposition Log accurately represents the records to be destroyed;
- C. Records Custodian must authorize the destruction of his or her records on the Disposition Log:
- D. Department Head must authorize the destruction of all records that fall under his or her Office of Record on the Disposition Log;
- E. RMO must review the entire Disposition Log for approval prior to presenting to the RIM Committee:
- F. RIM Committee must vote to approve the Disposition Log for the destruction of Official Company Records; and
- G. RIM Committee Board Member and NBU CEO must sign the Disposition Log for final approval.

Accidental Destruction of Records

If an Official Company Record has been destroyed without authorization, the RIM Team must be notified within thirty (30) days of the incident (or as soon as possible) to properly document the



accidental disposal of records. Once notified, the RIM Team will submit a log of the destroyed records as official notification to TSLAC.

Destruction of ROT

A Non-Record may be disposed of at the discretion of the custodian or the creator of the document, as applicable. Convenience Copies of an Official Company Record may be destroyed by shredding or recycling, as long as they do not contain PII. Those Convenience Copies that contain PII must be destroyed by shredding only. Trash may not be used to destroy convenience copies.

III. AUTHORIZATION AND ACCESS

NBU must ensure the accuracy, completeness, and accessibility of records to ensure employees have the ability to comply with any litigation, claim, negotiation, audit, Public Information Request, administrative review, or other legal action involving the record. As a result, all NBU employees are required to ensure all records are properly stored in either an approved EDRMS or an approved records storage location in compliance with the RIM Program.

Hold Records

A record may not be destroyed if any litigation, claim, negotiation, audit, Public Information Request (PIR), administrative review or other action involving the record is initiated before the expiration of the applicable record retention period. The record must be retained until the completion of the action and the resolution of all issues that arise from the action or until the expiration of the retention period, whichever is later. Official Company Records associated with any such action should be classified as Hold Records to ensure destruction of the record does not occur. Hold Records are initiated by a notice sent from the office of NBU's General Counsel to the RMO and RIM Team. Hold Records will remain in such status until termination of the suspended Retention Period is communicated by a notice from the office of NBU's General Counsel to the RMO and RIM Team.

Public Information Requests

NBU receives PIRs pursuant to the Texas Public Information Act, Chapter 552 of the Texas Government Code. Public Records, Public Information, Non-Records, ROT and any personal information stored on NBU's systems is subject to the Texas Public Information Act. Compliance with the RIM Program will assist NBU's Public Information Officer in accurately and timely responding to PIRs. For more information, see NBU's Public Information Act Policy.

IV. PHYSICAL RECORDS MANAGEMENT

Official Company Records in physical form must be boxed, labeled, indexed, stored and secured appropriately in accordance with Title 13, Subchapter F, of the Texas Administrative Code.

Records Center

NBU follows the Required Minimum Storage Conditions for Permanent Records provided by Title 13, Rule 7.164, of the Texas Administrative Code for the storage of Physical Records, both permanent and inactive, as follows:



Records shall be stored in a manner that complies with the following:

- **A.** Offers protection from fire, water, steam, structural collapse, unauthorized access, theft, and other similar hazards and does not expose records to direct sunlight.
- **B.** Records or storage boxes shall not be stored in contact with the floor.
- **C.** Records stored in a building or storage area constructed after the effective date of this Policy shall be protected by an operational fire detection system, or the facility must comply with local fire codes.
- **D.** Records shall not be stored in any area of a building or storage area constructed after the effective date of this Policy that is located in a 100-year flood plain area, as established by the U.S. Geological Survey at the time of the construction of the building, unless the floor of said area is at least five feet above the 100-year flood level.

A records center shall be under the direct control and supervision of the RIM Team. The RIM Program procedures regulate the operation and use of a records center.

V. ELECTRONIC RECORDS MANAGEMENT

Official Company Records in electronic form must be stored and secured appropriately in accordance with Title 13, Subchapter C, of the Texas Administrative Code and Sections 205.001-205.009 of the Texas Local Government Code. Additionally, the RIM Program Procedures for Electronic Records should be followed to ensure compliance with this Policy.

NBU's Electronic Records must be managed and maintained in accordance with the same Record Retention Schedule to which NBU's Physical Records are subject. In addition, NBU shall ensure that any documentation related to software, hardware, support and/or maintenance of NBU systems, especially those that related directly to record management, be preserved based on the applicable Record Retention Schedule.

Security & Accessibility of Electronic Records

Electronic Records shall be appropriately secured to control accessibility. To ensure that only authorized personnel have access to such records, appropriate security measures shall be utilized to prevent the unauthorized addition, modification, alteration, deletion of and/or access to Official Company Records.

Electronic Documents and Records Management System (EDRMS)

All NBU Electronic Records shall be captured and maintained on an approved EDRMS.

Official Company Records shall not be stored and/or maintained on a system or media that is not pre-approved by the RIM team. An EDRMS platform is required to manage electronic records efficiently and successfully. Any Source System that is not an approved EDRMS cannot be the system of record, as such systems may lack the necessary functionality to protect NBU's information and records over time. RIM Program procedures and processes should be followed for integrating and migrating records into an EDRMS.



VI. RECORD CONVERSION

Record Conversion is crucial to long-term records management, including the storage and transmission of records, because it allows information of all kinds in all formats to be stored in NBU's EDRMS in a unified, easy to access manner. Per Texas Local Government Code, Section 205.002, records may be stored electronically in addition to or instead of Source Documents in paper or other media.

Once the Source Document is digitized, the Electronic Record shall become the Official Company Record and shall be retained for the required Retention Period. A quality assurance check should be performed to ensure the integrity of the Electronic Record. The RIM Program Procedures for Record Conversion must be followed prior to the destruction of a Source Document, as Physical Records with a Retention Period of ten (10) years or more and/or Permanent Records must be kept in the Records Center as a Convenience Copy, and proper authorization is required prior to destruction of such records.

Per Texas Local Government Code Section 202.004(c), NBU may temporarily transfer Official Company Records to a third-party company for the purposes of microfilming, duplication, conversion to electronic media, restoration, or similar records management and preservation procedures. Prior to such temporary transfer, NBU must enter into a contract with the third-party recipient to establish appropriate terms and conditions for the temporary transfer and the provision of any third-party records management or preservation services associated therewith.

VII. EMERGENCY MANAGEMENT PLAN

NBU strives to mitigate any damages resulting from potential events that could interrupt or otherwise interfere with NBU's normal business operations. Thus, the RIM Program emphasizes the preservation and/or restoration of Vital Records to ensure that NBU may return to full operational capacity as quickly as possible and minimize possible losses to NBU's business.

Adhering to the RIM Program and following processes and procedures designed to successfully manage Physical Records and Electronic Records is critical for the preservation and/or restoration of Official Company Records in the event of an emergency, disaster, or other disruption. Additional information regarding policies and procedures relating to emergency situations may be found in the NBU Emergency Management Plan.



Policy Type		Approval Author	ity	Adopted	Effective
Board Approved		NBU Board of Trustees		12/14/2023	
Responsible Executive		Responsible Department		Contact	
Connie Lock		Legal		Pamela Tarbox	
Reviewed/Approved by Chief Financial Officer		Reviewed/Approved by General Counsel & Chief Ethics Officer		Reviewed/Approved by Interim CEO	
Name	Date Signed	Name	Name Date Signed I		Date Signed
Dawn Schriewer		Connie Lock		Ryan Kelso	
Signature		Signature		Signature	

REVISION HISTORY

May 27, 1998: Adopted Records Management Program Resolution;

July 31, 2008: Adopted Records Management Program Policy and Procedures; and

December 9, 2021: Revised, renamed and adopted Records and Information Management Policy.

I. General Provisions

A. Policy Statement

The Board of Trustees of New Braunfels Utilities (NBU) requires all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of NBU to adhere to the Records and Information Management (RIM) Policy. The purpose of this Policy is to define appropriate standards to provide for efficient, economical and effective controls over the creation, distribution, organization, maintenance, use and disposition of all NBU company records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Texas Local Government Records Act, other applicable law and regulations, and accepted records management practice.

B. Authority

The Texas Local Government Records Act, Chapters 201 through 205, Tex. Loc. Gov't Code, requires that each local government establish an active and continuing records management program administered by a Records Management Officer (RMO). A copy of the resolution establishing or amending the program must be filed with the Texas State Library and Archives Commission (TSLAC). As a local government, NBU prescribes this Policy to facilitate proper administration of a RIM Program in accordance with the Texas Local Government Records Act.

Failure to comply with the RIM Program governed by this Policy may constitute a violation of federal, state and/or local laws or regulations that could result in civil and/or criminal penalties against NBU and/or its officers and employees. NBU's declaration of compliance of August 11, 2008, can be found in Appendix B of this Policy. NBU will continue to submit such certification as may be required by law or regulation.

C. Definitions

NBU records consist of all information, regardless of media, format, operating system, application or storage location and regardless of whether public access to it is open or



restricted under the laws of the state, that is created or received by NBU or any of its officers or employees pursuant to law or in the transaction of public business. All such information is hereby declared to be the local government records of NBU and shall be created, maintained, preserved and disposed of in accordance with this RIM Policy and all procedures authorized hereunder.

Separation from employment with NBU does not relieve a former officer or employee of his or her legal obligation as a temporary custodian under the Texas Public Information Act to preserve any NBU record in his or her possession which has not been transferred to an approved Electronic Document and Records Management System (EDRMS), in accordance with this RIM Policy, the Public Information Act Policy, and all procedures authorized hereunder.

NBU local government records shall be created, maintained, and disposed of in accordance with the provisions of this Policy and other applicable federal, state and local laws and regulations.

For additional definitions related to the RIM Program & Policy, see Appendix A – Definitions.

D. Records Management Requirements at NBU

In the performance of their job duties, NBU employees shall at all times follow and abide by all requirements regarding creation of, access to, and/or retention of any and all local government records, as set forth in APPENDIX C - RIM Requirements of this Policy.

II. Adoption

This Policy applies to all NBU employees and shall become effective immediately upon approval, and supersedes all previous records management policies, instructions, or directives.

III. Administrative Matters

A. Ownership

NBU records are the property of NBU. No NBU official or employee has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, alteration, removal or use of such records is prohibited and may result in disciplinary action against the employee, including possible termination of employment, in addition to possible criminal and/or civil liability, as applicable.

B. No Privacy for Personal Information

NBU employees should not expect privacy of any information that is created, transferred or stored using NBU's property and/or technology systems. NBU reserves the right to review, monitor, and audit all technology systems use at any time. For more information about privacy, refer to the NBU Employee Handbook.





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NBU employees shall not store personal information as an Official Company Record. NBU reserves the right to delete any personal information being stored on NBU systems at NBU's sole discretion, without notice.

C. Roles and Committees

The RIM Program is comprised of the following roles and committees. Definitions of each can be found in Appendix A - Definitions of this Policy:

- 1. Roles
 - a. Records Management Officer (RMO)
 - b. Records & Information Management (RIM) Team
 - c. Department Head (executive or director)
 - d. Records Custodian (department manager)
 - e. Records Liaison Officer (RLO)
- 2. *Committees*
 - a. Records & Information Management (RIM) Committee
 - b. Historical Memorabilia Committee

IV. POLICY OMISSIONS AND LIMITATIONS

A. Matters Not Addressed in Policy

Any matters or issues not addressed by this Policy relating to RIM shall be governed by federal, state, local and/or other applicable laws, regulations or policies.

B. Conflicts between Federal Law, State Law, and this Policy

This Policy does not supersede any applicable federal, state, local and/or other applicable laws. In the event of a conflict between a provision of this Policy and any applicable federal, state or local law or regulation, the latter shall control.



APPENDIX A DEFINITIONS

- 1. <u>Convenience Copy:</u> Consists of all duplicate/extra copies of records that are not considered the Official Company Record. Convenience Copies only need to be retained as long as administratively feasible but should be reviewed at a minimum of every two (2) years for potential purging in order to keep record storage systems clean and organized. These records have no present value and should be properly destroyed through shredding and/or recycling, as appropriate.
- 2. **Critical Record:** See Vital Records.
- 3. **<u>Department Head</u>**: The executive or director responsible for the records and information maintained under his or her Office of Record.
- 4. **Designated Company Record:** See Official Company Record.
- 5. <u>Destruction</u>: The act of permanently and irreversibly destroying records and information, commonly done through the act of:
 - **Electronic Destruction:** Electronic records are destroyed in the EDRMS, but the record metadata is kept as a Disposition Log to track a record's retention history. This act ensures that page and electronic file contents are entirely removed.
 - Recycling: Placing physical media into an unlocked recycle bin typically used to recycle reusable goods such as paper, glass and plastics. As of the date of the policy, NBU does not have a vendor that collects recycling material from recycle bins. Recycling should not be used for media containing Personally Identifiable Information (PII).

Shredding:

- a. Secured Shredding Placing physical media into a locked shred-bin, which is retrieved by a vendor and shredded on-site, at the time of retrieval. Shredded material is then sent to a recycling facility and made into new materials. This is the preferred method of destruction for physical records as it is the most controlled and secured method.
- b. Unsecured Shredding Placing physical media in a machine that will pulverize/cut/chop media to destroy it and render it unreadable. As of the date of the policy, NBU does not have a vendor that collects unsecured shredding material and this material is discarded in the trash.
- <u>Trash:</u> Placing physical media in a trash receptacle that is picked up and taken to a landfill. Trash that ends up in a landfill is open to potential data breaches.



Destruction can also take place from a disastrous and/or disruptive event. Destruction methods may also be used to destroy Non-Records.

- 6. **<u>Digital Record:</u>** See Electronic Record.
- 7. **Digitization:** See Record Conversion.
- 8. **Disaster Recovery Planning:** See Emergency Management Plan.
- 9. **Disposal:** See Destruction.
- 10. **<u>Disposition</u>**: The final action taken on an Official Company Record per the Records Retention Schedule, which is either Destruction or Permanent Retention.
- 11. **Disposition Log**: A detailed listing of all records marked for destruction or permanent archival transfer; reflecting the record series, record title, record description, beginning date, ending date, retention, method of destruction, and the signatures of the Division Manager and RMO. These lists have a permanent retention.
- 12. **Electronic Document and Records Management System (EDRMS)**: A software program or set of programs designed to track and store records. The software can be used to manage the creation and maintenance of records within classification schemes, apply retention and disposal schedules, and control access and use.
- 13. **Electronic Record**: Information recorded by a software application that is generated with and used by information technology devices.
- 14. <u>Emergency Management Plan</u>: A course of action developed to mitigate the damage of potential events that could endanger NBU's ability to function. Such a plan should include measures that provide for preparedness, response, mitigation, and recovery of records during and after an emergency, disaster, or other disruption. An emphasis is placed on the preservation of Vital Records with the goal of returning NBU to full operational capacity as quickly as possible with as little loss to NBU's business as possible.
- 15. **Employee**: NBU full-time employees, part-time employees, and temporary or seasonal employees.
- 16. **Essential Record:** See Vital Records.
- 17. **Expired Record:** See Convenience Copy, Non-Record and Redundant, Obsolete, Transitory (ROT).



- 18. Hard Copy: See Physical Record.
- 19. <u>Historical Memorabilia Committee</u>: A group of NBU employees and volunteer retirees that are convened, as needed, in order to review information stored on various media formats to identify the potential historical relevance of certain records.
- 20. <u>Hold Record</u>: An Official Company Record preserved through the process of temporarily suspending the Retention Period to prevent destruction of potentially relevant information when a legal request for the information is pending or reasonably anticipated.
- 21. **Legal Hold:** See Hold Record.
- 22. Master Record Copy: See Official Company Record.
- 23. **Non-Essential Record:** See Convenience Copy, Non-Record and Redundant, Obsolete, Transitory (ROT).
- 24. **Non-Record**: Any information that does not hold value or provide evidence of NBU's business activities. A non-record has no business value or legal value. Examples include:
 - Personal Email, Junk/Spam and other non-business related Emails,
 - Publicly available articles, magazines, professional publications, trade publications, industry publications, newspapers and general reference material that is generated outside of NBU; where the custodian of the information is not an NBU Representative,
 - Promotional and similar materials from contractors, vendors and other external entities which are publicly available,
 - Personal papers that may be kept in any employee's work area but were not created or received in the course of business and do not relate in any way to the employee's duties,
 - Information received from external websites, including Social Media and networking platforms, where the custodian of the information on the website(s) is not an NBU Representative.

For more information about records and non-records, see Section 201.003(8), Texas Local Government Code.

25. <u>Obsolete Record:</u> See Convenience Copy, Non-Record and Redundant, Obsolete, Transitory (ROT).



- 26. **Office of Record**: The office of the executive or director group at NBU responsible for maintaining the official company records, as opposed to a duplicate.
- 27. Official Company Record: The primary record used for business and/or legal purposes. It is the record copy used in order to obtain the most updated information on its specific content and used when pulling data for public information requests, audits, litigation, etc.
- 28. **Open Record:** See Public Information.
- 29. Paper Copy: See Physical Record.
- 30. <u>Permanent Record</u>: Official Company Record with a permanent record retention period. Records can also be classified as permanent if they are Vital Records or hold historical value or because the Record Retention Schedule (RRS) allows it. Permanent Records cannot be destroyed.
- 31. **Physical Records**: Information recorded in physical form, such as paper, that can be physically handled and which takes up physical space.
- 32. **Physical Record Storage:** See Records Center.
- 33. **Preservation:** See Record Retention.
- 34. <u>Public Information</u>: Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business as defined in Section 552.002 of the Public Information Act. Public Information includes Public Records and may include other types of information as well that is subject to disclosure under Chapter 552 Texas Government Code.
- 35. **Public Information Act** (formerly known as the Texas Open Records Act): The Act can be found in Chapter 552 Texas Government Code and gives the public the right to request access to public information. Act also outlines records that are excepted from disclosure.
- 36. **Public Record**: An Official Company Record that is not confidential and/or does not contain PII.
- 37. **Record Conversion**: The process of converting information into a digital (computer-readable) format. Physical Records are digitized into an Electronic Record.
- 38. **Record Lifecycle**: The life span of a record from its creation or receipt to its final disposition. Records are maintained and used throughout four lifecycle phases: creation, active, inactive, and disposition.



- 39. Record of Truth: See Official Company Record.
- 40. **Record Retention**: Refers to the storage of records that are no longer active. It is the act of keeping records for a specified amount of time or permanently based on a designated Record Retention Schedule.
- 41. **Record Retention Period**: The minimum time that must pass after the creation, recording, or receipt of a record or the fulfillment of certain actions associated with a record, before it is eligible for destruction. The Record Retention Period is defined for each record classification on the Record Retention Schedule. A Record Retention Period should be honored regardless of media or record format.
- 42. **Record Retention Schedule (RRS)**: A document issued by the TSLAC under authority of Chapter 441, Subchapter J, Texas Government Code, establishing mandatory retention periods for local government records. See the Section 441.158 of the Texas Government Code for more information.
 - 1. <u>Records Retention Schedule UT (Records of Utility Services):</u> The retention schedule assigned by the Texas State Library & Archives Commission (TSLAC) to provide retention rules for records of a government utility company.
 - 2. Records Retention Schedule GR (Records Common to All Local Governments): The retention schedule assigned by the Texas State Library & Archives Commission (TSLAC) to provide retention rules for records that are common to all local government organizations/entities.
- 43. **Records Administrator**: A member of the RIM Team responsible for performing the RIM Program functions.
- 44. **Records Analyst**: A member of the RIM Team who assists and supports the responsibility of performing the RIM Program functions.
- 45. **Records Assistant**: A member of the RIM Team who assists and supports the responsibility of performing the RIM Program functions.
- 46. Records and Information Management (RIM) Committee: The Records & Information Management (RIM) Committee meets at least once annually to discuss, review and/or approve topics related to the NBU Records & Information Management Program. This committee consists of the RIM Team, the CEO and a Board Member.
- 47. **Records and Information Management (RIM) Program**: The NBU initiative consisting of policies, procedures, and processes designed to protect and properly preserve the records of NBU, throughout their lifecycle; reduce administrative and legal costs; and improve the efficiency of recordkeeping.



- 48. <u>Records and Information Management (RIM) Team</u>: A team consisting of General Counsel, Director of Legal Services, Records Manager, Records Administrator, Records Analyst, Records Assistant, and supported by an assigned System Administrator RIM.
- 49. **Records Center**: The location devoted exclusively to Physical Records storage. The area shall provide controlled access to hard copy Official Company Records and shall be specifically designed to comply with storage requirements per state law.
- 50. **Records Custodian**: The manager of a department who is responsible for the records held by that department.
- 51. **Records Liaison Officer (RLO)**: An assigned RIM Program representative for each department.
- 52. **Records Management Officer (RMO)**: The person who holds the position of Records Manager of NBU, who oversees the entire RIM Program.
- 53. **Records Owner**: The employee responsible for any record, regardless of media, created or received by or on behalf of NBU. The Records Owner is responsible for ensuring that his or her records are stored in accordance with NBU policies and procedures and that the Record Retention Category and Retention Period of their records is identified.
- 54. **Redundant, Obsolete, Transitory (ROT)**: Information that needs to be cleared out of NBU's information systems and EDRMS that has the potential to undermine the accuracy and/or negatively impact the RIM Program.
 - **Redundant:** information that is duplicated in multiple places, whether in the same system or across multiple systems.
 - **Obsolete:** information that has been replaced (superseded) by other information, is incomplete or outdated.
 - Transitory: data that is created when doing daily business activities but which does not meet the standards of a record. This information is not valuable to NBU and should be deleted when no longer needed by the Record Owner.
- 55. Required Minimum Storage Conditions: Texas Local Government Bulletin F, Section 7.164 states that, as local resources permit, local governments should strive to store records under conditions that meet as many of the minimum storage condition recommendations of the Texas Local Government Code as practicable. Examples include monitoring the climate of the records center, having appropriate shelving, and getting pest control services completed on a regular basis.



- 56. <u>Social Media</u>: The various activities integrating web technology, social interaction, and user-generated content. Social media includes blogs, wikis, social networks, Facebook, Twitter, RSS feeds (outlook), photo libraries, virtual worlds, location-based services, and video sharing sites.
- 57. **Source Document**: The record from which record data is obtained for electronic storage. The term does not include backup copies of the data in any media generated from electronic storage.
- 58. <u>Source System</u>: The system or software where information is originated and electronic records are generated. Source systems provides the most complete, accurate and timely data, nearest to the point of operational entry and can be used to feed other systems; including the EDRMS. NBU has several source systems (e.g. City Works, Northstar, Microsoft Dynamics GP, Paramount, etc.), used by several departments. A source system shall not be used for storing Official Company Records without prior authorization from the RIM Team.
- 59. Storage Location: See Records Center.
- 60. **System Administrator-RIM**: A member of the RIM Team who works within NBU's Data Strategy Department who is responsible for providing support and project management for the application and operations software as related to the RIM Program functions.
- 61. <u>Transitory Records:</u> See Convenience Copy, Non-Record and Redundant, Obsolete, Transitory (ROT).
- 62. **TSLAC**: The Texas State Library and Archives Commission is the agency created by the State of Texas that is charged with adopting rules for retention, storage, and destruction to oversee and assist state agencies and local governments in implementing records and information management programs in accordance with the state law.
- 63. <u>Vital Records</u>: Any record necessary to resume or continue business operations in an emergency or disaster, to the re-creation of the legal and financial status of NBU, or to the protection and fulfillment of obligations to NBU customers. These records are essential to the continued life of the business. All vital records are permanent records.





Item 19.

APPENDIX B DECLARATION OF COMPLIANCE



Texas State Library and Archives Commission

State and Local Records Management Division PO Box 12927 • Austin, Texas 78711-2927 • Telephone 512-421-7200

Declaration of Compliance with the Records Scheduling Requirement of the Local Government Records Act

(Submitted pursuant to § 203.041(a)(2), Local Government Code)

	New Braunfels Utilities				
	Name of Government			-	
	263 E Main Plaza				
		Ad	ldress		-
				830-629-	
		New Braunfels, 781	31	8400	
		City and Zip		Telephone	~
recorreten mana § 205 (perm (Contriby the (suppl (on an conflict	rds control schedules, we have the control schedules issued by agement program. In doing 5.003(a), Local Government (1) the validity of this decla (2) if we have previously anently, we must attach am (3) the records control scherol Schedule (SLR Form 50 e commission (as checked be (4) if a Supplemental Records (SLR 501) in order to de (5) the commission will supplemental forms for declaring (6) should we file locally developmental forms for declaring (6) should developmental forms for decla	we adopted records control sche the Texas State Library and so, I also certify that the admin code, will be followed for recuration is contingent on its acceptified documentation with the ended documentation to this declaration on which are listed propose below); rds Control Schedule is not file estroy records that do not appear opply us with subsequent edition; compliance with amended requeveloped records control schedule shall prevail over	edules that of Archives Cistrative rule ords subject stance for fil commission claration bef claration bed did retention p ed, we must r on schedul so of any sch airements; a alles under § those in any	comply with minimum commission (as checes for electronic record to the rules. I undersing by the commission in which we declare it can be accepted amended by filing for periods for records the file a Request for A see issued by the commedules issued by the rud 203.041(a)(1), Local y schedule adopted by	on; ared our intent to retain all records if for filing; for approval a Supplemental Records that do not appear on schedules issued authorization to Destroy Unscheduled
_	Schedule CC (Records of C				rds of Justice and Municipal Courts)
	(,,	ب	Concume De (Recon	do of sustice and Municipal Courts)

 □ Schedule CC (Records) ☐ Schedule DC (Records of District Clerks) Schedule PS (Records of Public Safety Agencies) Schedule EL (Records of Elections and Voter Registration) Schedule PW (Records of Public Works and Services) Schedule GR (Records Common to All Governments) ☐ Schedule SD (Records of Public School Districts) Schedule HR (Records of Public Health Agencies) ☐ Schedule TX (Records of Property Taxation) ☐ Schedule JC (Records of Public Junior Colleges) Schedule UT (Records of Utility Services) Texas State Library and Archives Commission Use Only Name (printed or typed): Accepted for Filing: Date: SLR508 (1/08)



APPENDIX C RECORDS INFORMATION MANAGEMENT REQUIREMENTS

I. RECORDS RETENTION

Recognizing the importance of efficient management, preservation and convenient access to the public of NBU records, the establishment of uniform standards for the retention of records are necessary to govern records management. For each type of NBU record, the RMO shall adopt a minimum retention period that is at least as restrictive as the applicable record retention period specified in the current record retention schedule promulgated by TSLAC in accordance with Section 441.158 of the Texas Government Code. Specifically, NBU utilizes the Records **Retention Schedule UT** (records of utility services) and **Records Retention Schedule GR** (records common to all local governments), as such schedules may be amended. NBU's declaration of compliance can be found in Appendix B of this Policy. No NBU record may be destroyed except in accordance with the applicable retention schedule, the Texas Local Government Records Act and other applicable law.

II. DESTRUCTION OF RECORDS UNDER SCHEDULE

A record whose retention period has expired according to the applicable Records Retention Schedule shall be destroyed in accordance with this Policy unless a Texas Public Information Act Request involving the record is pending, or the record is classified as a Hold Record due to pending or imminent litigation, government investigation, or audit.

Prior to the destruction of a record in accordance with the applicable Records Retention Schedule, the following must occur:

- A. RIM Team must create an annual Disposition Log of records whose retention period has expired;
- B. RLO must perform an initial review of their documents to ensure the Disposition Log accurately represents the records to be destroyed;
- C. Records Custodian must authorize the destruction of his or her records on the Disposition Log:
- D. Department Head must authorize the destruction of all records that fall under his or her Office of Record on the Disposition Log;
- E. RMO must review the entire Disposition Log for approval prior to presenting to the RIM Committee;
- F. RIM Committee must vote to approve the Disposition Log for the destruction of Official Company Records; and
- G. RIM Committee Board Member and NBU CEO must sign the Disposition Log for final approval.

Accidental Destruction of Records

If an Official Company Record has been destroyed without authorization, the RIM Team must be notified within thirty (30) days of the incident (or as soon as possible) to properly document the



accidental disposal of records. Once notified, the RIM Team will submit a log of the destroyed records as official notification to TSLAC.

Destruction of ROT

A Non-Record may be disposed of at the discretion of the custodian or the creator of the document, as applicable. Convenience Copies of an Official Company Record may be destroyed by shredding or recycling, as long as they do not contain PII. Those Convenience Copies that contain PII must be destroyed by shredding only. Trash may not be used to destroy convenience copies.

III. AUTHORIZATION AND ACCESS

NBU must ensure the accuracy, completeness, and accessibility of records to ensure employees have the ability to comply with any litigation, claim, negotiation, audit, Public Information Request, administrative review, or other legal action involving the record. As a result, all NBU employees are required to ensure all records are properly stored in either an approved EDRMS or an approved records storage location in compliance with the RIM Program.

Hold Records

A record may not be destroyed if any litigation, claim, negotiation, audit, Public Information Request (PIR), administrative review or other action involving the record is initiated before the expiration of the applicable record retention period. The record must be retained until the completion of the action and the resolution of all issues that arise from the action or until the expiration of the retention period, whichever is later. Official Company Records associated with any such action should be classified as Hold Records to ensure destruction of the record does not occur. Hold Records are initiated by a notice sent from the office of NBU's General Counsel to the RMO and RIM Team. Hold Records will remain in such status until termination of the suspended Retention Period is communicated by a notice from the office of NBU's General Counsel to the RMO and RIM Team.

Public Information Requests

NBU receives PIRs pursuant to the Texas Public Information Act, Chapter 552 of the Texas Government Code. Public Records, Public Information, Non-Records, ROT and any personal information stored on NBU's systems is subject to the Texas Public Information Act. Compliance with the RIM Program will assist NBU's Public Information Officer in accurately and timely responding to PIRs. For more information, see NBU's Public Information Act Policy.

IV. PHYSICAL RECORDS MANAGEMENT

Official Company Records in physical form must be boxed, labeled, indexed, stored and secured appropriately in accordance with Title 13, Subchapter F, of the Texas Administrative Code.

Records Center

NBU follows the Required Minimum Storage Conditions for Permanent Records provided by Title 13, Rule 7.164, of the Texas Administrative Code for the storage of Physical Records, both permanent and inactive, as follows:



Records shall be stored in a manner that complies with the following:

- **A.** Offers protection from fire, water, steam, structural collapse, unauthorized access, theft, and other similar hazards and does not expose records to direct sunlight.
- **B.** Records or storage boxes shall not be stored in contact with the floor.
- **C.** Records stored in a building or storage area constructed after the effective date of this Policy shall be protected by an operational fire detection system, or the facility must comply with local fire codes.
- **D.** Records shall not be stored in any area of a building or storage area constructed after the effective date of this Policy that is located in a 100-year flood plain area, as established by the U.S. Geological Survey at the time of the construction of the building, unless the floor of said area is at least five feet above the 100-year flood level.

A records center shall be under the direct control and supervision of the RIM Team. The RIM Program procedures regulate the operation and use of a records center.

V. ELECTRONIC RECORDS MANAGEMENT

Official Company Records in electronic form must be stored and secured appropriately in accordance with Title 13, Subchapter C, of the Texas Administrative Code and Sections 205.001-205.009 of the Texas Local Government Code. Additionally, the RIM Program Procedures for Electronic Records should be followed to ensure compliance with this Policy.

NBU's Electronic Records must be managed and maintained in accordance with the same Record Retention Schedule to which NBU's Physical Records are subject. In addition, NBU shall ensure that any documentation related to software, hardware, support and/or maintenance of NBU systems, especially those that related directly to record management, be preserved based on the applicable Record Retention Schedule.

Security & Accessibility of Electronic Records

Electronic Records shall be appropriately secured to control accessibility. To ensure that only authorized personnel have access to such records, appropriate security measures shall be utilized to prevent the unauthorized addition, modification, alteration, deletion of and/or access to Official Company Records.

Electronic Documents and Records Management System (EDRMS)

All NBU Electronic Records shall be captured and maintained on an approved EDRMS.

Official Company Records shall not be stored and/or maintained on a system or media that is not pre-approved by the RIM team. An EDRMS platform is required to manage electronic records efficiently and successfully. Any Source System that is not an approved EDRMS cannot be the system of record, as such systems may lack the necessary functionality to protect NBU's information and records over time. RIM Program procedures and processes should be followed for integrating and migrating records into an EDRMS.



VI. RECORD CONVERSION

Record Conversion is crucial to long-term records management, including the storage and transmission of records, because it allows information of all kinds in all formats to be stored in NBU's EDRMS in a unified, easy to access manner. Per Texas Local Government Code, Section 205.002, records may be stored electronically in addition to or instead of Source Documents in paper or other media.

Once the Source Document is digitized, the Electronic Record shall become the Official Company Record and shall be retained for the required Retention Period. A quality assurance check should be performed to ensure the integrity of the Electronic Record. The RIM Program Procedures for Record Conversion must be followed prior to the destruction of a Source Document, as Physical Records with a Retention Period of ten (10) years or more and/or Permanent Records must be kept in the Records Center as a Convenience Copy, and proper authorization is required prior to destruction of such records.

Per Texas Local Government Code Section 202.004(c), NBU may temporarily transfer Official Company Records to a third-party company for the purposes of microfilming, duplication, conversion to electronic media, restoration, or similar records management and preservation procedures. Prior to such temporary transfer, NBU must enter into a contract with the third-party recipient to establish appropriate terms and conditions for the temporary transfer and the provision of any third-party records management or preservation services associated therewith.

VII. EMERGENCY MANAGEMENT PLAN

NBU strives to mitigate any damages resulting from potential events that could interrupt or otherwise interfere with NBU's normal business operations. Thus, the RIM Program emphasizes the preservation and/or restoration of Vital Records to ensure that NBU may return to full operational capacity as quickly as possible and minimize possible losses to NBU's business.

Adhering to the RIM Program and following processes and procedures designed to successfully manage Physical Records and Electronic Records is critical for the preservation and/or restoration of Official Company Records in the event of an emergency, disaster, or other disruption. Additional information regarding policies and procedures relating to emergency situations may be found in the NBU Emergency Management Plan.

R-2023-180

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES ("NBU") APPROVING REVISIONS TO THE RECORDS AND INFORMATION MANAGEMENT POLICY, APPOINTING THE NBU RECORDS MANAGER AS THE RECORDS MANAGEMENT OFFICER PURSUANT TO THE LOCAL GOVERNMENT RECORDS ACT, AND APPROVING OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, NBU is a Texas municipally owned utility that provides water, wastewater, and electricity to ratepayers in its service area;

WHEREAS, Section 203.026 of the Texas Local Government Code provides that each local government must establish by resolution an active and continuing records management program to be administered by a records management officer (the "RMO");

WHEREAS, on May 27, 1998, the NBU Board of Trustees adopted New Braunfels Utilities Records Management Program by Resolution;

WHEREAS, on July 31, 2008, the NBU Board of Trustees adopted the Records Management Program Policy and Procedures and named the NBU Chief Financial Officer as the RMO (the "Original Policy");

WHEREAS, the Board subsequently adopted revisions to the Original Policy on December 9, 2021, and renamed the Original Policy as the Records and Information Management Policy (the "Revised Policy" and, together with the Original Policy, the "Policy");

WHEREAS, NBU has recently restructured the department responsible for records and information management;

WHEREAS, NBU staff reviewed the Policy and recommends changes to the Policy, attached hereto as Exhibit A, to reflect the departmental changes, including appointing the Records Manager as the RMO; and

WHEREAS, the Records Information Management Committee of the NBU Board of Trustees reviewed the proposed changes and determined that the changes to the Policy are prudent and reflect the departmental changes.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES THAT:

SECTION 1. The Board of Trustees hereby approves the Policy, attached hereto as Exhibit A, and appoints the NBU Records Manager as the RMO.

SECTION 2. The recitals contained in the preamble hereof are found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board of Trustees.

SECTION 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board of Trustees hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED, APPROVED, AND ADOPTED, this the 14th day of December, 2023.

Secretary, Board of Trustees New Braunfels Utilities

Wayne Peters
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ryan Kelso

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Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Jacob Tschoepe Reviewed by: Shawn Schorn

Program Portfolio Manager Director of Business Planning

Submitted by: Shawn Schorn Approved by: Ryan Kelso

Director of Business Planning Interim Chief Executive Officer

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute

an AIA Amendment to the Professional Services Agreement with Marmon Mok Architecture for Architectural Design Services for the

New Braunfels Utilities Headquarters Project

BACKGROUND

On May 28, 2020, New Braunfels Utilities ("NBU") entered into a Professional Services Agreement (the "Agreement") with Marmon Mok Architecture ("Marmon Mok") for Architectural Design Services for a campus consolidation project to consolidate the Main Office and Operations Center into a single campus to improve efficiency, communication, and collaboration between the various divisions ("Original Services") for the NBU Headquarters Project ("NBU HQ"), to be completed by September 30, 2023, (the "Project"). This Agreement went to the Board of Trustees for approval because it was over the \$500,000 threshold.

The Project was delayed briefly to allow for the completion of a staffing study, and upon completion of the study, it was determined that a larger site was required to accommodate the additional staff identified. Upon review of multiple sites, a new site was selected. The new campus is a 76-acre tract located in west New Braunfels between FM 482 and I-35 South at Engel Road.

Upon completion of the staffing study and the selection of the new site, NBU and Marmon Mok identified a need to (i) accommodate approximately 765 employees on a daily basis, an increase from 417 originally programmed; and (ii) provide workspaces, including meeting, support spaces, and amenity spaces as determined through Project Vision Mapping with NBU Vision Team and Executive Steering Committee; (iii) accommodate expanded operational and yard facilities as required by the expanded staffing and service demand; (iv) expand the design to include parking either surface and/or structures as determined through site planning for approximately 880 vehicles distributed throughout the site for employees, guest parking, contractor parking, short term parking, and deliveries; (v) expand the design to include increased warehouse and maintenance building facilities positioned within the site to provide efficient access for loading and unloading of various materials and associated offices, raw material storage, and loading dock access for shipping and receiving; (vi) expand the design to include increased vehicle maintenance facilities to include vehicle lifts, fluids distribution, overhead lift capabilities, exhaust evacuation

capabilities, and other requirements as determined through programming efforts; (vii) expand the design to include infrastructure and support to include utility connections and coordination, trash and recycling, mail facility for pickup, delivering, and processing, security, health and wellness features, and customers service activities ("New Services").

As a result, NBU staff requests that the Board of Trustees approve the First Amendment to the Agreement (the "First Amendment") to (i) add the New Services, (ii) authorize additional compensation for the New Services, and (iii) extend the completion time to January 31, 2025.

This item is being presented to the Board because the total amount for the Project exceeds \$250,000.

FINANCIAL IMPACT

The total financial impact of the First Amendment is \$ 9,682,862. The total contract amount for the Agreement and the First Amendment with Marmon Mok for the Project is \$11,254,950. The Project is budgeted within the fiscal year 2023 through fiscal year 2026 NBU Board approved Capital Improvement Projects Budget as NBU Headquaters.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Safety and Security

EXHIBITS

1. AIA G802 First Amendment to the Professional Services Agreement with Marmon Mok



Amendment to the Professional Services Agreement

PROJECT: (name and address) New Braunfels Utilities New Headquarters Campus

OWNER: (name and address) New Braunfels Utilities 355 FM 306 New Braunfels, TX 78130 AGREEMENT INFORMATION:

Date: 4/30/20

ARCHITECT: (name and address)
MarmonMok Architecture
1020 NE Loop 410, Suite 201
San Antonio, TX 78209

AMENDMENT INFORMATION:

Amendment Number: 001 Date: 10/30/23

The Owner and Architect amend the Agreement as follows: Project Scope:

NBU has initiated a campus consolidation project ("the Project") that will consolidate the following NBU offices at a single campus to improve efficiency, communication, and collaboration between the various divisions.

- 1. Main Plaza Office, 263 Main Plaza, New Braunfels, Texas 78130
- 2. Operation Center, 355 FM 306, New Braunfels, Texas 78130

The project was paused briefly to allow for the completion of an independent staffing study commissioned by NBU, and upon completion of the study, it was determined that a larger alternative site was required to sufficiently accommodate the additional staff identified in said study. Alternate sites were identified and evaluated. Following evaluation, the selected site for the new campus is a 76-acre tract located in west New Braunfels between FM 482 and I-35 South at Engel Road. The site is primarily brush consisting of Mesquite and Huisache with some significant trees. Primary access to the site is anticipated to be from I-35 access road with a secondary access from FM 482. NBU desires that the campus utilize the natural site features to organize the design of the campus.

Architect shall provide a complete design of the new campus including offices, parking for employees, visitors, and fleet, warehouse, maintenance, storage, and infrastructure and support as required by this Agreement.

Architect shall through its own forces, or by engaging subconsultants, provide design and all necessary services for the following actions: Platting, Tree and Topographic Survey, WPAP, SCS, TIA, Drainage Design, Offsite water and sewer extensions to NBU property, Permitting as required by the Agreement.

Offices

Design must provide office space adequate to meet the needs of NBU as determined through the approved program within a campus plan in a manner to facilitate communication and collaboration between various departments on a formal and informal basis.

Design must:

- 1. Accommodate approximately 765 employees on a daily basis, an increase from 417 originally programmed.
- 2. Provide work spaces, including meeting, support spaces, and amenity spaces as determined through Project Vision Mapping with NBU Vision Team and Executive Steeling Committee.
- 3. Accommodate expanded operational and yard facilities as required by the expanded staffing and service demand.

- 4. The design must include parking either surfaced and/or structures as determined through site planning for approximately 880 vehicles distributed throughout the site for employees, guest parking, contractor parking, short term parking, and deliveries. The Architect shall verify if structured parking is required with NBU during the Schematic phase of the Project.
- 5. Design will include expanded warehouse and maintenance building facilities. The warehouse facility or facilities must be positioned within the site to provide efficient access for loading and unloading of various materials and associated offices, raw material storage, and loading dock access for shipping and receiving.
- 6. Vehicle Maintenance facilities should have vehicle lifts, fluids distribution, overhead lift capabilities, exhaust evacuation capabilities, and other requirements as determined through programming effort.
- 7. Infrastructure and Support design shall include all other necessary components including the following:
 - a. All required utility connections and utility coordination
 - b. Trash and recycling station
 - c. Mail facility for pickup, delivery, and processing of mail
 - d. Security
 - e. Health and wellness features
 - f. Customer service activities

Project Team

NBU anticipates that the Project Team will consist of NBU, FNI, Architect, and General Contractor to manage and coordinate the overall design and construction of the Project as required by the contract, including revised Schematic Design and Design Development phases necessary to the new site and expanded building program requirements.

The Architect's compensation and schedule shall be adjusted as follows:

Compensation Adjustment:

Original Contract Amount	\$ 3,935,923
Original Design Phase Paid to Date	\$ 1,692,750 (Complete through Design Development)
Alternative Site Evaluations Paid to Date	\$ 421,084.09
Total Work Completed and Paid to Date	\$ 2,113,834.09
Original Contract Sum Remaining	\$ 1,822,088.91
Engel-Nelson (Site 7) Due Diligence	\$ 150,000

Engel-Nelson (Site 7) Due Diligence \$ 150,000
Program Update/Project Vision Mapping \$ 100,000
Sub-Total \$ 250,000
Headquarters Redesign New Site: \$ 11,254,950

Headquarters Redesign New Site: \$ 11,254,950 Architects' compensation increase \$ 9,682,862

Schedule Adjustment:

Schematic Design - November 2023 - March 2024 Design Development - April 2024 - August 2024 Construction Documents - September 2024 - January 2025

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Marmon Mok Architecture

ARCHITECT (Firm name)

New Braunfels Utilities **OWNER** (Firm name)

PRINTED NAME AND TITLE

SIGNATURE

DATE

Briant Harkiewicz, AIA, Partner

PRINTED NAME AND TITLE November 30, 2023

DATE

SIGNATURE

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Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Jacob Tschoepe Reviewed by: Shawn Schorn

Program Portfolio Manager Director of Business Planning

Submitted by: Shawn Schorn Approved by: Ryan Kelso

Director of Business Planning Interim Chief Executive Officer

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute

an AIA Agreement with SpawGlass Contractors, Inc., Including Contingency, for the NBU Annex Facility Renovation Design Build

BACKGROUND

New Braunfels Utilities ("NBU") staff identified a need to find additional office space to house employees. On April 27, 2023, the Board of Trustees approved the transfer of property located at 1488 South Seguin Avenue to NBU from the City of New Braunfels. Prior to the transfer, a building assessment was completed, identifying items that need to be addressed before relocation of employees to the site.

In order to address the items identified in the building assessment, NBU staff issued a request for qualifications ("RFQ") on August 6, 2023, for the NBU Annex Facility Renovation Design-Build (the "Project"). NBU received two responses to the RFQ on August 23, 2023, and deemed both respondents qualified. On September 12, 2023, NBU issued Request for Proposal ("RFP") #23-0011 for the Project to both respondents. Interviews were conducted with both respondents on October 2, 2023. The project team evaluated both proposals and recommends the selection of SpawGlass Contractors, Inc. ("SpawGlass"), based on the criteria specified in the RFP as follows: (i) proposer and design-build team profiles, (ii) proposer and design-build team qualifications and related experience, (iii) design-build organization and key personnel, (iv) project approach, and (v) respondents' technical information and cost.

NBU staff requests that the Board of Trustees approve the AIA agreement with SpawGlass for the Project.

This item is being presented to the Board of Trustees because the total amount of the contract exceeds \$250,000.

FINANCIAL IMPACT

The contract amount for the Project is \$2,000,000. In anticipation of challenges that are common in remodel projects, a 15% contingency of \$300,000 will be added to the project construction budget. The total financial impact of the Project, including contingency, is \$2,300,000. The Project is budgeted within the Fiscal Year 2024 Board approved Capital Improvement Projects Budget.

LINK TO STRATEGIC PLAN

Customers and Community

People and Culture

Safety and Security

EXHIBITS

1. NBU Annex Facility Renovation Design Build AIA141



Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the day of	in the year 2023
(In words, indicate day, month and year.)	
BETWEEN the Owner:	
(Name, legal status, address and other inform	nation)
New Braunfels Utilities	
355 FM 306	
New Braunfels, Texas 78130	
and the Design-Builder:	
(Name, legal status, address and other inform	nation)
SpawGlass Contractors, Inc.	
9331 Corporate Drive	
Selma, Texas 78154	
for the following Project:	
(Name, location and detailed description)	
NBU Annex Facility Renovation	
1488 South Seguin Avenue	

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
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- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C DESIGN CRITERIA PACKAGE

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

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(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

Renovation of NBU's Annex Facility as more fully described in the Design Criteria Package, attached hereto and made a part of this Agreement.

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The Project shall consist of paving repairs and related improvements; site lighting improvements; miscellaneous site improvements related to fencing, landscaping and irrigation; building façade, roof and signage improvements; interior remodeling; finish improvements; electrical improvements; mechanical work; plumbing; and furniture, fixtures and other improvements as more fully described in the Design Criteria Package attached hereto and incorporated herein by reference as Exhibit C.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™−2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below: (Provide total for Owner's budget, and if known, a line item breakdown of costs.)

The estimated budget for the Project is two million dollars and zero cents (\$2,000,000.00)

- § 1.1.7 The Owner's design and construction milestone dates:
 - .1 Design phase milestone dates:

Preliminary meeting with Owner to review and evaluate Owner's Criteria – 1 day 100% Schematic Design Package – 14 days 100% Design Development Package – 21 days 75% Construction Document Package – 21 days

.2 Submission of Design-Builder Proposal:

Not more than fourteen (14) days after completion of Owner's review and approval of the 75% Construction Documents

.3 Phased completion dates:

Design Phase shall be completed within sufficient time to allow for execution of the Design-Build Amendment in such time as to allow substantial completion on or before April 2024.

Substantial Completion date:

TBD in the Design-Build Amendment, but the parties agree that the target date is in April 2024

- Final Completion date: Timely final completion is an essential condition of this Agreement. The Design-Builder agrees to achieve final completion of the Work within 30 days of the designated or extended Substantial Completion date. Final Completion means actual completion of the Work, including any punch list items, extras or Change Orders reasonably required or contemplated under the Design-Build Documents other than warranty work that may be required by the Agreement.
- .6 Other milestone dates:

Owner review and approval of the Design-Build Amendment within thirty (30) days of submission.

§ 1.1.8 The Design-Builder will retain Architects, Consultants and Contractors at the Design-Builder's (Paragraphs deleted) cost. The Architects, Consultants, and Contractors shall be listed in Exhibit A.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based: (Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

- § 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.
- § 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.
- § 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.
- § 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203TM_2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1: (List name, address and other information.)

John M. New, P.E., CCM Freese and Nichols, Inc. 10431 Morado Circle, Ste 300 Austin, TX 78759 210-865-5461

The Owner may authorize a designated representative to act on its behalf.

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows: (List name, address and other information.)

§ 1.2.3 The Owner will retain the following consultants and separate contractors: (List discipline, scope of work, and, if known, identify by name and address.)

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TBD

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2. The Design-Builder's representative shall be available to the Owner at all reasonable times for consultation with the Owner.

Jason Smith, President, San Antonio Division SpawGlass Contractors, Inc. 9331 Corporate Drive Selma, Texas 78154 210-651-9000

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party, unless such change is due to the representative leaving the employment of such party. In such event a replacement representative will be identified. The Design-Builder may not change its representative without written approval of the Owner. Such approval shall not be unreasonably withheld.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the exclusive venue and method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[]	Arbitration pursuant to Section 14.4
]	X]	Litigation in a District Court of competent jurisdiction in Comal County, Texas.
1]	Other: (Specify)

§ 1.4 Definitions

- § 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); Payment and Performance bonds; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.
- § 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.
- § 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.
- § 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.
- § 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

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- § 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.
- § 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.
- § 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.
- § 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.
- § 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.
- § 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.
- § 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." The foregoing is expressly subject to the Owner's obligations under the Texas Public Information Act, Texas Government Code chapter 552. The Owner cannot enter into confidentiality agreements and all records provided to the Owner in relation to this Project are subject to potential disclosure pursuant to the Act.
- § 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.
- § 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.
- § 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit,)

100% Schematic Design Package: \$41,000.00 100% Design Development Package: \$55,500.00 75% Construction Document Package: \$62,750.00 Architectural Construction Administration: \$21,750.00

Delivery of Performance and Payment Bonds: .76% of the total project cost

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§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

- § 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:
 - .1 Transportation and authorized out-of-town travel and subsistence;
 - .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
 - .3 Printing, reproductions, plots, standard form documents;

(Paragraphs deleted)

- .4 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner; and
- .5 Other Project-related expenditures, if authorized in writing in advance by the Owner.
- § 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred.
- § 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment
- § 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's

(Paragraphs deleted)

invoice to the Owner. Timeliness and interest on any late payments are governed by chapter 2251 of the Texas Government Code. Such obligations contained in that chapter apply equally to Owner and Design-Builder. Further, with respect to payments made by Owner, such funds are considered Trust Funds and shall be safeguarded and used as represented by Design-Builder to pay any consultants and subcontracts that may be due pursuant to the schedule of values.

- § 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner with each application for payment or invoice on which any charges for reimbursable expenses appears. Design-Builder shall maintain, at its office, a complete record of all costs and accounting data generated in relation to Reimbursable Expenses and services performed for a period of five years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first. Upon request of Owner, and within a reasonable time following such request, Design-Builder will make available for inspection and duplication all records required to be maintained by this section or elsewhere in the Design-Build Documents.
- § 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment
 For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall
 pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.
 Notwithstanding any terms to the contrary, the provisions of this Article 2 shall control the obligations of the Parties
 with respect to payments made pursuant to the Design-Build Documents.

§2.3 Owner's Right to Audit

The Owner and the Owner's designated representatives or auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Design-Builder's proposals, purchase orders, vouchers, memoranda and other data relating to the Agreement. In lieu of an on-site inspection, the Owner may elect to request and receive a complete copy, or portions, of the Design-Builder's records at the Owner's expense.

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ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

- § 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.
- § 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.
- § 3.1.3 The Design-Builder shall perform the Work in strict accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in strict accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.
- § 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.
- § 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.
- § 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.
- § 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.
- § 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals in accordance with the Texas Occupations Code and all applicable legal standards of care applicable to design professionals. The Design-Builder shall perform its services consistent with the professional skill and care ordinarily provided by competent architects and engineers practicing in the same or similar locality under the same or similar circumstances and professional license. The Design-Builder shall perform its services as expeditiously as is prudent considering the ordinary professional skill of a competent architect or engineer.
- § 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

- § 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:
 - .1 Work completed for the period;
 - .2 Project schedule status;
 - .3 Submittal schedule and status report, including a summary of outstanding Submittals;
 - .4 Responses to requests for information to be provided by the Owner;
 - .5 Approved Change Orders and Change Directives;
 - .6 Pending Change Order and Change Directive status reports;
 - .7 Tests and inspection reports:
 - .8 Status report of Work rejected by the Owner;
 - .9 Status of Claims previously submitted in accordance with Article 14;



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- Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.
- § 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:
 - .1 Design-Builder's work force report;
 - .2 Equipment utilization report; and
 - .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

- § 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. In no circumstance shall the preparation and presentation of a schedule extending the completion beyond the time limits contained in the Design-Build Documents entitle the Design-Builder to an extension of time absent a fully executed Modification extending such Contract Time.
- § 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner. Failure to do so may be an event of default unless such failure is excusable and notice of the event providing such excuse is given to the Owner in accordance with the obligations contained in this Agreement.
- § 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications.

§ 3.1.11 Design-Builder's Submittals

- § 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals. Owner's failure to review and respond to Submittals in general accordance with the approved Submittal schedule may entitle Design-Builder to an extension of Contract Time if such failure directly impacts the critical path of the Work on the Construction Schedule.
- § 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.
- § 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.
- § 3.1.11.4 The Work shall be in accordance with approved Submittals. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The

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Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

- § 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.
- § 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- § 3.1.12.1 The Design-Builder warrants and guarantees for one (1) year from Final Completion, or for a longer period if expressly stated in the Design-Build Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Design-Builder must correct any and all defects in material and/or workmanship which may appear during the Warranty and Guarantee period, or any defects that occur within one (1) year of Final Completion even if discovered more than one (1) year after Final Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.
- § 3.1.12.2 The Design-Builder's general warranty and any additional or special warranties are not limited by the Design-Builder's obligations to specifically correct defective or nonconforming Work, nor are they limited by any other remedies provided in the Design-Build Documents. The Design-Builder shall also be liable for any damage to property or persons relating to any breach of the Design-Builder's general warranty or any additional or special warranties required by the Contract Documents.
- § 3.1.12.3 The Design-Builder must furnish all special warranties required by the Design-Build Documents to the Owner no later than Final Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work which is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 11.

§ 3.1.13 Royalties, Patents and Copyrights

- § 3.1.13.1 The Design-Builder shall pay all royalties and license fees.
- § 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, INCLUDING THE OWNER'S CONSULTANTS, AGENTS AND EMPLOYEES, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS', EXPERT, OR CONSULTANT'S FEES, ARISING OUT

OF OR RESULTING FROM PERFORMANCE OF THE WORK, IF CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE DESIGN-BUILDER, ARCHITECT, A CONSULTANT, A CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.1.14.

§ 3.1.14.2 THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.1.14 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR DESIGN-BUILDER, ARCHITECT, A CONSULTANT, A CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, UNDER WORKERS' COMPENSATION ACTS. DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.1.15 Contingent Assignment of Agreements

- § 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that
 - assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

- § 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.
- § 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.
- § 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

- § 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.
- § 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.



- § 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include
 - .1 allocations of program functions, detailing each function and their square foot areas;
 - .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
 - .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
 - .4 the following:
 (List additional information, if any, to be included in the Design-Builder's written report.)
- § 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

- § 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:
 - Confirmation of the allocations of program functions;
 - .2 Site plan;
 - .3 Building plans, sections and elevations;
 - .4 Structural system;
 - .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
 - .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

- § 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:
 - A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
 - .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
 - .3 The proposed date the Design-Builder shall achieve Substantial Completion;
 - An enumeration of any qualifications and exclusions, if applicable;
 - .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
 - .6 The date on which the Design-Builder's Proposal expires.
- § 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site, evaluated the conditions and features of the site and existing building, made determinations relevant to design and construction relating to such evaluations, and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

- § 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.
- § 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information and approval. If the Design-Builder has included any deviations between the Construction Documents and the Design-Build Documents, the Design-Builder shall promptly notify the Owner of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

- § 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.
- § 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.
- § 5.2.3 The Design-Builder shall supervise, manage, and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder's obligation to supervise, manage and direct the Work is a material obligation under the Contract. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.
- § 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

- § 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.
- § 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.
- § 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

- § 5.4.1 The Owner enjoys tax-exempt status as a governmental entity. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Design-Builder for use on the Project. The Design-Builder shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the Owner by the Design-Builder. The Design-Builder agrees to bind all Consultants and Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.
- § 5.4.2 The Design-Builder will require all Contractors, Subcontractors and suppliers to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be

paid on material procurement and that such savings shall be passed on to the Owner.

- § 5.4.3 The Design-Builder will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable timeframe after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Design-Builder will be liable to the Owner for those amounts and the Owner may back-charge the Design-Builder for those amounts if a balance of funds due and payable remains at the time of such discovery.
 - .1 The Design-Builder will require all Contractors and Subcontractors of any tier maintain all records. invoices, receipts, or other accounting data regarding material purchases. The Design-Builder will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Design-Builder's records.
 - .2 The Design-Builder will ensure its Contractors and Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as the Design-Builder is bound to the Owner.
- § 5.4.4 Subject to the terms above, the Design-Builder shall pay sales, consumer, use and similar taxes for the Work provided by the Design-Builder that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

- § 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. The Design-Builder assumes full responsibility for all Work performed in contravention to any applicable law, statute, code, rule, regulation, or ordinance. Design-builder shall not be entitled to an increase in the Contract Sum or Contract Time associated with a failure to perform in accordance with the covenants contained in this section 5.5.1.
- § 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.
- § 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.
- § 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

- § 5.6.2 Unless otherwise provided in the Design-Build Documents.
 - allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
 - .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.
- § 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection. The Owner's failure to make selections as required in this section 5.6.3 may entitle Design-Builder to an extension of Contract Time if such failure directly impacts the critical path of the Work on the Construction Schedule.

§ 5.7 Key Personnel, Contractors and Suppliers

- § 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.
- § 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.
- § 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.
- § 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, including a current Construction Schedule, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. At all times during construction, the Design-Builder shall display a current Construction Schedule at the site for reference and reliance by the Owner. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

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§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

- § 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.
- § 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

- § 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. The Owner will request its separate contractors to implement the Design-Builder's safety requirements as a minimum standard for safety while on site. The Design-Builder shall provide a copy of such safety-requirements in writing to the Owner and any such separate contractors upon request. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.
- § 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.
- § 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.
- § 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

- § 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.
- § 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.
- § 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.
- § 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

- § 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.
- § 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.
- § 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.
- § 6.1.4 No Work, or portion of the Work, performed by the Design-Builder in excess or deviation from the Design-Build Documents will be subject to adjustments in the Contract Sum or Contract Time without prior written authorization as provided in this Article 6.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

- § 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order. A Change Directive may also be used in the absence of total agreement on whether work required by the Owner is within the Design-Builder's scope of Work or should be the subject of a Change Order.
- § 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:
 - .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
 - .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - .4 As provided in Section 6.3.7.
- § 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.
- § 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.
- § 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- § 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:
 - Additional costs of professional services; .1
 - Costs of labor, including social security, unemployment insurance, fringe benefits required by .2 agreement or custom, and workers' compensation insurance;
 - Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
 - .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the
 - .6 Additional costs of supervision and field office personnel directly attributable to the change.
- § 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost and any overhead and profit on such deleted work. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- § 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified.

The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

- § 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization, with the exception of any matter that must be approved by NBU's Board of Trustees.
- § 7.1.2 For all matters requiring the Owner's determination, input, approval, or other decision-making, the Owner shall render decisions in a timely manner and in accordance with the Construction Schedule agreed to by the Owner.

§ 7.2 Information and Services Required of the Owner

- § 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.
- § 7.2.2 The Owner shall provide, to the extent these documents exist and are under the Owner's control, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.
- § 7.2.3 The Owner will not, and the Contract shall be responsible for obtaining easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.
- § 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections; however, nothing in this section 7.2.4 shall relieve Design-Builder of its obligations contained in section 5.5 of this Agreement.
- § 7.2.5 The services, information, surveys and reports, if any, required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.
- § 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.
- § 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal.
- § 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

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§ 7.3 Submittals

- § 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3.
- § 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.
- § 7.4 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed and will be reasonably available to make site visits for the purpose of conferring with the Design-Builder as may be necessary to maintain the progress of the Project. Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.
- § 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.
- § 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- § 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

- § 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. In all aspects of the Work, time is of the essence of the Contract. Additionally, time limits stated in the Design-Build Documents are of the essence. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.
- § 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.
- § 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

- § 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; (2) by changes ordered in the Work by the Owner; (3) by labor disputes, fire, epidemic or pandemic, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution or (5) by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. If a delay is directly caused by both an act or neglect of Owner and beyond the control and without the fault of the Design-Builder, the Design-Builder may submit a Claim for the General Conditions costs for extension of the Contract Time. Notwithstanding the foregoing, the Design-Builder acknowledges and agrees that adjustments in the Contract Time or Contract Sum as outlined in this Section 8.2.1 will be permitted for a delay only to the extent such delay: (1) is not caused or could not have been reasonably anticipated and mitigated by the Contractor; (2) could not be limited or avoided by the Design-Builder's timely notice to the Owner of the delay; and (3) is in addition to any time contingency periods set forth in the critical path for completion of the Work.
- § 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.
- § 8.2.3 Should the Design-Builder default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, the Owner may withhold or deduct all costs and damages for compensable delay caused by the Design-Builder from the Contract Sum. Such costs shall include any attorneys' fees, and all other costs, expenses, and damages actually incurred by the Owner as a result of such delay.
- §8.2.4 Except as provided in Section 8.2.1 for a delay directly caused by both an act or neglect of Owner and beyond the control and without the fault of the Design-Builder, the Design-Builder shall receive no financial compensation for delay or hindrance of the Work. In no event shall the Owner be liable to the Design-Builder for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance with the limited express exception in Section 8.2.1. The Design-Builder's sole remedy for delay or hindrance shall be an extension of time.
- §8.2.5 The procedure for the determination of time extensions for unusually severe weather. In order for the Owner to award a time extension under this clause, the following conditions must be satisfied.
 - The weather experienced at the Project site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month; and
 - (2) The unusually severe weather must actually cause a delay to the completion of the Project. The delay must be beyond the control and without the fault of negligence of the Design-Builder.
- §8.2.6 The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the Project location and will constitute the base line for monthly weather time evaluations. The Design-Builder's activity durations provided in the progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
(4)	(4)	(4)	(3)	(5)	(6)	(4)	(3)	(4)	(4)	(4)	(4)

For the duration of the Contract, the Design-Builder shall maintain in its daily reports an accurate and contemporaneous record of the occurrence of adverse weather and resultant impact to normally scheduled Work. There is no delay from adverse weather unless Work on the overall Project's critical activities is prevented for 50 percent or more of the Design-Builder's scheduled work day. The number of actual adverse weather days shall be calculated monthly. If the number of actual adverse weather delay days in a month exceed the number of days for that month as referenced above, the Owner upon notification by the Design-Builder, will cover any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and a modification of time shall be issued in accordance with the Contract.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

(Paragraphs deleted)

§ 9.2 PREVAILING WAGE REQUIREMENTS

The Design-Builder and the Owner shall comply with chapter 2258 of the Texas Government Code governing prevailing wage. The Design-Builder shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage. The Owner has not independently performed a wage determination in accordance with controlling state and federal statutes. Accordingly, the Contractor must utilize the wage determinations and rates published by the U.S. Department of Labor pursuant to the Davis-Bacon Act.

(Paragraph deleted)

§ 9.3 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

(Paragraphs deleted)

§ 9.4 Applications for Payment

- § 9.4.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, parital lien releases, waivers, or other documents, and shall reflect retainage.
- § 9.4.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.
- § 9.4.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.
- § 9.4.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the

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Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Cost of materials stored off the construction site may be included in the Design-Builder's request at the sole discretion of the Owner for progress payment, if the following submittals are made and conditions are met:

- 1. The Design-Builder shall submit a written narrative giving location of stored materials, provisions for protection of same, and arrangements for transportation of materials to the job site.
- 2. The Design-Builder shall submit separate Bills of Sale or Invoices on all materials stored off site.
- 3. The Design-Builder shall submit suitable written evidence that materials stored off site are covered by insurance protection adequate to cover Owner's interests.
- The Design-Builder shall store materials in facilities which are suitable to protect same from loss and deterioration. Materials shall be separated from other stored materials and shall be clearly labeled as to description, Ownership and Project destination. Access to stored materials shall be made convenient for inspection which will be made by Owner's representative prior to the issue of each Certificate of Payment which includes payment for materials stored off site.
- 5. Payment for materials stored off site shall not affect warranty period for such materials, which period shall commence upon date of final completion of the Work.
- § 9.4.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.
- § 9.4.4 Affidavits and Waivers of Liens. With each Application for Payment, the Design-Builder will provide the Owner with an affidavit and waiver of lien through the period covered by such Application for Payment conditioned only upon receipt of payment from the Owner. Beginning with Design-Builder's second Application for Payment, Design-Builder, will also submit to the Owner an unconditional affidavit and waiver of lien through the period covered by such immediately preceding Application for Payment.

§ 9.5 Certificates for Payment

The Owner shall, within ten (10) days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.6.1.

§ 9.6 Decisions to Withhold Certification

§ 9.6.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.5. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

- .7 failure to carry out the Work in accordance with the Design-Build Documents.
- § 9.6.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- § 9.6.3 If the Owner withholds certification for payment under Section 9.6.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

(Paragraphs deleted)

§ 9.7 Progress Payments

- § 9.7.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.
- § 9.7.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.
- § 9.7.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.
- § 9.7.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.
- § 9.7.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.7.2, 9.6.3 and 9.7.4.
- § 9.7.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.
- § 9.7.7 Payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision. However, Design-Builder shall comply with the provisions of the Texas Trust Fund Act, Chapter 162 of the Texas Property Code.

(Paragraphs deleted)

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§ 9.8 Failure of Payment

Failure of payment by the Owner within the time limits proscribed by chapter 2251 of the Texas Government Code shall entitle the Design-Builder to the remedies contained in that chapter. Further, should the Owner fail to pay the Design-Builder any sums for which a Certificate for Payment has been issued within sixty (60) days, the Design-Builder may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of suspension provided the Design-Builder files a claim in accordance with Article 15 herein.

§ 9.9 Substantial Completion

- § 9.9.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.9.
- § 9.9.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.
- § 9.9.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.
- § 9.9.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.9.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.
- § 9.9.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- § 9.9.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.10 Partial Occupancy or Use

- § 9.10.1 The Owner may occupy or use any completed or partially completed portion of the Work provided such occupancy or use is authorized by public authorities having jurisdiction over the Project.
- § 9.10.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- § 9.10.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

(Paragraphs deleted)

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§ 9.11 Final Completion and Final Payment

- § 9.11.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. The Design-Builder's written notice and request for final inspection constitutes a representation by the Design-Builder to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Design-Build Documents. The Owner will promptly notify the Design-Builder if the Owner does not concur that the Work is finally complete. In such case, the Design-Builder must bear the cost of any additional Work or services of the Owner until the Work is determined to be finally complete. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.11.2, promptly issue a final Certificate for Payment.
- § 9.11.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a release or waiver of payment claims on behalf of the Design-Builder and a similar release or waiver on behalf of each Subcontractor and supplier; (3) a certificate evidencing that the Design-Builder's liability insurance will remain in effect after final payment and will not be cancelled or allowed to expire prior to the period required by these contract documents; (4) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (5) consent of surety, if any, to final payment, (6) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (7) all warranties and bonds required by the Design-Build Documents, product data, and maintenance and operations manuals, and (8) a certified building location survey and as-built site plan in the form and number required by the Design-Build Documents; and (9) other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner.
- § 9.11.3 If the Design-Builder is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, THE DESIGN-BUILDER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER FOR ANY AND ALL COSTS INCURRED BY THE OWNER IN ADDRESSING, REMOVING, DISCHARGING OR OTHERWISE SETTLING AN ARCHITECT, ENGINEER, CONSULTANT, OR A CONTRACTOR PAYMENT CLAIM, INCLUDING ALL ATTORNEYS' FEES.
- § 9.11.4 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- § 9.11.5 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
 - .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
 - .3 terms of special warranties required by the Design-Build Documents.
- § 9.11.6 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

- § 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to
 - .1 all persons at the site and other persons who may be affected by the Work or other operations of the Design-Builder;
 - .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
 - .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.
- § 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss. Included within the applicable laws are such laws governing access to public facilities by all people, including those with disabilities. As such, the Design-Builder shall adhere to all applicable provisions of the Americans with Disabilities Act and the Texas Accessibility Standards regardless of anything to the contrary elsewhere in the Design-Build Documents.
- § 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.
- § 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.
- § 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.
- § 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.
- § 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.
- § 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials.

(Paragraphs deleted)

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§ 10.3.2 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site.

(Paragraphs deleted)

§ 10.3.3 THE DESIGN-BUILDER SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE DESIGN-BUILDER BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE DESIGN-BUILDER FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder must take all necessary action to prevent threatened damage, injury or loss. The Design-Builder must promptly but in all events within twenty-four (24) hours of the occurrence report such action in writing to the Owner.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

- § 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder and poportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.
- § 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
- § 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.
- § 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

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- § 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.
- § 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work pursuant to the warranties provided, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

- § 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. As part of the total compensation which the Owner has agreed to pay the Design-Builder for the professional services to be rendered under this Agreement, the Design-Builder agrees that all finished and unfinished "Instruments of Service" including but not limited to documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, preliminary reports, reports, bid packet, construction contract documents, advertisement for bids incorporating any Owner standard provisions provided by the Design-Builder, all of which are produced by the Design-Builder and paid for by the Owner are, and will remain, the property of the Owner. The Design-Builder will furnish the Owner with electronic copies in .PDF format, to the extent they are available, of all of the foregoing to facilitate coordination; however, ownership of the underlying work product shall remain the intellectual property of the Design-Builder. The Design-Builder shall have the right to use such work products for the Design-Builder's purposes on this Project. However, such documents are not intended to be suitable for reuse by the Owner or others. The above notwithstanding, the Design-Builder shall retain all rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary and intellectual property information provided pursuant to this Agreement.
- § 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.
- § 12.3 The Design-Builder shall obtain non-exclusive licenses from the Architect, Engineer, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12.
- § 12.3.1 In the event the Owner alters the Instruments of Service without the author's written authorization, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such alteration. The terms of this Section 12.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause.

(Paragraph deleted)

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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- § 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.
- § 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven (7) days' written notice.
- § 13.1.4 Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- § 13.1.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Design-Builder for the Owner's convenience and without cause.
- § 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.
- § 13.2 Termination or Suspension Following Execution of the Design-Build Amendment
- § 13.2.1 Termination by the Design-Builder
- § 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:
 - .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be (Paragraphs deleted) stopped.
- § 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
- § 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on such Work, profit on unperformed Work, and direct job costs incurred by reason of such termination, and damages.

(Paragraph deleted)

- § 13.2.2 Termination by the Owner For Cause
- § 13.2.2.1 The Owner may terminate the Contract if the Design-Builder
 - .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
 - repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
 - .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
 - .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

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- § 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate the Design-Builder's right to perform under the Contract and may, subject to any prior rights of the surety:
 - Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
 - .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15;
 - .3 Finish the Work by whatever reasonable method the Owner may deem expedient.
- § 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.
- § 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for consultant's services and expenses made necessary thereby, attorneys' fees, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.
- § 13.2.2.5 In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of emergency, and other applicable exemptions pursuant to controlling procurement law. In the event of a claim by Owner for completion costs following termination by the Owner or abandonment by the Design-Builder, the exercise of Owner's rights under this section shall not be grounds for challenging the reasonableness of the costs incurred or the Owner's damages.
- §13.2.2.6 In the event of a determination by a court or other authority to whom a dispute between the Parties has been submitted that a termination for cause under this section 13.2.2 was either wrongful, improper, or unjustified for any reason, the termination shall automatically be deemed a termination for convenience pursuant to section 13.2.4 below and the Design-Builder's remedy for such termination shall be limited to the recoveries allowed pursuant to section 13.2.4.3.

§ 13.2.3 Suspension by the Owner for Convenience

- § 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
- § 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
 - that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
 - .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

- § 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
- § 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall
 - .1 cease operations as directed by the Owner in the notice and, if required by Owner, participate in an inspection of the Work with the Owner to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
 - .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
 - .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

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§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and direct job costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

- § 14.1.1 Definition. A Claim is a written demand by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 14.1.1 does not require the Owner to file a Claim in order to impose delay damages in accordance with the Design-Build Documents.
- § 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

- § 14.1.3.1 Prior To Final Payment. Notice of Claims should be provided contemporaneously with the events giving rise to the claim or concurrent to the time the claimant recognizes the condition giving rise to the Claim. Failure to provide timely notice and preserve conditions and records to substantiate a Claim may result in the diminishment or denial of a Claim. Failure to provide notice required by the Design-Build Documents and this Section 14.1.3.1 within ninety (90) days of the occurrence or event giving rise to the claim shall constitute an express waiver and complete bar to recovery for any adjustment to the Contract Time, Contract Sum, or other damages and accommodations.
- § 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.
- § 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.
- § 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Otherwise, failure to provide notice in accordance with the Design-Build Documents constitutes an express waiver of the Claim by the Design-Builder.

§ 14.1.6 Claims for Additional Time

- § 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. Failure to provide notice constitutes an express waiver of the Claim by the Design-Builder.
- § 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Any Claim relating to adverse weather will be subject to the provisions contained in Section 8.2.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This

(Paragraphs deleted)

waiver includes damages incurred by the Design-Builder for principal office overhead and expenses including the compensation of personnel stationed there, for losses of financing, bonding capacity, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of delay damages incurred by the Owner.

(Paragraphs deleted)

§ 14.2 Damages Available to the Design-Builder

§14.2.1 The Design-Builder expressly acknowledges that its ability to recover damages for any Claims against the Owner are strictly limited to the following:

- .1 the balance due and owed by the Owner under the Contract, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
- .2 the amount owed for Change Orders or additional work performed pursuant to a Change Directive;
- .3 reasonable and necessary attorney's fees that are equitable and just; and
- .4 interest as allowed by Chapter 2251 of the Texas Government Code.

§14.2.2 The Design-Builder may not recover damages for the following:

- .1 consequential damages as delineated in section 14.1.7; and
- .2 exemplary damages.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for herein shall be subject to mediation as a condition precedent to filing suit.

- § 14.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing.
- § 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

(Paragraphs deleted)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the State of Texas without regard to its conflict of laws principles.

(Paragraphs deleted)

§ 15.2 Venue

This Agreement is entered into and performed in Comal County, Texas, and the Design-Builder and the Owner agree that mandatory venue for any legal action related to or arising from this Agreement shall be in the state District Courts of Comal County, Texas.

§ 15.3 Successors and Assigns

§ 15.3.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract and the attempted assignment shall be of no legal force or effect as to the other party.

§ 15.4 Written Notice

User Notes:

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice sent or transmitted by electronic mail or facsimile must be actually received to be considered delivered and to comply with notice requirements herein. Transmission alone by electronic mail or facsimile does not

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constitute delivery, proof of delivery by means of a return or read receipt, or other means, is required to establish delivery.

§ 15.5 Rights and Remedies

- § 15.5.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- § 15.5.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(Paragraphs deleted)

§ 15.6 Tests and Inspections

§ 15.6.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Design-Builder must first obtain the Owner's written approval of any independent testing laboratory that will sample and test any materials at the Project as may be required by the Design-Build Documents. The Design-Builder must inform the Owner of all scheduled tests. All tests, inspections, or specific approvals required by law or the Design-Build Documents must be scheduled, coordinated and performed in a manner so as to avoid any delay in the Work. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

(Paragraphs deleted)

- § 15.6.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.6.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.6.3, shall be at the Owner's expense.
- § 15.6.3 If such procedures for testing, inspection or approval under Sections 15.6.1 and 15.6.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.
- § 15.6.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.
- § 15.6.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.
- § 15.6.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.
- § 15.6.7 In addition to the tests required by this Section 15.6, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Design-Builder must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

§ 15.7 Confidential Information

To the extent allowed by law, if the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.7.1 and 15.7.2.

§ 15.7.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§15.7.2 The foregoing is expressly subject to the Owner's obligations under the Texas Public Information Act, Texas Government Code chapter 552. The Owner cannot enter into confidentiality agreements and all records provided to the Owner in relation to this Project are subject to potential disclosure pursuant to the Act.

§ 15.8 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.9 Interpretation

§ 15.9.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.9.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

- § 16.1 This Agreement is comprised of the following documents listed below:
 - .1 AIA Document A141TM_2014, Standard Form of Agreement Between Owner and Design-Builder
 - .2 AIA Document A141TM-2014, Exhibit A, Design-Build Amendment, if executed
 - AIA Document A141TM—2014, Exhibit B, Insurance and Bonds
 - Exhibit C, General Project Requirements (Owner's Request for Qualifications and Response from Design-Builder)
 - .5 Exhibit D, Owner's Design Criteria Package

(Paragraphs deleted)

.6 Exhibit E, Design-Builder's Project Team

This Agreement entered into as of the day and year first written above.

NEW BRAUNFELS UTILITIES	SPAWGLASS CONTRACTORS, INC.					
	11/20/2023					
OWNER (Signature)	DESIGN-BUILDER (Signature)					
9	Jason Smith, President, San Antonio Division					
(Printed name and title)	(Printed name and title)					

User Notes:

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Additions and Deletions Report for

AIA® Document A141® - 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:26:20 ET on 11/17/2023.

PAGE 1
AGREEMENT made as of theday ofin the year 2023
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New Braunfels Utilities 355 FM 306 New Braunfels, Texas 78130
SpawGlass Contractors, Inc. 9331 Corporate Drive Selma, Texas 78154
NBU Annex Facility Renovation 1488 South Seguin Avenue New Braunfels, TX 78130 PAGE 2
C SUSTAINABLE PROJECTS DESIGN CRITERIA PACKAGE PAGE 3
Renovation of NBU's Annex Facility as more fully described in the Design Criteria Package, attached hereto and made a part of this Agreement.
The Project shall consist of paving repairs and related improvements; site lighting improvements; miscellaneous site improvements related to fencing, landscaping and irrigation; building façade, roof and signage improvements; interior remodeling; finish improvements; electrical improvements; mechanical work; plumbing; and furniture, fixtures and other improvements as more fully described in the Design Criteria Package attached hereto and incorporated herein by reference as Exhibit C.
The estimated budget for the Project is two million dollars and zero cents (\$2,000,000.00)
•••

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Preliminary meeting with Owner to review and evaluate Owner's Criteria - 1 day

100% Schematic Design Package – 14 days 100% Design Development Package – 21 days 75% Construction Document Package – 21 days

Not more than fourteen (14) days after completion of Owner's review and approval of the 75% Construction Documents

Design Phase shall be completed within sufficient time to allow for execution of the Design-Build Amendment in such time as to allow substantial completion on or before April 2024.

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TBD in the Design-Build Amendment, but the parties agree that the target date is in April 2024

- .5 Final Completion date: Timely final completion is an essential condition of this Agreement. The Design-Builder agrees to achieve final completion of the Work within 30 days of the designated or extended Substantial Completion date. Final Completion means actual completion of the Work, including any punch list items, extras or Change Orders reasonably required or contemplated under the Design-Build Documents other than warranty work that may be required by the Agreement.
- .6 Other milestone dates:

Owner review and approval of the Design-Build Amendment within thirty (30) days of submission.

§ 1.1.8 The Owner requires the Design Builder to retain the following Architect, Design-Builder will retain Architects, Consultants and Contractors at the Design-Builder's cost: (List name, legal status, address and other information.)

1 Architect

.2 Consultants

.3 Contractors

cost. The Architects, Consultants, and Contractors shall be listed in Exhibit A.

John M. New, P.E., CCM
Freese and Nichols, Inc.
10431 Morado Circle, Ste 300
Austin, TX 78759
210-865-5461
The Owner may authorize a designated representative to act on its behalf.
PAGE 5

TBD

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2: (List name, address and other information.) Section 3.1.2. The Design-Builder's representative shall be available to the Owner at all reasonable times for consultation with the Owner.

Jason Smith, President, San Antonio Division SpawGlass Contractors, Inc. 9331 Corporate Drive Selma, Texas 78154 210-651-9000

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party, unless such change is due to the representative leaving the employment of such party. In such event a replacement representative will be identified. The Design-Builder may not change its representative without written approval of the Owner. Such approval shall not be unreasonably withheld.

...

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the <u>exclusive venue and</u> method of binding dispute resolution shall be the following:

...

[X] Litigation in a court-District Court of competent jurisdiction in Comal County, Texas.

...

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); Payment and Performance bonds; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

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§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." The foregoing is expressly subject to the Owner's obligations under the Texas Public Information Act, Texas Government Code chapter 552. The Owner cannot enter into confidentiality agreements and all records provided to the Owner in relation to this Project are subject to potential disclosure pursuant to the Act.

...

100% Schematic Design Package: \$41,000.00 100% Design Development Package: \$55,500.00 75% Construction Document Package: \$62,750.00 Architectural Construction Administration: \$21,750.00

Delivery of Performance and Payment Bonds: .76% of the total project cost

PAGE 7

- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- Fees paid for securing approval of authorities having jurisdiction over the Project;
- Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .4 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner:
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .5 Other Project-related expenditures, if authorized in writing in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of percent (%) of the expenses-incurred.

- § 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design Builder. (Insert rate of monthly or annual interest agreed upon.)
- -%-invoice to the Owner. Timeliness and interest on any late payments are governed by chapter 2251 of the Texas Government Code. Such obligations contained in that chapter apply equally to Owner and Design-Builder. Further, with respect to payments made by Owner, such funds are considered Trust Funds and shall be safeguarded and used as represented by Design-Builder to pay any consultants and subcontracts that may be due pursuant to the schedule of values.
- § 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two-with each application for payment or invoice on which any charges for reimbursable expenses appears. Design-Builder shall maintain, at its office, a complete record of all costs and accounting data generated in relation to Reimbursable Expenses and services performed for a period of five years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first, Upon request of Owner, and within a reasonable time following such request, Design-Builder will make available for inspection and duplication all records required to be maintained by this section or elsewhere in the Design-Build Documents.

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment. Notwithstanding any terms to the contrary, the provisions of this Article 2 shall control the obligations of the Parties with respect to payments made pursuant to the Design-Build Documents.

§2.3 Owner's Right to Audit

The Owner and the Owner's designated representatives or auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Design-Builder's proposals, purchase orders, vouchers, memoranda and other data relating to the Agreement. In lieu of an on-site inspection, the Owner may elect to request and receive a complete copy, or portions, of the Design-Builder's records at the Owner's expense. PAGE 8

§ 3.1.3 The Design-Builder shall perform the Work in strict accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in strict accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

...

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder-professionals in accordance with the Texas Occupations Code and all applicable legal standards of care applicable to design professionals. The Design-Builder shall perform its services consistent with the professional skill and care ordinarily provided by competent architects and engineers practicing in the same or similar locality under the same or similar circumstances and professional license. The Design-Builder shall perform its services as expeditiously as is prudent considering the ordinary professional skill of a competent architect or engineer.

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- § 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. In no circumstance shall the preparation and presentation of a schedule extending the completion beyond the time limits contained in the Design-Build Documents entitle the Design-Builder to an extension of time absent a fully executed Modification extending such Contract Time.
- § 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner. Failure to do so may be an event of default unless such failure is excusable and notice of the event providing such excuse is given to the Owner in accordance with the obligations contained in this Agreement.
- § 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief. the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

...

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals. Owner's failure to review and respond to Submittals in general accordance with the approved Submittal schedule may entitle Design-Builder to an extension of Contract Time if such failure directly impacts the critical path of the Work on the Construction Schedule.

- § 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. Submittals. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals. PAGE 10
- § 3.1.12.1 The Design-Builder warrants and guarantees for one (1) year from Final Completion, or for a longer period if expressly stated in the Design-Build Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Design-Builder must correct any and all defects in material and/or workmanship which may appear during the Warranty and Guarantee period, or any defects that occur within one (1) year of Final Completion even if discovered more than one (1) year after Final Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.

§ 3.1.12.2 The Design-Builder's general warranty and any additional or special warranties are not limited by the Design-Builder's obligations to specifically correct defective or nonconforming Work, nor are they limited by any other remedies provided in the Design-Build Documents. The Design-Builder shall also be liable for any damage to property or persons relating to any breach of the Design-Builder's general warranty or any additional or special warranties required by the Contract Documents.

§ 3.1.12.3 The Design-Builder must furnish all special warranties required by the Design-Build Documents to the Owner no later than Final Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work which is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 11.

...

§ 3.1.14.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, INCLUDING THE OWNER'S CONSULTANTS, AGENTS AND EMPLOYEES, FROM AND AGAINST CLAIMS, DAMAGES, losses-Losses, Costs, and expenses, Including but not limited to atterneys'. Attorneys', expert, or consultant's fees, arising out of or resulting from performance of the work, but only to the extent caused-IF Caused in whole or in part by the negligent acts or omissions of the design-builder, architect, a consultant, a contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this section 3.1.14. Page 12

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the <u>site</u>, evaluated the conditions and features of the site <u>and existing building</u>, made determinations relevant to design and construction relating to such evaluations, and become familiar with local conditions under which the Work is to be completed.

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§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers-information and approval. If the Design-Builder has included any deviations between the Construction Documents and the Design-Build Documents, the Owner-Design-Builder shall promptly notify the Design-Builder-Owner of such deviations in writing. The Construction Documents shall not modify the Design-Builder Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

...

§ 5.2.3 The Design-Builder shall supervise supervise, manage, and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder's obligation to supervise, manage and direct the Work is a material obligation under the Contract. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

•••

The Design Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. § 5.4.1 The Owner enjoys tax-exempt status as a governmental entity. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Design-Builder for use on the Project. The Design-Builder shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the Owner by the Design-Builder. The

Design-Builder agrees to bind all Consultants and Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

- § 5.4.2 The Design-Builder will require all Contractors, Subcontractors and suppliers to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.
- § 5.4.3 The Design-Builder will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable timeframe after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Design-Builder will be liable to the Owner for those amounts and the Owner may back-charge the Design-Builder for those amounts if a balance of funds due and payable remains at the time of such discovery.
 - .1 The Design-Builder will require all Contractors and Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Design-Builder will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Design-Builder's records.
 - .2 The Design-Builder will ensure its Contractors and Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as the Design-Builder is bound to the Owner.
- § 5.4.4 Subject to the terms above, the Design-Builder shall pay sales, consumer, use and similar taxes for the Work provided by the Design-Builder that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

 PAGE 14
- § 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. The Design-Builder assumes full responsibility for all Work performed in contravention to any applicable law, statute, code, rule, regulation, or ordinance. Design-builder shall not be entitled to an increase in the Contract Sum or Contract Time associated with a failure to perform in accordance with the covenants contained in this section 5.5.1.

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- § 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection. The Owner's failure to make selections as required in this section 5.6.3 may entitle Design-Builder to an extension of Contract Time if such failure directly impacts the critical path of the Work on the Construction Schedule.

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, including a current Construction Schedule, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. At all times during construction, the Design-Builder shall display a current Construction Schedule at the site for reference and reliance by the Owner. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

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§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. The Owner will request its separate contractors to implement the Design-Builder's safety requirements as a minimum standard for safety while on site. The Design-Builder shall provide a copy of such safety-requirements in writing to the Owner and any such separate contractors upon request. If

the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

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§ 6.1.4 No Work, or portion of the Work, performed by the Design-Builder in excess or deviation from the Design-Build Documents will be subject to adjustments in the Contract Sum or Contract Time without prior written authorization as provided in this Article 6.

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§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order. A Change Directive may also be used in the absence of total agreement on whether work required by the Owner is within the Design-Builder's scope of Work or should be the subject of a Change Order.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net eest. cost and any overhead and profit on such deleted work. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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- § 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization, authorization, with the exception of any matter that must be approved by NBU's Board of Trustees.
- § 7.1.2 The For all matters requiring the Owner's determination, input, approval, or other decision-making, the Owner shall render decisions in a timely manner and in accordance with the Design Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. Construction Schedule agreed to by the Owner.
- § 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, these documents exist and are under the Owner's control, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.
- § 7.2.3 The Owner shall promptly obtain will not, and the Contract shall be responsible for obtaining easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.
- § 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections: inspections; however, nothing in this section 7.2.4 shall relieve Design-Builder of its obligations contained in section 5.5 of this Agreement.
- § 7.2.5 The services, information, surveys and reports-reports, if any, required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no

event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design Builder as the Design Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design Builder. In such event, the Design Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals, Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. PAGE 20

§ 7.4 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed and will be reasonably available to make site visits for the purpose of conferring with the Design-Builder as may be necessary to maintain the progress of the Project. Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

...

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently-fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3. PAGE 21

- § 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. In all aspects of the Work, time is of the essence of the Contract. Additionally, time limits stated in the Design-Build Documents are of the essence. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.
- § 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or (2) by changes ordered in the Work by the Owner; er-(3) by labor disputes, fire, epidemic or pandemic, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or-(4) by delay authorized by the Owner pending mediation and binding dispute resolution or (5) by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. If a delay is directly caused by both an act or neglect of Owner and beyond the control and without the fault of the Design-Builder, the Design-Builder may submit a Claim for the General Conditions costs for extension of the Contract Time. Notwithstanding the foregoing, the Design-Builder acknowledges and agrees that adjustments in the Contract Time or Contract Sum as outlined in this Section 8.2.1 will be permitted for a delay only to the extent such delay: (1) is not caused or could not have been reasonably anticipated and mitigated by the Contractor; (2) could not be limited or avoided by the Design-Builder's timely notice to the Owner of the delay; and (3) is in addition to any time contingency periods set forth in the critical path for completion of the Work.
- § 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Decuments-Should the Design-Builder default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, the Owner may withhold or deduct all costs and damages for compensable delay caused by the Design-Builder from the Contract Sum. Such costs shall include any attorneys' fees. and all other costs, expenses, and damages actually incurred by the Owner as a result of such delay.
- §8.2.4 Except as provided in Section 8.2.1 for a delay directly caused by both an act or neglect of Owner and beyond the control and without the fault of the Design-Builder, the Design-Builder shall receive no financial compensation for delay or hindrance of the Work. In no event shall the Owner be liable to the Design-Builder for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance with the limited express exception in Section 8.2.1. The Design-Builder's sole remedy for delay or hindrance shall be an extension of time.
- §8.2.5 The procedure for the determination of time extensions for unusually severe weather. In order for the Owner to award a time extension under this clause, the following conditions must be satisfied.
 - (1) The weather experienced at the Project site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month; and
 - (2) The unusually severe weather must actually cause a delay to the completion of the Project. The delay must be beyond the control and without the fault of negligence of the Design-Builder.
- §8.2.6 The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the Project location and will constitute the base line for monthly weather time evaluations. The Design-Builder's activity durations provided in the progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

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JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
(4)	(4)	(4)	(3)	(5)	(6)	(4)	(3)	(4)	(4)	(4)	(4)

For the duration of the Contract, the Design-Builder shall maintain in its daily reports an accurate and contemporaneous record of the occurrence of adverse weather and resultant impact to normally scheduled Work. There is no delay from adverse weather unless Work on the overall Project's critical activities is prevented for 50 percent or more of the Design-Builder's scheduled work day. The number of actual adverse weather days shall be calculated monthly. If the number of actual adverse weather delay days in a month exceed the number of days for that month as referenced above, the Owner upon notification by the Design-Builder, will cover any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and a modification of time shall be issued in accordance with the Contract.

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§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design Builder's Applications for Payment.

§ 9.3 Applications for Payment

- § 9.3.1 At least ten days before the date established for each progress payment, the Design Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be netarized, if required, and supported by data substantiating the Design Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design Build Documents.
- § 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.
- § 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design Builder, unless such Work has been performed by others whom the Design Builder intends to pay.
- § 9.3.2 Unless otherwise provided in the Design Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.
- § 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design Builder's Application for Payment, or the quality of the Work is not in accordance with the Design Builder Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design Builder as provided in Section 9.4. If the Design Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party-claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.2 PREVAILING WAGE REQUIREMENTS

The Design-Builder and the Owner shall comply with chapter 2258 of the Texas Government Code governing prevailing wage. The Design-Builder shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage. The Owner has not independently performed a wage determination in accordance with controlling state and federal statutes. Accordingly, the Contractor must utilize the wage determinations and rates published by the U.S. Department of Labor pursuant to the Davis-Bacon Act.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.3 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.4 Applications for Payment

§ 9.4.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, parital lien releases, waivers, or other documents, and shall reflect retainage.

§ 9.4.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

- § 9.4.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.
- § 9.4.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Cost of materials stored off the construction site may be included in the Design-Builder's request at the sole discretion of the Owner for progress payment, if the following submittals are made and conditions are met:
 - The Design-Builder shall submit a written narrative giving location of stored materials, provisions for protection of same, and arrangements for transportation of materials to the job site.
 - The Design-Builder shall submit separate Bills of Sale or Invoices on all materials stored off site.
 - The Design-Builder shall submit suitable written evidence that materials stored off site are covered by insurance protection adequate to cover Owner's interests.
 - 4. The Design-Builder shall store materials in facilities which are suitable to protect same from loss and deterioration. Materials shall be separated from other stored materials and shall be clearly labeled as to description, Ownership and Project destination. Access to stored materials shall be made convenient for inspection which will be made by Owner's representative prior to the issue of each Certificate of Payment which includes payment for materials stored off site.
 - Payment for materials stored off site shall not affect warranty period for such materials, which period shall commence upon date of final completion of the Work.
- § 9.4.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.
- § 9.4.4 Affidavits and Waivers of Liens. With each Application for Payment, the Design-Builder will provide the Owner with an affidavit and waiver of lien through the period covered by such Application for Payment conditioned only upon receipt of payment from the Owner. Beginning with Design-Builder's second Application for Payment, Design-Builder, will also submit to the Owner an unconditional affidavit and waiver of lien through the period covered by such immediately preceding Application for Payment.

§ 9.5 Certificates for Payment

The Owner shall, within ten (10) days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.6.1.

§ 9.6 Decisions to Withhold Certification

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.5. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may

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nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor:
- reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 7 failure to carry out the Work in accordance with the Design-Build Documents.
- § 9.6.2 The Design Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design Builder is entitled, reflecting percentages actually retained from payments to the Design Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design Builder to make payments to subconsultants and subcontractors in a similar manner. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- § 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity If the Owner withholds certification for payment under Section 9.6.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design Builder. Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.
- § 9.6.4 The Owner has the right to request written evidence from the Design Builder that the Design Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design Builder, amounts paid by the Owner to the Design Builder for the Work. If the Design Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.
- § 9.6.5 Design Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.
- § 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design Build Documents.

§ 9.7 Progress Payments

- § 9.7.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.
- § 9.7.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the

Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

- § 9.7.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.
- § 9.7.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.
- § 9.7.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.7.2, 9.6.3 and 9.7.4.
- § 9.7.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.
- § 9.6.7 Unless the Design Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments 9.7.7 Payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision. However, Design-Builder shall comply with the provisions of the Texas Trust Fund Act, Chapter 162 of the Texas Property Code.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design Builder, within the time required by the Design Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design Builder's reasonable costs of shut down, delay and start up, plus interest as provided for in the Design Build Documents.

§ 9.8 Substantial Completion

- § 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.
- § 9.8.2 When the Design Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design Builder to complete all Work in accordance with the Design-Build Documents.
- § 9.8.3 Upon receipt of the Design Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design Builder's list, which is not sufficiently complete in accordance with the Design Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon

notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

- § 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.
- § 9.8.5 When the Work or designated portion thereof is substantially complete, the Design Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- § 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.8 Failure of Payment

Failure of payment by the Owner within the time limits proscribed by chapter 2251 of the Texas Government Code shall entitle the Design-Builder to the remedies contained in that chapter. Further, should the Owner fail to pay the Design-Builder any sums for which a Certificate for Payment has been issued within sixty (60) days, the Design-Builder may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of suspension provided the Design-Builder files a claim in accordance with Article 15 herein.

§ 9.9 Substantial Completion

- § 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design Build Documents. When the Design Builder considers a portion substantially complete, the Design Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design Builder-Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.9.
- § 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.
- § 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents. Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the

Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.10 Final Completion and Final Payment

- § 9.9.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.9.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.
- § 9.9.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- § 9.9.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.10 Partial Occupancy or Use

- § 9.10.1 Upon receipt of the Design Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment. The Owner may occupy or use any completed or partially completed portion of the Work provided such occupancy or use is authorized by public authorities having jurisdiction over the Project.
- § 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design Build Documents, (4) consent of surety, if any, to final payment, (5) as constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design Builder, refuses to furnish a release or waiver required by the Owner, the Design Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees. Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- § 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design Build Documents, and if bonds have been furnished, the written consent of surety to

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payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

- § 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
 - .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Design Build Documents; or
 - .3 terms of special warranties required by the Design Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

§ 9.11 Final Completion and Final Payment

§ 9.11.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. The Design-Builder's written notice and request for final inspection constitutes a representation by the Design-Builder to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Design-Build Documents. The Owner will promptly notify the Design-Builder if the Owner does not concur that the Work is finally complete. In such case, the Design-Builder must bear the cost of any additional Work or services of the Owner until the Work is determined to be finally complete. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.11.2, promptly issue a final Certificate for Payment.

§ 9.11.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a release or waiver of payment claims on behalf of the Design-Builder and a similar release or waiver on behalf of each Subcontractor and supplier; (3) a certificate evidencing that the Design-Builder's liability insurance will remain in effect after final payment and will not be cancelled or allowed to expire prior to the period required by these contract documents; (4) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (5) consent of surety, if any, to final payment, (6) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (7) all warranties and bonds required by the Design-Build Documents, product data, and maintenance and operations manuals, and (8) a certified building location survey and as-built site plan in the form and number required by the Design-Build Documents; and (9) other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner.

§9.11.3 If the Design-Builder is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, THE DESIGN-BUILDER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER FOR ANY AND ALL COSTS INCURRED BY THE OWNER IN ADDRESSING, REMOVING, DISCHARGING OR OTHERWISE SETTLING AN ARCHITECT, ENGINEER, CONSULTANT, OR A CONTRACTOR PAYMENT CLAIM, INCLUDING ALL ATTORNEYS' FEES.

§ 9.11.4 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- § 9.11.5 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
 - liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
 - failure of the Work to comply with the requirements of the Design-Build Documents; or
 - .3 terms of special warranties required by the Design-Build Documents.
- § 9.11.6 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

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- employees on the Work-all persons at the site and other persons who may be affected thereby; by the Work or other operations of the Design-Builder;
- § 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss. Included within the applicable laws are such laws governing access to public facilities by all people, including those with disabilities. As such, the Design-Builder shall adhere to all applicable provisions of the Americans with Disabilities Act and the Texas Accessibility Standards regardless of anything to the contrary elsewhere in the Design-Build Documents.
- § 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design Builder encounters a hazardous material or substance not addressed in the Design Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestes or polychlorinated biphenyl (PCB), encountered on the site by the Design Builder, the Design Builder shell, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.
- § 10.3.2 Upon receipt of the Design Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design Build Documents, the Owner shall furnish in writing to the Design Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design Builder will promptly reply to the Owner in writing stating whether or not the Design Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless. Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design Builder's reasonable additional costs of shut down, delay and start up.
- § 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.
- § 10.3.4-10.3.2 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner

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shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design Builder's fault or negligence in the use and handling of such materials or substances.site.

- § 10.3.5 The Design Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design Builder brings to the site and negligently handles, or (2) where the Design Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.
- § 10.3.6 If, without negligence on the part of the Design Builder, the Design Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design Build Documents, the Owner shall indemnify the Design Builder for all cost and expense thereby incurred.
- § 10.3.3 THE DESIGN-BUILDER SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE DESIGN-BUILDER BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE DESIGN-BUILDER FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design Builder's discretion, must take all necessary action to prevent threatened damage, injury or loss. The Design-Builder must promptly but in all events within twenty-four (24) hours of the occurrence report such action in writing to the Owner. PAGE 28

- § 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, Work, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a-an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9. PAGE 29
- § 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, Work pursuant to the warranties provided, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.
- § 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. As part of the total compensation which the Owner has agreed to pay the Design-Builder for the professional services to be rendered under this Agreement, the Design-Builder agrees that all finished and unfinished "Instruments of Service" including but not limited to

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documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, preliminary reports, reports, bid packet, construction contract documents, advertisement for bids incorporating any Owner standard provisions provided by the Design-Builder, all of which are produced by the Design-Builder and paid for by the Owner are, and will remain, the property of the Owner. The Design-Builder will furnish the Owner with electronic copies in .PDF format, to the extent they are available, of all of the foregoing to facilitate coordination; however, ownership of the underlying work product shall remain the intellectual property of the Design-Builder. The Design-Builder shall have the right to use such work products for the Design-Builder's purposes on this Project. However, such documents are not intended to be suitable for reuse by the Owner or others. The above notwithstanding, the Design-Builder shall retain all rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary and intellectual property information provided pursuant to this Agreement.

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- § 12.3 Upon execution of the Agreement, the Design Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate. The Design-Builder shall obtain non-exclusive licenses from the Architect, Engineer, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12.
- § 12.3.1 The Design Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design Builder to satisfy its obligations to the Owner under this Article 12. The Design Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design Builder's Architect, Consultants, or Contractors terminate their agreements with the Design Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service. In the event the Owner alters the Instruments of Service without the author's written authorization, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such alteration. The terms of this Section 12.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause.
- § 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service, the Owner releases the Design Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

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- § 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven (7) days' written notice.
- § 13.1.4 Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- § 13.1.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Design-Builder for the Owner's convenience and without cause.
- § 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.
 - .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
 - .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
 - 3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design Build Documents; or
 - .4 The Owner has failed to furnish to the Design Builder promptly, upon the Design Builder's request, reasonable evidence as required by Section 7.2.7.stopped.
- § 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, profit on such Work, profit on unperformed Work, and direct job costs incurred by reason of such termination, and damages.
- § 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design Builder or any other persons or entities performing portions of the Work under contract with the Design Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

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- § 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design Builder the Design-Builder's right to perform under the Contract and may, subject to any prior rights of the surety:
 - .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design Builder, the Owner shall furnish to the Design Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

- § 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work-Work, including compensation for consultant's services and expenses made necessary thereby, attorneys' fees, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.
- § 13.2.2.5 In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of emergency, and other applicable exemptions pursuant to controlling procurement law. In the event of a claim by Owner for completion costs following termination by the Owner or abandonment by the Design-Builder, the exercise of Owner's rights under this section shall not be grounds for challenging the reasonableness of the costs incurred or the Owner's damages.
- §13.2.2.6 In the event of a determination by a court or other authority to whom a dispute between the Parties has been submitted that a termination for cause under this section 13.2.2 was either wrongful, improper, or unjustified for any reason, the termination shall automatically be deemed a termination for convenience pursuant to section 13.2.4 below and the Design-Builder's remedy for such termination shall be limited to the recoveries allowed pursuant to section 13.2.4.3.

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.1 cease operations as directed by the Owner in the notice; notice and, if required by Owner, participate in an inspection of the Work with the Owner to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;

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§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and <u>direct job</u> costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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§ 14.1.1 Definition. A Claim is a <u>written</u> demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. <u>This Section 14.1.1 does not require the Owner to file a Claim in order to impose delay damages in accordance with the Design-Build Documents.</u>

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§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Notice of Claims should be provided contemporaneously with the events giving rise to the claim or concurrent to the time the claimant recognizes the condition giving rise to the Claim. Failure to provide timely notice and preserve conditions and records to substantiate a Claim may result in the diminishment or denial of a Claim. Failure to provide notice required by the Design-Build Documents and this Section 14.1.3.1 within ninety (90) days of the occurrence or event giving rise to the claim shall constitute an express waiver and complete bar to recovery for any adjustment to the Contract Time, Contract Sum, or other damages and accommodations.

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§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under

Section 10.4. Otherwise, failure to provide notice in accordance with the Design-Build Documents constitutes an express waiver of the Claim by the Design-Builder.

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Failure to provide notice constitutes an express waiver of the Claim by the Design-Builder.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Any Claim relating to adverse weather will be subject to the provisions contained in Section 8.2.

The Design-Builder and Owner-waive-Claims against each other-waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- damages incurred by the Design Builder for principal office waiver includes damages incurred by the Design-Builder for principal office overhead and expenses including the compensation of personnel stationed there, for losses of financing, bonding capacity, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design Build Documents.delay damages incurred by the Owner.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

- § 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.
- § 14.2.2.2 Claims initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.
- § 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.
- § 14.2.4 If the Owner requests the Design Builder to provide a response to a Claim or to furnish additional supporting data, the Design Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a

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response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

- § 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.
- § 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.
- § 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time-required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.
- § 14.2.7 In the event of a Claim against the Design Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- § 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.2 Damages Available to the Design-Builder

- §14.2.1 The Design-Builder expressly acknowledges that its ability to recover damages for any Claims against the Owner are strictly limited to the following:
 - .1 the balance due and owed by the Owner under the Contract, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
 - .2 the amount owed for Change Orders or additional work performed pursuant to a Change Directive;
 - .3 reasonable and necessary attorney's fees that are equitable and just; and
 - .4 interest as allowed by Chapter 2251 of the Texas Government Code.

§14.2.2 The Design-Builder may not recover damages for the following:

- .1 consequential damages as delineated in section 14.1.7; and
- .2 exemplary damages.

§ 14.3 Mediation

- § 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, herein shall be subject to mediation as a condition precedent to binding dispute resolution, filing suit.
- § 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings, writing. PAGE 33

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered

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to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design Builder under this Agreement.

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The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4. State of Texas without regard to its conflict of laws principles.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design Build Documents. The Design Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this

Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.2 Venue

This Agreement is entered into and performed in Comal County, Texas, and the Design-Builder and the Owner agree that mandatory venue for any legal action related to or arising from this Agreement shall be in the state District Courts of Comal County, Texas.

§ 15.3 Successors and Assigns

§ 15.3.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract and the attempted assignment shall be of no legal force or effect as to the other party.

§ 15.4 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice sent or transmitted by electronic mail or facsimile must be actually received to be considered delivered and to comply with notice requirements herein. Transmission alone by electronic mail or facsimile does not constitute delivery, proof of delivery by means of a return or read receipt, or other means, is required to establish delivery.

§ 15.5 Rights and Remedies

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design Builder, Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design Builder shall give timely notice to

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the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense. No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

- § 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design Build Documents, all costs made necessary by such failure shall be at the Design Builder's expense.
- § 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design Build Documents, be secured by the Design Builder and promptly delivered to the Owner.
- § 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.
- § 15.5.6 Tests or inspections conducted pursuant to the Design Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6 Tests and Inspections

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees. consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract. Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections and approvals. The Design-Builder must first obtain the Owner's written approval of any independent testing laboratory that will sample and test any materials at the Project as may be required by the Design-Build Documents. The Design-Builder must inform the Owner of all scheduled tests. All tests, inspections, or specific approvals required by law or the Design-Build Documents must be scheduled, coordinated and performed in a manner so as to avoid any delay in the Work. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

- § 15.8.1 In the interest of brevity the Design Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.
- § 15.8.2 Unless otherwise stated in the Design Build Documents, words which have well-known technical or construction industry meanings are used in the Design Build Documents in accordance with such recognized meanings.

- § 15.6.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.6.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.6.3, shall be at the Owner's expense.
- § 15.6.3 If such procedures for testing, inspection or approval under Sections 15.6.1 and 15.6.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.
- § 15.6.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.
- § 15.6.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.
- § 15.6.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.
- § 15.6.7 In addition to the tests required by this Section 15.6, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Design-Builder must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

§ 15.7 Confidential Information

To the extent allowed by law, if the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.7.1 and 15.7.2.

- § 15.7.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.
- §15.7.2 The foregoing is expressly subject to the Owner's obligations under the Texas Public Information Act, Texas Government Code chapter 552. The Owner cannot enter into confidentiality agreements and all records provided to the Owner in relation to this Project are subject to potential disclosure pursuant to the Act.

§ 15.8 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.9 Interpretation

- § 15.9.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.
- § 15.9.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

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- .4 AIA Document A141TM 2014, Exhibit C, Sustainable Projects, if completed Exhibit C, General Project Requirements (Owner's Request for Qualifications and Response from Design-Builder)
- .5 AIA Document E203TM 2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

Exhibit D, Owner's Design Criteria Package

- .6 Other:
- .6 Exhibit E, Design-Builder's Project Team

NEW BRAUNFELS UTILITIES	SPAWGLASS CONTRACTORS, INC.

	Jason Smith, President, San Antonio Division

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Certification of Document's Authenticity

AIA® Document D401™ - 2003

I, The Chapman Firm, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:26:20 ET on 11/17/2023 under Order No. 2114449710 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141TM – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)		
(Title)	 ii	i i
(Dated)		



Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Jeffrey Jones Reviewed by: Greg Brown

Information Technology Chief Technology and Security

Manager Officer

Submitted by: Greg Brown **Approved by:** Ryan Kelso

Chief Technology and Interim Chief Executive Officer

Security Officer

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Cooperative Contract with Waypoint Business Solutions, LLC for the Replacement of Servers Within the Consolidated VxRail Cluster

and the Backup System

BACKGROUND

New Braunfels Utilities ("NBU") currently has a clustered VxRail system containing all virtual servers, including domain controllers, application servers, and data storage. The VxRail environment and backup solution was initially purchased in December 2019 and deployed in January 2020. To ensure all hardware remains efficient and under manufacturer warranty, the physical servers that make up the backbone of this environment need to be replaced. A current server backup system, IDPA, will also be upgraded to its replacement, Dell Power Protect. These two products through Waypoint Business Solutions, LLC will be combined to take advantage of a bundled discount for both products.

The DIR TSO-4299 with Waypoint Business Solutions, LLC will ensure the reliability of critical information technology systems. NBU's selection of Waypoint Business Solutions, LLC to enter into this contract through the Texas Department of Information Resources DIR TSO-4299 satisfies the bidding requirements under Texas law.

This item is being presented to the Board because the total amount of the contract exceeds \$250,000

FINANCIAL IMPACT

The total amount of the contract is \$592,540. The Power Protect backup service will be in place for a three (3) year period. The amount of \$334,861 is budgeted in our FY24 Capital Equipment budget, and the amount of \$257,679 is budgeted under our FY24 Operation and Maintenance Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Financial Excellence

EXHIBITS

- 1. DIR Cooperative Contract DIR-TSO-4299
- 2. Waypoint Business Solutions, LLC vendor contract for Server Replacements for VxRail and IDPA
- 3. Waypoint Business Solutions, LLC AAAQ17629 Quote

Vendor	Contract No.	
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STATE OF TEXAS DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

EMC Corporation, dba System Peripherals, Inc.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and EMC Corporation, dba System Peripherals, Inc. (hereinafter "Vendor"), with its principal place of business at 176 South Street, Hopkinton, Massachusetts 01748.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-422, on March 20, 2018, for Data Storage, Data Communications & Networking Equipment and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-422 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Support Service and Professional Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-422, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-422, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D. Support Service and Professional Services Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-422, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-422, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling

Vendor	Contract No.	
vendor	Contract No.	

document shall be this Contract, then Appendix E or Appendix F, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with one (1) optional two-year renewal and one (1) optional one-year renewal. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Data Storage, Data Communications & Networking Equipment as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Data Storage, Data Communications & Networking related services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

- **A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.
- **B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

Vendor Contract No.	
vendor contract No.	

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300

Austin, Texas 78701 Phone: (512) 475-1647 Facsimile: (512) 475-4759

Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Tiffany Pabst EMC Corporation, dba System Peripherals, Inc. 3017 Douglas Blvd., Ste 300 Roseville, CA 95661

Phone: 774-350-8224

Email: tiffany.pabst@dell.com

7. Software License, Service and Leasing Agreements

A. Software License Agreement

- 1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Terms below and the End User License Agreement (EULA). No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in the Software License Terms and EULA, however, that the Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Terms, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfiller shall make the Software License Agreement Terms available to all Customers at all times.
- 2) Compliance with the Software License Terms is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Terms. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Term or shrink/click wrap license agreement, as applicable.
- 3) Shrink/Click-wrap License Agreement

It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

Vendor	Contract	No.	

B. Software License Terms:

Definitions:

- a) **"Documentation"** means the then-current, generally available, written user manuals and online help and guides provided by EMC for Products.
- b) "Products" mean "Equipment" (which is the EMC branded hardware delivered by EMC to Customer) and/or "Software" (which is any programming code provided by EMC to Customer as a EMC branded standard product, also including microcode, firmware and operating system software).
- c) **Product Notice"** means the Product and Services related information posted at the applicable EMC website at the time of the EMC quote, currently located at http://www.emc.com/products/warranty maintenance/index.jsp.
- d) **"Software Release"** means any subsequent version of Software provided by EMC after initial Delivery of Software, but does not mean a new Product.
- e) General License Grant. Vendor grants to Customer a non-exclusive, non-transferable (except as specified in this Contract) license to use the Software and the Documentation during the period of the license solely for Customer's internal business operations, and subject to the provisions of this Contract. Unless otherwise indicated in this Contractor or the applicable quote, licenses granted to Customer will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date Customer is notified of availability for electronic download. Use of Software may require Customer to complete Vendor's then current product registration process, if any, to obtain and input an authorization key or license file.
- f) Licensing Models. Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or Vendor quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with a certain piece equipment, CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software needed by the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.
- g) Copying Permitted. Customer may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.
- h) License Restrictions. Without Vendor's prior written consent, Customer must not, and must not allow any third party to: (i) use Software in an application services provider, service bureau, or similar capacity for third parties; (ii) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of Vendor's Products done by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer's employees or contractors reasonably acceptable to Vendor and which require access to use Software on behalf of Customer in a matter permitted by this Contract; (iv) transfer or sublicense Software or Documentation to any third party; (v) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in the Product Notice and/or Vendor quote; (vi) except to the extent

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permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse assemble or disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (vii) remove any copyright or other proprietary notices on or in any copies of Software; or (viii) violate or circumvent any technological restrictions within the Software or specified in this Contract, such as via software or services.

- i) **Software Releases.** Software Releases shall be subject to the license terms applicable to Software.
- j) **Records and Audit**. Records and Audit shall be in accordance with DIR contract number DIR-TS0-4299.
- k) *Termination of License.* Termination of licenses shall be in accordance with DIR contract number DIR-TS0-4299.
- Reserved Rights. Vendor reserves all rights not expressly granted to Customer and does not transfer any ownership rights in any Software.
- m) Other License Terms. If a particular Product or component is provided with its own license terms ("Separate License Terms"), typically in the form of a (i) "click-to-accept" agreement included as part of the installation and/or download process, or (ii) "shrink-wrap" agreement included in the packaging for the Product, or (iii) notice indicating that by installation and/or use thereof the related license terms apply, then, in case of conflict with the terms of this Contract, such Separate License Terms shall (a) prevail with regard to Products or components for which Vendor is not the licensor; and (b) not prevail with regard to a Product or component for which Vendor is the licensor.

C. Service Agreement

Services provided under this Contract shall be in accordance with, Support Service and Professional Services Agreement as set forth in Appendix D or in a Statement of Work or other services agreement of this Contract . No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Master Operating Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Operating Lease Agreement in Appendix E of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

E. Master Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix F of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions. Texas State Agencies that have the requisite capital authority and who are not required to utilize such authority via the Texas Public Finance Authority may or may not be eligible to utilize the Master Lease Agreement; each such agency must confer with its own counsel to make this determination.

F. Conflicting or Additional Terms

In the event of a conflict, any linked documents (other than and those referenced in software license terms in Section 7) may not take precedence over the printed or referenced

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documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

- 8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.
 - A. Appendix A, Section 3, Definitions, is hereby replaced in its entirety as follows:
 - A. Customer any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:
 - 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
 - 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
 - 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
 - 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
 - 5) A local workforce development board created under Section 2308.253;

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- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.
- **B.** Compliance Check an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- **C. Contract** the document executed between DIR and Vendor into which this Appendix A is incorporated.
- **D. CPA** refers to the Texas Comptroller of Public Accounts.
- **E. Day** shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- **F.** Order Fulfiller means the party, either Vendor or a party that may be designated by Vendor as a Reseller, who is authorized to quote and fulfill-a Purchase Order and receive payment pursuant to the Contract.
- **G. Purchase Order** means the Customer's fiscal form or format, which is used when making a purchase (e.g. formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument). Neither Vendor or Customer is or shall be bound by a terms and conditions imprinted on or embedded in orders, order acknowledgements or other communications between the parties relating to orders.
- **H.** State refers to the State of Texas.
- **I. Documentation** means the then-current, generally available, written user manuals and online help and guides provided by EMC for Products.
- J. Products mean "Equipment" (which is the EMC branded hardware delivered by EMC to Customer) and/or "Software" (which is any programming code provided by EMC to Customer as an EMC branded standard product, also including microcode, firmware and operating system software).
- K. Reseller means any third party approved by Vendor to sell to Customers under this Contract. Vendor will flow the terms and conditions of this Contract to its Resellers authorized under this Contract except, the pricing Reseller resales to Eligible Customers will be established by the Reseller. Reseller will not resale products or services that exceed the maximum price as set forth in Appendix C, Pricing Index, of this Contract.
- **B.** Appendix A, Section 4. General Provision, E. Survival, is hereby replaced in its entirety as follows:

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract prior to expiration or termination of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders, Statements of Work or Service Agreements issued to and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, Statement of Work or

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service agreement unless the Customer terminates the Purchase Order, Statement of Work or Service Agreement sooner. However, regardless of the_term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer incudes a statement of its internal approval of such longer period on the Purchase Order. Rights and obligations under this Contract which by their nature should survive will apply to such Purchase Order that survives after expiration or termination of the Contract, including, but not limited to the DIR Administrative Fee; and any and all payment obligations that occurred prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

C. Appendix A, Section 5. Intellectual Property Matters, A. Definitions, is hereby replaced in its entirety as follows:

A. Definitions.

- 1) "Work Product" means any and all reports, analyses, scripts, code or other work results which have been developed by Vendor for Customer within the framework of fulfilling obligations by Vendor for Customer under a Statement of Work issued pursuant to this Contract.
- **2)** "Property Rights" mean all patents, copyrights, trade secrets, methodologies, ideas, concepts: inventions, know-how, techniques or other intellectual property rights of a party.
- **3)** "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.
- **4)** "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.
- 5) "Vendor IP" shall mean all tangible or intangible items or things, including the Property Rights therein, created or developed by Vendor. (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Professional Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer. Vendor shall not be limited in developing, using or marketing services or products which are similar to the Work Product or Professional Services provided hereunder, or, subject to Vendor's confidentiality obligations to Customer, in using the Work Product or performing similar Professional Services for any other project.

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- **6)** "Services" mean (i) services for the support and maintenance of Products ("Support Services") as set forth in the Support Services and Professional Services Agreement, Appendix D to this Contract; or (ii) consulting, installation, implementation, or other services that are not Support Services ("Professional Services") as set forth in the Support Services and Professional Services Agreement, Appendix D to this Agreement.
- D. Appendix A Section 5. Intellectual Property Matters, B. Ownership through L. Vendor Development right is hereby replaced in its entirety as follows:

B. Property Rights:

1) Grant of Copyright Rights in Work.

Subject to Customer's payment of the applicable amounts due Vendor and to Vendor's Proprietary Rights in any underlying intellectual property embodied therein or used by Vendor to perform Professional Services, Customer shall own all copyright rights to the portion of Work Product that consists solely of written reports, analyses and other working papers prepared and delivered by Vendor to Customer in the performance of EMC's obligations under the SOW.

2) Grant of License Rights in Work Product.

For the portion of Work Product that consists of scripts and code, Vendor grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the Contract or SOW) perpetual right to use, copy and create derivative works from such (without the right to sublicense) for Customer's internal business operations, as contemplated by the applicable SOW. The license granted in this section does not apply to (i) Customer furnished materials, and (ii) any other Products or items licensed, or otherwise provided, under a separate agreement.

3) Customer Furnished Materials.

Customer does not relinquish any of its rights in materials it furnishes for use by Vendor in connection with the performance of Professional Services. Pursuant to Customer's Proprietary Rights therein, Customer grants EMC a non-exclusive, non-transferable right to use such solely for the benefit of Customer in fulfillment of Vendor's obligations under the SOW.

4) Reservation of Proprietary Rights.

Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. Vendor shall not be limited in developing, using or marketing services or products which are similar to the Work Product or Professional Services provided hereunder, or, subject to Vendor's confidentiality obligations to Customer, in using the Work Product or performing similar Professional Services for any other projects.

5) Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under subparagraph 5.3.B.5, Customer Furnished Materials, hereunder. Vendor shall not use, disclose, or permit any

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person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

E. Appendix A, Section 7. Contract Fulfillment and Promotion, A. Services, Sales and Support of the Contract, is hereby replaced in its entirety as follows:

Vendor shall provide service, sales and support resources available under the Contract to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its commercially reasonable efforts to ensure that potential Customers are made aware of the existence of the Contract.

F. Appendix A, Section 7. Contract Fulfillment and Promotion, C. Product Warranty and Return Policies, is hereby replaced in its entirety as follows:

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

Vendor's Warranty:

- 1. Product Warranty
 - A. Equipment and Software Media. Vendor warrants that (i) Equipment, and Equipment upgrades installed into Equipment, when purchased from Vendor and operated with normal usage and regular recommended service; and (ii) the physical media, if any, on which software is provided by Vendor, shall be free from material defects in materials and workmanship, and perform substantially in accordance with Documentation provided for Equipment or the physical media until the expiration of the warranty period. Unless otherwise noted on the Product Notice or Vendor quote, the warranty coverage for the microcode, firmware or operating system software that enables Equipment to perform as described in its Documentation shall be no less than that which applies to such Equipment. To the extent specified in the Product Notice, Support Services in the form of the Support Option noted on the Product Notice are included free of charge during the Equipment warranty period. In some cases, a Support Option upgrade during the Equipment warranty period may be available by separate purchase.
 - **B.** Equipment and Software Media Warranty Duration. Unless otherwise stated on the Vendor quote, the warranty period from Vendor for Products shall be as set forth at

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the Product Notice. Equipment warranty commences upon Delivery. Equipment upgrades are warranted in the same manner as the Equipment in which the upgrades are installed from Delivery of the upgrade until the end of the warranty period for the Equipment into which the upgrades are installed. The warranty for physical media for Software provided by EMC, if any, is ninety (90) days and commences upon Delivery.

- C. Equipment and Software Media Warranty Remedies. Vendor's entire liability and Customer's exclusive remedies under the Equipment and physical media for Software warranties described in this Section 6 shall be for Vendor, at its option, to remedy the non-compliance or to replace the affected Product, and if Vendor is unable to effect such within a reasonable time, then Vendor shall refund the amount paid by Customer for the affected Product as depreciated on a straight line basis over a five (5) year period, upon return of such Product to Vendor. All replaced Products or portions thereof shall be returned to and become the property of Vendor. If such replacement is not so returned, Customer shall pay Vendor's then current spare parts price therefore. Vendor shall have no liability hereunder after expiration of the applicable warranty period.
- D. Software Warranty, Duration and Remedy. Vendor warrants to Customer that the Software will, for a period of ninety (90) days following Delivery or notice of availability for electronic download ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (i) has been properly installed and used at all times in accordance with the applicable Documentation; and (ii) has not been modified or added to by persons other than Vendor or its authorized representative. Vendor will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to Vendor by Customer in writing during the Warranty Period. If Vendor determines that it is unable to correct the error or replace the Software, Vendor will refund to Customer the amount paid by Customer for that Software, in which case the license for that Software will terminate.
- E. Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond Vendor's control; (iii) installation, operation or use not in accordance with Vendor's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than Vendor or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. Vendor has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without Vendor's consent or whose original identification marks have been altered or removed.
- F. Disclaimer of Warranty. OTHER THAN THE WARRANTIES SET FORTH IN THIS CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VENDOR AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS CONTRACT, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. VENDOR AND ITS SUPPLIERS DO NOT

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WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET CUSTOMER'S REQUIREMENTS.

2. Support Services Warranty:

- **A. Support Services.** Vendor shall perform the labor portion of Support Services in a workmanlike manner in accordance with generally accepted industry standards. Customer shall notify Vendor of any failure to so perform as soon as reasonably possible, and in no event more than ten (10) days after the date on which such failure first occurs. A replacement part receives the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part.
- **B.** Customer Remedies. Customer's exclusive remedy and Vendor's entire liability under the foregoing warranties shall be for Vendor to, at its option, (i) use reasonable efforts to (a) re-perform the deficient labor services within a reasonable time, or (b) replace any replacement parts which become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty (60) days after installation thereof, whichever occurs later; and (ii) if, after reasonable efforts, Vendor is not able correct such deficiencies, then Customer has the right to terminate for breach in accordance with Section 7 D below.
- C. No Further Warranties. EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, VENDOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

3. Professional Services.

- **A. Professional Services.** Vendor shall perform Professional Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify Vendor of any failure to so perform within ten (10) days after the performance of the applicable portion of Professional Services.
- **B. Customer Remedies.** Vendor's entire liability and Customer's sole remedy for Vendor's failure to so perform shall be for Vendor to, at its option, (i) correct such failure; and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.
- C. No Further Warranties. EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, VENDOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

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F. Appendix A, Section 7. Contract Fulfillment and Promotion, H. Trade Show Participation, is hereby replaced in its entirety as follows:

At DIR's discretion, Vendor may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's booth.

G. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, is hereby replaced in its entirety as follows:

The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

- 1) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.
- 2) During the term of this Contract, if pricing for products or non-custom services available under this Contract are provided by Vendor at a lower price to an Eligible Texas Customer (headquartered in the State of Texas) who is not purchasing those products or services under this Contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or non-customized services actually charged by Vendor for a quantity of one (1) under substantially similar terms and conditions, for substantially similar configurations or deliverables. This requirement does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.
- H. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices, is hereby replaced in its entirety as follows:

Vendor or Order Fulfiller may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately at the time of submission of a purchase order, but shall not be retroactive to products for which a purchase order has been received, or for services currently being rendered under a prior purchase order.

I. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, K. Acceptance is amended by adding the following:

K. Acceptance.

All Products will be deemed to be delivered and accepted, meaning that Product operates in

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substantial conformity to the Product's Documentation upon (i) Delivery of the Equipment or physical media; or (ii) transmission of a notice of availability for download (accomplished by the license key when required by EMC). Notwithstanding such acceptance, Customer retains all rights and remedies set forth in the Section entitled "Product Warranty".

- J. Appendix A, Section 9. Contract Administration, C. Records and Audit, is hereby replaced in its entirety as follows:
 - 1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
 - 2) Vendor and Order Fulfillers shall maintain adequate records relevant to the performance of the Contract to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
 - 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may

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invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

- 4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.
- K. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions, is hereby replaced in its entirety as follows:

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS FOR LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract resulting in bodily injury (including death) or damage to tangible property and to the extent caused by Vendor or its Order Fulfillers, Agents, Resellers or subcontractors. VENDOR'S OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS WILL BE LIMITED TO CLAIMS CAUSED SOLELY BY VENDOR NEGLIGENCE. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS FEES AWARDED BY A COURT OF FINAL DETERMINATION. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT OR BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. VENDOR MAY NOT AGREE TO ANY SETTLEMENT AS TO CLAIMS AGAINST STATE AGENCIES WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

L. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 3) Infringements, is hereby replaced in its entirety as follows:

3) INFRINGEMENTS

a) Vendor shall indemnify the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES ("Indemnified Party"), from any and all third- party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performance of Services or the provision of Vendor-branded Products by Vendor pursuant to this contract by paying (i) the resulting costs and damages finally awarded against Indemnified Party by a court of competent jurisdiction to the extent that such are the result of the third party claims, or (ii) the amounts stated in a written settlement negotiated and approved by Vendor. "Vendor-Branded Products" shall mean hardware products (including all EMC standard components and parts contained within the

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EMC system), components, or parts bearing the Vendor's logo that are included on Vendor's standard price list.

Vendor and Customer agrees to furnish timely written notice to each other of any such claim. The defense shall be coordinated by the Office of the Attorney General for Texas State Agency Customers, Vendor's Counsel for Vendor, and by Customer's legal counsel for non-state agency customers and Vendor may not agree to any settlement as to claims against Texas State agencies without first obtaining concurrence from the Office of the Attorney General. In addition, without any additional payment of liability by Vendor, the foregoing IP obligations shall extend to third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with Vendor's sale of third party equipment and license of third party software under this Contract, if and to the extent the applicable third party equipment manufacturer or third party software licensor is contractually obligated to Vendor to provide indemnification for such claims and such indemnification by its own terms can be extended to Indemnified Party.

b) Notwithstanding the foregoing, Vendor shall have no obligation under this Section 10.A.3 for any claim to the extent that it results or arises from (1) Customer's modifications of such products, services or deliverables that were not performed by or on behalf of Vendor; (2) the combination, operation or use of such product, service or deliverable in connection with a third-party product or service (the combination of which causes the infringement); or (3) Vendor's compliance with Customer's written specifications (to the extent such specifications were not developed by Vendor) or directions, including the incorporation of any software or other materials or process provided by or requested by Customer. In the event Vendor has no obligation for a claim as set forth above, Vendor agrees to provide such assistance (e.g., producing documents and its employees as witnesses) as is reasonably requested by the Attorney General in connection with the Attorney General's defense of such claim.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing, or (iii) provide a refund that reflects reasonable depreciation for time of use, and for services/custom software. (iii) applies only if the remedies described in subparts (i) and (ii) are not obtainable despite Vendor's commercially reasonable efforts. This subsection states Customer's exclusive remedies for any third-party intellectual property claim. Notwithstanding the foregoing, if Vendor provides the remedy described in subpart (iii) and the affected Customer incurs transition expenses relating to the replacement in such Customer's IT environment of the affected portion of Dell Vendor-Branded Products or services, such Customer may tender to Vendor a claim for such actual and reasonable transition expenses in an amount up to the difference between (y) the original purchase price for the affected portion of the product or service being removed and (z) the

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refund provided to such Customer pursuant to subpart (iii), above, and Vendor will pay such claim.

M. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 4) Property Damage, is hereby replaced in its entirety as follows:

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY REAL AND TANGIBLE PROPERTY OF CUSTOMER OR THE STATE DUE TO THE SOLE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL; 1) FOR LOSS, DAMAGE OR DESTRUCTION OF EMC PRODUCT, EMC WILL REPAIR OR REPLACE THE EMC PRODUCT OR PROVIDE THE REFUND EACH AS SPECIFIED IN THE TERMS AND CONDITIONS OF THE APPLICABLE WARRANTY OR SUPPORT SERVICE TERMS. OR 2) FOR PRODUCTS OTHER THAN AN EMC PRODUCT, AND AFTER VENDOR'S INVESTIGATION AND SUMMARY OF PROPOSED REMEDY, PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S ELECTION, TAKING INTO CONSIDERATION THE VENDOR'S RECOMMENDATION. IF SUCH LOSS DAMAGE OR DESTRUCTION IS CAUSED SOLELY BY VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS NEGLIGENCE. FOR LOSS, DAMAGE OR DISTRUCTION NOT CAUSED SOLELY BY VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS SOLE NEGLEGENCE VENDOR WILL PAY THAT PORTION OF THE COST OF EITHER REPAIR, RECONSTRUCTION OR REPLACEMENT OF THE PROPERTY TO THE DEGREE RESPONSIBLE. SUCH COST SHALL BE DETERMINED BY AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

- N. Appendix A, Section 10. Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE, is hereby replaced in its entirety as follows:
 - 1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR,-ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER AS A RESULT OF ITS PERFORMANCE UNDER THIS CONTRACT.
 - 2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO EMPLOYEE TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE

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INCLUDING ATTORNEYS' FEES FOR CLAIMS MADE BY VENDOR VENDOR'S EMPLOYEES, VENDOR'S SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR OR FOR WITH CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCIES. VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL OR NON-STATE COUNSEL IF SUCH SETTLEMENT REQUIRES THE STATE OR STATE AGENCY TO MAKE ANY PAYMENT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

L.

- O. Appendix A, Section 10. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel, is hereby replaced in its entirety as follows:
 - a) Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other tangible property, belonging to the Customer. Vendor shall use commercially reasonable efforts to preserve the safety, security, and the integrity of the premises, equipment, and other tangible property of the Customer, in accordance with the instruction of the Customer provided to Vendor or the applicable Order Fulfiller by the Customer in writing or in the manner that Customer generally provides such instructions to its own employees and other contractors. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, premises, and other tangible property when and to the degree such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller materially fails to comply with Customer's security requirements, then Customer may terminate its Purchase Order and related Service Agreement in accordance with Section 11.B. Termination of the Contract. b) In addition, Vendor and/or Order Fulfiller may, during performance of the Contract, have access to Customer's data ("Data") that is hosted either at Customer's or a third party's premises (other than premises of Vendor's Affiliates or subcontractors) (collectively, "Customer Premises") or at Vendor's premises or the premises of Vendor's Affiliates or subcontractors (collectively, "Vendor Premises"). i) As to Data hosted at any Customer Premises, Vendor shall comply with Customer's instructions related to preserving the safety, security and integrity of such Data provided to Vendor or the applicable Order Fulfiller by the Customer in writing or in the manner that Customer generally provides such instructions to its own employees and other contractors. ii) As to Data hosted at any Vendor Premises, Vendor will comply with its generally applicable security standards designed to preserve the safety, security and integrity of such Data, as well as any additional security obligations expressly agreed in the applicable Statement of Work executed by Customer and Vendor. iii) Notwithstanding anything to the contrary in this Contract, including this Section 10.I, except as otherwise expressly provided in a Statement of Work executed by Customer and Vendor: (A) Customer is responsible for backing up its own Data, (B) Vendor and Order Fulfiller shall not have operational or financial responsibility for refreshes, upgrades, modifications or improvements to Customer-provided facilities, equipment or software that may be required to preserve the safety, security and integrity of such Data, and (C) if Vendor or Order Fulfiller's compliance with Customer's instructions constitutes a material change to the scope of Services or their other obligations, the parties will equitably adjust the charges to account for such material change. Vendor and Order Fulfiller shall not be responsible, or liable for any damages, for any Data losses to the extent such Data cannot be retrieved due to Customer's

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(or Customer's applicable Third-Party Vendor's) failure to use standard industry practices relating to data backups and retrieval of Data.

P. Appendix A, Section 10. Vendor Responsibilities, J. Background and/or Criminal History Investigation, is hereby replaced in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer (as required by Customer), provided the Customer gives prior notice of such investigation. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately require replacement of the Vendor or Order Fulfiller employee or subcontractor in question. If Vendor fails to replace the employee or subcontractor personnel as soon as practicable, then Customer may terminate its Purchase Order and related Service Agreement in accordance with the applicable termination sections of this Contract.

Q. Appendix A, Section 10. Vendor Responsibilities, K. Limitation of Liability, is hereby replaced in its entirety as follows:

For any claims or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's cumulative liability for all claims and damages of any kind to the Customer under the Contract shall be limited in the aggregate, to \$5,000,000. The foregoing limitations shall apply regardless of whether the claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise. Insofar as applicable law prohibits any limitation herein, the parties agree that such limitation will be automatically modified, but only to the extent so as to make the limitation permitted to the fullest extent possible under such law. However, this limitation of Vendor's liability shall not apply to Vendor's indemnification obligations for claims of patent, trademark, or copyright infringement of Vendor-branded products or Vendor provided services and deliverables as set forth in Section 10.A.3 ("Infringements").

R. Appendix A, Section 10. Vendor Responsibilities, M. Prohibited Conduct, is hereby replaced in its entirety as follows:

Vendor certifies that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Reseller Order Fulfiller, subcontractor has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract

S. Appendix A, Section 10. Vendor Responsibilities, N. Required Insurance Coverage, is hereby replaced in its entirety as follows:

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As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on Commercial General Liability and Business Auto Liability policies. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

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T. Appendix A, Section 10. Vendor Responsibilities, S. Secure Erasure of Hard Disk Products and/or Services, is hereby replaced in its entirety as follows:

Vendor agrees that all products that are equipped with hard disk drives (i.e. computers, servers etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services. Erasure services are available at additional cost.

- U. Appendix A, Section 10. Vendor Responsibilities, T. Deceptive Trade Practices; Unfair Business Practices, is hereby replaced in its entirety as follows:
 - 1) Vendor certifies as of the Effective Date of this Contract, that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
 - 2) Vendor certifies, as of the Effective Date of this Contract, that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- V. Appendix A, Section 10. Vendor Responsibilities, U. Drug Free Workplace Policy, is hereby replaced in its entirety as follows:

Vendor will comply with drug and alcohol rules and regulations that are legally mandated for employers in the State of Texas. Vendor and Customers may agree to more specific requirements for onsite services in a mutually agreed statement of work.

W. Appendix A, Section 11. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation, a). Termination for Non-Appropriation by Customer is hereby replaced in its entirety as follows:

"Customer will endeavor to ensure appropriated funds have been appropriated prior to placing orders. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

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X. Appendix A, Section 11. Contract Enforcement, B. Termination, 3) Termination for Convenience, is hereby replaced in its entirety as follows:

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days written notice. Customer will be responsible for all payments for products and services delivered prior to termination and for any agreed to costs associated with termination of a services as agreed to in a lease agreement, Statement of Work or other service agreement.

Y. Appendix A, Section 11. Contract Enforcement, C. Force Majeure, is hereby replaced in its entirety as follows:

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if 1) its performance is or will be delayed by 20 days or more by event(s) of Force Majeure (or a longer period if agreed to by the Customer) and 2) if it is reasonably determined by the Customer that Order Fulfiller will not be able to deliver services in a timely manner to meet the business needs of the Customer

Z. Appendix A, Section 14. Trade Compliance, is hereby added as follows:

The parties agree to comply with US Export and Import laws.

All content, Services and the technology included therein (collectively the "Materials") provided under this Contract are subject to governmental restrictions on exports and imports including without limitation (i) exports from the U.S and the European Union as well as reexport from third countries in the form received; (ii) exports from other countries in which the Materials may be produced or located; (iii) disclosures of technology to non-U.S persons; (iv) exports from other countries of the same or products derivative of Materials; and (v) the importation and/or use the Materials outside of the U.S. or other countries (collectively, "Trade Laws"). Customer must comply with all Trade Laws. Diversion contrary to U.S. law or other Trade Laws is expressly prohibited. In addition, Customer shall not send or deliver to EMC any data controlled by the International Traffic in Arms ("ITAR"), and shall not request Materials or Service from EMC where an ITAR license is required in order for EMC to provide such Materials or Service, unless the EMC Global Trade Compliance Group Office has signed a specific agreement consenting to provide ITAR controlled Materials or Service Customer. Customer represents and warrants that it is not (a) listed on any of the lists of restricted parties found at http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-ofconcern; (b) located in any country subject to embargo by the U.S. (identified as an E:1 country in Supplement 1 to Part 740 of the United States Export Administration Regulations

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Vendor Contract No.

("EAR"), as shown here and updated from time to time: http://www.ecfr.gov/cgi-bin/text-idx?SID=7f51b38428b0614519eea4b4fdc8640e&node=15:2.1.3.4.25.0.1.21.28&rgn=div9; or (c) engaged in the proliferation of weapons of mass destruction (i.e., nuclear, chemical or biological weapons or missiles). Customer will not participate or ask EMC to participate in any illegal boycott.

AA. Appendix A, Section 15. EMC Select or Brokerage Products, shall be added at a later date.

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Vendor Contract No. _____

This Contract is executed to be effective as of the date of last signature.

EMC Corporation, dba System Peripherals, Inc.

Authorized By: Signature on file

Name: Rita Roles

Title: Sr. Contracts Manager

Date: <u>12/10/2018</u>

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on file

Name: Hershel Becker

Title: Chief Procurement Officer

Date: <u>12/17/2018</u>

Office of General Counsel: DB 12/14/2018

Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

3. Definitions

- A. Customer any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:
 - 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
 - 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
 - 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
 - 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
 - 5) A local workforce development board created under Section 2308.253;
 - 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
 - 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
 - 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
 - 9) A nonprofit organization that provides affordable housing.
- **B.** Compliance Check an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract

- management staff or their designees.
- **C. Contract** the document executed between DIR and Vendor into which this Appendix A is incorporated.
- **D. CPA** refers to the Texas Comptroller of Public Accounts.
- **E. Day** shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- **F.** Order Fulfiller the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- **G.** Purchase Order the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- **H.** State refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
- 2) If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other

parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

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

H. Proof of Financial Stability

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

5. Intellectual Property Matters

A. Definitions

1)" Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations,

manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

- 2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.
- 4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.
- 5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon

creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and

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prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

- 1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

- 1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).
- 2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all

necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

- a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
- **b)** DIR reserves the right to require the Vendor to rescind any such Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.
- d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.
- e) Vendor shall not prohibit Order Fulfiller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiller List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 7.B.1.a above.

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall

only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the products and services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;
- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- 1) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

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3) Webpage Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's webpage will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this webpage is compliant with the pricing as stated in the Contract.

4) Webpage Changes

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Vendor and Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

If DIR receives Vendor's or Order Fulfiller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller' trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include reporting requirements. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

J. Performance Review Meetings

DIR may require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract, at DIR's discretion. The meetings may be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1

1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.
- 3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for

the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (http://www.window.state.tx.us/procurement/prog/stmp/). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller.

Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Invoices shall be submitted by the Vendor or Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Vendor or Order Fulfiller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.
- 2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.
- 3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

9. Contract Administration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute

resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

- a) Vendor shall be responsible for reporting all products and services purchased through Vendor and Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.
- **b)** DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

- a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- **b)** Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

- a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.
- b) DIR may change the amount of the administrative fee upon thirty (30) calendar days

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written notice to Vendor without the need for a formal contract amendment.

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

- a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract..

C. Records and Audit

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)

- 1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- 2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books,

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documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

- 1) Prior to execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.
- 2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts E-Mail Box information.

10. Vendor Responsibilities

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W

A. Indemnification

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or

performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

- a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to

- receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of

- appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and
- (xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

D. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

E. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of

its obligations under the Contract.

G. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

H. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

K. Limitation of Liability

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

For any claims or cause of action arising under or related to the Contract: i) to the extend permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

L. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

M. Prohibited Conduct

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

O. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other resources of the Customer or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

P. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

• all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and

• all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

No public disclosures or news releases pertaining to this contract shall be made by Vendor without prior written approval of DIR.

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Substitutions are not permitted without the written permission of DIR or Customer.

S. Secure Erasure of Hard Disk Products and/or Services

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

- 1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- 2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.
- 3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas

Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

7) Vendor or Order Fulfiller Rights Under Termination Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office Department of Information Resources Attn: Public Information Officer 300 W. 15th Street, Suite 1300 Austin, Texas 78701 (512) 475-4759, facsimile

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

Rev. 2/17



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

>	If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
	Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
	☐ Section2cYes
	Section 4 - Affirmation
	GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you <u>do not</u> have a <u>continuous contract</u> * in place for more than five (5) years <u>meets or exceeds</u> the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
	☐ Section 1 - Respondent and Requisition Information
	☐ Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
	☐ Section 2 c No
	☐ Section 2 d Yes
	☐ Section 4 - Affirmation
	GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUI vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with whic you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agencidentified in the "Agency Special Instructions/Additional Requirements", complete:
	Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
	☐ Section 2 c No
	Section 2 d No
	Section 4 - Affirmation
	GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
	☐ Section 3-Self Performing Justification
	☐ Section 4 - Affirmation

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.





HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract* in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

SEC	TION 1: RESPO	NDENT AND	REQUISITION INFORMATION			
a.	Respondent (Co	ompany)Name:	EMC Corporation, dba System Peripherals, Inc.	State of T	exas VID#:	1042680009900
	Point of Contact:	Dennis	Brabandt	Phone #:	512-723	3-2585
E-mail Address: Dennis_B		Dennis_	Brabandt@dell.com	Fax #:	512-283	3-0352
b.	Is your company	a State of Texa	s certified HUB? - Yes - No			
c.	Requisition#:	DIR-TSO-	ΓMP-422	Bid Open	Date:	3/20/18
						((- - -

1

Dennis Brabandt

Requisition #:

DIR-TSO-TMF

Item 22.

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
 - ☑ Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
 - No, I will not be subcontracting <u>any</u> portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If No, continue to SECTION 3 and SECTION 4.)
- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		HU	Non-HUBs	
Item #	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1	EMC Hardware, Software, and Services	31.00%	%	69.00%
2		%	%	%
3		%	%	%
4		% %		%
5		% %		%
6		% %		%
7		% %		%
8		% %		%
9		% %		%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	31.00 %	%	69.00 %

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php).

c.	Check the appropriate box (Yes or No) that ind	cates whether you will be using onl	<u>y</u> Texas certified HUBs to perform	all of the subcontracting opportunities
	you listed in SECTION 2, Item b.			

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.

┙-	Yes (If Yes, continue to	SECTION 4 and complete an	"HSP Good Faith Effort	 Method A (Attachment A))" for <u>each of</u> the subcontractir	ng opportunities you	ı listed
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*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

⁻ No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract* in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

⁻ No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

Enter your company's name here: EMC Corporation, dba System Peripherals, Inc.

Requisition #: DIR-TSO-TMP

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		HL	HUBs	
Item#	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION	and continue to SECTION 4.) If you
responded "No" to SECTION 2, Item a, in the space provided below explain how your company will perform the entire contract v	vith its own employees, supplies
materials and/or equipment.	
OF ATION 4	

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature on File	Dennis Brabandt	Manager	11/04/2021
Signature	Printed Name	Title	Date (mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort Method B (Attachment B)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

Item 22.

Enter your company's name here: EMC Corporation, dba System Peripherals, Inc. Requisition #: DIR-TSO-TMP-422

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-sbcont-plan-gfe-achm-a.pdf

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: 1 Description: EMC Hardware, Software, and Services

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas cert	ified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
Avalon Technologies, Inc.	☐ - Yes	⊠- No	32060999243	\$ 200000	2%
Business Imaging Systems	☐ - Yes	☑- No	173149411660	\$ 100000	1%
Cambridge Computer Services	☐ - Yes	⊠- No	1043124822700	\$ 100000	1%
CDW Government, LLC	☐ - Yes	∏- No	1364230110800	\$ 500000	5%
Centre Technologies	□ - Yes	⊠- No	15106091778000	\$ 100000	1%
Cloud Ingenuity	Yes Yes	□- No	1812617971400	\$ 100000	1%
CMA Consulting	☐ - Yes	ÍÍ - No	1222580799400	\$ 500000	5%
Commonwealth Trading Co	Yes	□- No	1742748769300	\$ 100000	1%
Computex, Inc.	☐ - Yes	⊠- No	1760229023500	\$ 100000	1%
ConvergeOne	☐ - Yes	회 ^{- No}	1411763228200	\$ 300000	3%
DataVox	☐ - Yes	Ź No	1760251479000	\$ 100000	1%
Dimension Data	☐ - Yes	⊠- No	13-2554344	\$400000	4%
EST Group	文 - Yes	□- No	1203330208900	\$ 100000	1%
Flair Data Systems, Inc.	☐ - Yes	ĭ∕n- No	1750995208500	\$ 100000	1%
FreeIT	- Yes	회- No	1272209002900	\$ 100000	1%
GTS technology Solutions	🖄 - Yes	□- No	1742339797900	\$ 200000	2%
Insight Public Sector, Inc.	- Yes	Źj- No	102049006400	\$ 300000	3%
Lighting IT Solutions	☐ - Yes	⊠- No	14299645	\$ 100000	1%
Mark III Systems - Government Solutions	文 - Yes	□- No	1834682297800	\$ 100000	1%
Netsync Network Solutions	🛪 - Yes	□- No	1320030329800	\$200000	2%
Network Alliance	文 - Yes	□- No	1452486241500	\$ 100000	1%
NWN Corporation	☐ - Yes	⊠- No	1043532235800	\$200000	2%
Seamless Advanced Solutions, LLC	- Yes	⊠- No	1821924508	\$ 100000	1%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to <u>all</u> the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days after the contract</u> is awarded.

Page 1 of 1

(Attachment A)

HSP Good Faith Effort - Method A (Attachment A)

Item 22.

Enter your company's name here: EMC Corporation, dba System Peripherals, Inc. Requisition #: DIR-TSO-TMP-422

IMPORTANT: If you responded "Yes" to **SECTION 2**, **Items c** or **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in **SECTION 2**, **Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: __1 __ Description: EMC Hardware, Software, and Services

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

nttp://myopa.opa.state.tx.us/tpassemblsearen/index.jsp. 110B status code A	significs that t	no compai	ny io a rexas certifica riob.		
Company Name	Texas cert	ified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
Pegasus Tech Solutions	□- Yes	∏ - No	1003940374	\$ 100000	1%
Presidio Networked Solutions Group LLC	☐ - Yes	📉 - No	17605152499	\$ 500000	5%
Qnet, Inc. dba: Qnet Information Services	⊠ - Yes	□- No	1752837171300	\$ 100000	1%
Red8	☐ - Yes	🔀 - No	32054489748	\$ 100000	1%
RedRiver	☐ - Yes	⊠ - No	10204833411	\$ 100000	1%
Sequel Data	☐ - Yes	⊠́- No	1742678386000	\$ 100000	1%
SHI Government Solutions, Inc.	Y - Yes	□- No	1223695478500	\$ 500000	5%
Sirius	☐ - Yes	文 No	1742836721700	\$ 400000	4%
Solid IT	☐ - Yes	⊠- No	1752950821400	\$ 200000	2%
Sterling Computers	☐ - Yes	⊠- No	1954634907700	\$ 100000	1%
Summus Industries	文 - Yes	□- No	17605333925	\$400000	4%
Tanches Global Management, Inc.	Y - Yes	□- No	1760581657200	\$ 400000	4%
Technologent	☐ - Yes	⊠- No	1043589773000	\$ 100000	1%
Unique Digital, Inc.	☐ - Yes	文 No	1760203945900	\$ 100000	1%
Vion Corporation	☐ - Yes	凶- No	1521167763600	\$ 100000	1%
WayPoint Business Solutions, Inc.	☐ - Yes	⊠- No	1760550365900	\$ 100000	1%
Weaver Technologies, LLC	- Yes	⊠- No	12633572685	\$ 200000	2%
Pivot Technology Services Corp	☐ - Yes	⊠- No	1274186029500	\$ 100000	1%
USNet	☐ - Yes	회- No	27-1439595	\$ 100000	1 %
Prescriptive Data Solutions	☐ - Yes	⊠- No	1821571913100	\$ 100000	1 %
Mobius Partners	💢 - Yes	□- No	1742975599800	\$ 100000	1 %
Xennex, LLC	∑ - Yes	□- No		\$ 100000	1 %
Ahead, Inc	☐ - Yes	ĭă- No	1843489032500	\$200000	2%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to <u>all</u> the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days</u> after the contract is awarded.

HSP Good Faith Effort - Method A (Attachment A)

Item 22.

Enter your company's name here: EMC Corporation, dba System Enter your company's name here: Peripherals, Inc Requisition #: DIR-TSO-TMP-422

IMPORTANT: If you responded "**Yes**" to **SECTION 2**, **Items c** or **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in **SECTION 2**, **Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: __1 __ Description: EMC Hardware, Software, and Services

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mvcpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas cert	ified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
World Wide Technology	□- Yes	☑- No	14319128956	\$8,500,000	8.50 %
Layer 3 Communcations	☐ - Yes	☑ - No	1270097420200	\$1,500,000	.50 %
Abtech Technologies Inc	□- Yes	☑- No	1590908881	\$1,500,000	.50 %
Waypoint Government Solutions, LLC	☑ - Yes	□- No	1844682827	\$1,500,000	.50 %
Weaver Government Solutions	☑ - Yes	□- No	86-3737568	\$1,500,000	.50 %
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No	,	\$	%
	☐ - Yes	□- No	,	\$	%
	☐ - Yes	□- No	,	\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	Yes	□- No		\$	%
	- Yes	□- No		\$	%
	Yes	□- No		\$	%
	- Yes	□- No	,	\$	%
	- Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to <u>all</u> the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days</u> after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

Item 22.

Enter your company's name here: EMC Corporation, dba System Peripherals, Inc. Requisition #: DIR-TSO-TMP-422

IMPORTANT: If you responded "No" to **SECTION 2, Items c** and **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for <u>each</u> of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf..

SECTION B-1: SUBCONTRACTING OPPORTUNITY Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.
Item Number:Description:
SECTION B-2: MENTOR PROTÉGÉ PROGRAM
If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1 , constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.
Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.
☐ - Yes (If Yes, continue to SECTION B-4.)
□ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)
AFATION R.A. Marrier and C. Consolination of Consolination

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you <u>MUST</u> comply with items <u>a</u>, <u>b</u>, <u>c</u> and <u>d</u>, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs <u>and</u> trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) Historically Underutilized Business (HUB) Directory Search located at https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the <u>three (3)</u> Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?	
			🗌 - Yes	☐ - No
			- Yes	☐ - No
			Yes	☐ - No

- C. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php.
- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice	Accepted?
		- Yes	☐ - No
		- Yes	☐ - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

TIGI GOOG FAITH EHOIT - IIII	- unou	רן ט	ittaciiiieiit L	<i>3)</i>	Item 22.
Enter your company's name here: EMC Corporation, dba System	Peripherals	, Inc.	Requisition #	E DIR-TSO-TMF	2-422
SECTION B-4: SUBCONTRACTOR SELECTION Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment. a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page. Item Number: Description:					
b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1 . Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Emplioyer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp . HUB status code "A" signifies that the company is a Texas certified HUB.					f the work to be atus, ensure that
Company Name	Texas certi	fied HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	□ - Yes	□- No		\$	%
	□ - Yes	□-No		\$	%
	□ - Yes	□- No		\$	%
	□ - Yes	□- No		\$	%
	□ - Yes	□- No		\$	%
	□ - Yes	□- No		\$	%
	□ - Yes	□- No		\$	%
	□- Yes	□ - No		\$	%
	□- Yes	□ - No		\$	%
	□- Yes	□ - No		\$	%
c. If any of the subcontractors you have selected to perform the subcontracting justification for your selection process (attach additional page if necessary		y you listed	d in SECTION B-1 is <u>not</u> a	Texas certified HUE	3, provide <u>written</u>

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Forl

Item 22.

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least https://exas.certified-HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C**, **Item 2**, reply no later than the date and time identified in **Section C**, **Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

identified in Section C, Item	n 1. Submit your response to the point-of-contact referenced in Section A .		
Company Name: Point-of-Contact:	Danie Bush andt		1042680009900 512-723-2585 512-283-0352
SECTION B: CONTR.	ACTING STATE AGENCY AND REQUISITION INFORMATION		
Agency Name:			
Point-of-Contact:		Phone #:	
Requisition #:	DIR-TSO-TMP-422	Bid Open Date:	3/20/18 (mm/dd/yyyy)
1. Potential Subcontra	NTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIF actor's Bid Response Due Date: rould like for our company to consider your company's bid for the subcontracting oppo		
v	we must receive your bid response no later thanonon		
to us submitting our b organizations or devel American, Woman, Se (A working day is cons by its executive officer, is considered to be "da	days to respond to the notice prior to submitting our bid response to the contracting agency icid response to the contracting agency, we must provide notice of each of our subcollopment centers (in Texas) that serves members of groups (i.e., Asian Pacific Americante Price Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C). Indicated a normal business day of a state agency, not including weekends, federal or state. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and try zero" and does not count as one of the seven (7) working days.) Doortunity Scope of Work:	ntracting opportunities to two can, Black American, Hispar e holidays, or days the agenc	o (2) or more trade lic American, Native
3. Required Qualificati	ions:		- Not Applicable
4. Bonding/Insurance	Requirements:		- Not Applicable
5. Location to review p	plans/specifications:		- Not Applicable

Appendix C, Pricing Index DIR-TSO-4299 EMC, Corp.

Product Category	Product Category Description	DIR Customer Discount % off MSRF
A	Hardware - Enterprise (Sym,Celerra)	44.00%
В	Hardware - Mid-Tier (CLARiiON, Centera, NAS)	33.00%
С	Connectrix Hardware and Software	34.00%
CL-E	VMAX CE	10.00%
D1	Software - Enterprise Platform	23.00%
D2	Software - Mid-Tier Platform	33.00%
D3	Software - Multi-platform Open	23.00%
DD-1	Data Domain Flash Enabled HW, SW & Maintenance	20.00%
DE	Entry Software (BRS: Data Domain)	32.00%
DH	High-End Software (BRS: Data Domain, Avamar, Disk Library, Networker)	29.00%
DM	Midrange Software (BRS: Data Domain, Avamar, Atmos, Disk Library)	29.00%
E	EMC SW & HW, Switches	23.00%
EN-H	Hardware - VMAX 10K/20K/40K	23.00%
EN-S	Software - VMAX 10K/20K/40K	23.00%
ES-1	VMAX3 HW & SW, HW & SW	33.00%
ES-AF	VMAX All Flash Array	18.00%
ES-P1	Powermax	18.00%
F1	Services	10.00%
F2	Custom Residency Services, EMC Select Services	10.00%
l	Training / Education Services	10.00%
IS	Isilon HW/SW/Maintenance	26.00%
IS2	Isilon 2 HW/SW Maintenance	26.00%
J	Server Flash, AX/NX, Insignia, ScaleIO, DSSD	20.00%
PE	Entry Systems (BRS: Data Domain)	32.00%
PH	High-End Systems (BRS: Data Domain, Disk Library)	29.00%
PM	Midrange Systems (BRS: Data Domain, Avamar, Atmos, Disk Library)	29.00%
UE	Unified Entry - Level Offerings	32.00%
UM	VNX Hardware/Software/Maintenance	23.00%
UM-1	Unity Hardware/Software	10.00%
UM-F1	Unity All Flash Hardware/Software	10.00%
UM-H	Hardware - Unified Mid-Tier - VNX	29.00%
UM-S	Software - Unified Mid-Tier - VNX	29.00%
V	Vipr	19.00%
VPLEX	VPLEX HW, SW, and Maintenance	38.00%
X2	XtremIO 2	25.00%
XT	XtremIO	25.00%
MNT	All Maintenance	5.00%



For EMC Use Only
Contract ID

APPENDIX D

Support Service and Professional Service Agreement DIR-TSO-4299

Attachment 1

Support Services Exhibit

This Support Services Exhibit ("Exhibit") sets forth the terms governing the provision of Support Services by EMC to Customer during or after the applicable warranty period.

1. DEFINITIONS.

- A. All definitions set forth in the main body of DIR Contract, DIR-TSO-4299 ("Contract") shall also apply to this Exhibit.
- B. "Customer Support Tools" means any software or other tools made available by EMC to Customer to enable Customer to perform self-maintenance activities.
- C. "Documentation" means the then-current, generally available, written user manuals and online help and guides for Software provided by EMC for Software.
- **D. "EMC Channel Partner"** means a reseller, distributor or system integrator that is authorized by EMC to sell Software licenses and Support Services. The term shall also refer to any third party duly authorized by an EMC Channel Partner to do the same.
- **E.** "EMC Service Area" means the area that is within (i) one hundred (100) drivable miles of an EMC service location; and (ii) the same country as the EMC service location.
- **F.** "Installation Site" means the ship-to-address or other location identified on the EMC quote or other document prepared by EMC as the site of installation and/or use of Software, or a subsequent location approved by EMC.
- **G. "Maintenance Aids"** mean any hardware, software or other tools, other than Customer Support Tools, used by EMC to perform diagnostic or remedial activities on Software.
- H. "Product Notice" means the notice by which EMC informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an EMC quote, otherwise in writing and/or a posting on the applicable EMC website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp. The terms of the Product Notice in effect as of the date of the EMC quote to the Customer (when Customer purchases directly from EMC) or the EMC Channel Partner (when Customer purchases via an EMC Channel Partner) shall be deemed incorporated into and made a part of this Agreement. Each Product Notice is dated and is archived when it is superseded by a newer version. EMC shall not change any Product Notice retroactively with regard to any Software or Support Services listed on an EMC quote issued prior to the date of the applicable Product Notice. At Customer's request, EMC shall without undue delay provide Customer with a copy of the applicable Product Notice and/or attach it to the relevant EMC quote.
- I. "Service Offering" means Customer's service offering offered on a software-as-a-service ("SaaS"), infrastructure as a service ("IaaS"), platform as a service ("PaaS") hosted, turn-key, on-demand, service bureau, or similar basis.
- **J.** "Software" means any programming code provided by EMC to Customer as a standard product, also including microcode, firmware and operating system software, which requires acceptance of this Agreement, and any copies made by or on behalf of Customer.
- **K.** "Software Release" means any subsequent version of Software provided by EMC after initial Delivery of Software but does not mean a new product.
- **L.** "Support Services" or "Services" means the services for the support and maintenance of Software as set forth in Appendix D Service Terms to this Agreement.
- M. "Supplier" means an entity (other than Customer) whose components, subassemblies, software and/or services have been incorporated into Software.
- N. "Time and Materials Service" means any maintenance or support service that is provided by EMC but not part of fixed-fee Support Services or other generally available service related offering from EMC using a pre-established fee, but which will be separately charged to Customer on a time and materials basis and may be made available under a separate set of Time and Materials Services Terms and Conditions.

2. SUPPORT SERVICES.

A. Scope. The contents of Support Services for each Product (the "Support Option") are set forth in the Product Notice, and unless otherwise indicated in the Product Notice, consist of (i) using commercially reasonable efforts to remedy failures of Products to perform substantially in accordance with EMC's applicable specifications; (ii) providing English-language (or, where available, local language) help line service (via telephone or other electronic media); and (iii) providing, or enabling Customer to download, Software Releases and Documentation updates made generally available by EMC at no additional charge to other purchasers of Support Services for the applicable Product. EMC reserves the right to change the scope of Support Services on sixty (60) days' prior written notice to Customer.

B. Additional Support. EMC reserves the right to charge for Support Services performed outside the time frames of the at tem 22. Support Option as a Time and Materials Service. Except to the extent that Support Services are independent of the Equipment's

- EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. Support Services do not apply to any Software other than the current and the immediately prior Software Release. Support Services are subject to EMC's then-current "End-of-Service-Life" policy for the respective Product. EMC shall have no obligation to provide Support Services for Software problems that cannot be reproduced at EMC's facility or via remote access to Customer's facility. Support Services do not include the supply of Equipment upgrades, if any, needed to utilize new features or functionality in a Software Release.
- C. Exclusions. Support Services do not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond EMC's control; (iii) installation, operation or use not in accordance with EMC's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than EMC or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. EMC has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without EMC's consent or whose original identification marks have been altered or removed.
- **D. Re-Instatement of Support.** If Customer wishes to re-instate Support Services for a Product that is not then currently covered thereby, such re-instatement shall be subject to a certification at EMC's then current Time and Materials Service rates in accordance with Appendix C Pricing Index and conditions. Once so certified, Support Services shall commence upon payment to EMC of (i) the charge for the above described Time and Materials Service; (ii) the amount EMC would have normally charged had Support Services been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve (12) months of the newly commenced Support Services.

3. CUSTOMER RESPONSIBILITIES.

- A. Cooperation. Customer shall (i) promptly notify EMC when a Products fails and provide EMC with sufficient details so that the failure can be reproduced by EMC; (ii) allow EMC remote and on-site (when deemed necessary by EMC) access to the Product to provide Support Services; and (iii) furnish necessary facilities (which for on-site access means suitable work space, computers, power, light, phone, internet network availability, software and equipment reasonably required by EMC), information and assistance required to provide Support Services.
- B. Support Contacts. Unless a specific number of authorized contacts are indicated on the Product Notice, Customer shall designate in writing a reasonable number of authorized contacts, as determined by Customer and EMC, who shall initially report problems and receive Support Services from EMC. Each Customer representative shall be familiar with Customer's requirements and shall have the expertise and capabilities necessary to permit EMC to fulfill its obligations. A change to the authorized support contacts by Customer shall be submitted to EMC in writing.

4. ADDITIONAL TERMS.

- A. Maintenance Aids and Spare Parts for Equipment. Customer authorizes EMC to store Maintenance Aids and spare parts at the Installation Site and agrees that such are for use only by EMC authorized personnel. Customer shall not, and shall not authorize any third party to, make any use thereof. EMC is authorized, upon the conclusion of the Support Services or at any other time, upon reasonable notice to Customer, to enter the Installation Site, or to use remote means, to remove and/or disable Maintenance Aids and spare parts. Customer shall reasonably cooperate in this effort.
- B. Customer Support Tools. EMC may choose to make Customer Support Tools available to assist Customer in performing various maintenance or support related tasks. Customer shall use Customer Support Tools only in accordance with terms under which EMC makes such available.
- C. Equipment Replacements. All replaced Equipment (or portions thereof) shall become the property of EMC upon Customer's receipt of the corresponding replacement, and shall be returned promptly upon EMC's request. If such replaced Equipment is not so returned within fifteen (15) days after EMC's request, Customer shall pay EMC's then current spare parts list price therefore.
- D. Data Security Options. Customer is, at its own expense, fully responsible for the permanent erasure, of all information, including without limitation all personally identifiable and other protected information placed on, and by use of a method that does not cause damage to, any replaced parts or any other items that Customer provides to EMC for repair, trade-in, or disposal, before such items are returned to EMC, and for all costs associated with such erasure. Descriptions and charges associated with EMC's then currently offered data erasure services are available on request. EMC is not responsible for any information contained on such items notwithstanding anything to the contrary herein.
- E. Proactive Product Changes. EMC may, at its expense, implement changes to the Products upon reasonable notice to Customer (i) when such changes do not adversely affect interchangeability or performance of the Products; (ii) when EMC reasonably believes such changes are required for purposes of safety or reliability; or (iii) when EMC is required by law to do so. Customer shall give EMC reasonable access to the Products for such purpose.
- F. Software Releases. Upon use of a Software Release, Customer shall remove and make no further use of all prior Software Releases, and protect such prior Software Releases from disclosure or use by any third party. Customer is authorized to retain a copy of each Software Release properly obtained by Customer for Customer's archive purposes and use as a temporary back-up if the current Software Release becomes inoperable. Customer shall use and deploy Software Releases strictly in accordance with terms of the original license
- G. Change of Equipment Location or Configuration. Customer may change the Installation Site or configuration of a Product under Support Services by EMC only after written notice to EMC. If the new location is in a different country, such move is subject to EMC's prior written approval. Customer shall promptly notify EMC of any changes to the configuration, or movement of Equipment by any

Item 22.

other than EMC. EMC reserves the right to inspect and evaluate the changes in configuration or location of affected Equipment a then current Time and Materials Service terms, conditions and rates. Additional charges, if any, related to changes in configuration of Equipment shall apply from the date the change took place.

- **H. Movement of Software.** If Customer is current in the payment of the applicable Support Services fee, Customer may, to the extent technologically compatible, discontinue all use of the Software on the hardware or network environment for which it was originally licensed and begin the corresponding use thereof on a different Customer owned or controlled hardware or network environment provided that Customer (i) gives EMC advance, written notice of such move; and (ii) pays the applicable transfer and/or upgrade fee assessed by EMC for such a move (if any).
- I. Remote Support Capability. As part of Support Services, EMC makes various remote support capabilities available for certain Products in accordance with its then current policies and procedures. EMC's warranty and Support Services fees are based on the availability and use of such remote support capabilities. Customer has the option to not activate or to disable remote support capabilities, but it shall notify EMC thereof without undue delay. If Customer chooses to disable or to not activate the remote support capabilities, then, with regard to all Products affected by such disablement (i) EMC may assess Customer a surcharge in accordance with EMC's then current standard rates; and (ii) agreed response times or other agreed service levels (if any) shall no longer apply.
- **J.** Alterations and Attachments to Equipment. EMC does not restrict Customer from making alterations to, or installing other products in or with, the Equipment at Customer's expense; provided Customer is responsible for any inspection fees and/or additional charges resulting from such activities. If the alterations or attachments prevent or hinder EMC's performance of Support Services, Customer shall, upon EMC's request, take corrective action. Customer's failure to take appropriate corrective action shall be deemed a breach hereof.
- **K.** Transfer of Equipment to Secondary Purchasers. If Customer decides to sell, assign or otherwise transfer the use and/or ownership of Equipment to a Secondary Purchaser (meaning a bona fide end user that (i) is not considered, in EMC's reasonable discretion, to be a competitor of EMC; and/or (ii) has not had prior disputes with EMC), to the extent EMC resources reasonably permit, EMC shall make available to Customer, as a Time and Materials Service, de-installation services. In addition, and to the extent EMC resources reasonably permit, EMC shall make available to the Secondary Purchaser, (a) Equipment installation and re-certification services as a Time and Materials Service; and (b) Support Services for Equipment meeting the certification criteria.
- **L. Software Support Services affected by Change in Equipment Status.** For Software used on or operated in connection with Equipment that ceases to be covered by Support Services or the EMC Equipment warranty, EMC reserves the right to send Customer written notice that EMC has either chosen to discontinue or change the price for Support Services for such Software (with such price change effective as of the date the applicable Equipment ceases to be so covered). If EMC sends a discontinuation notice, or if Customer rejects or does not respond to the notice of a proposed price change within thirty (30) days after receipt, Customer will be deemed to have terminated the Software Support Services for its convenience and the terms of Section 7 C 2 below shall apply.

5. PRICING.

In cases where Customer has ordered Support Services directly from EMC, the fee for Support Services for Products shall be as set forth on the applicable quote from EMC. Additions to the Products on the EMC quote may result in additional Support Services fees. Time and Materials Service will be charged and invoiced by EMC in accordance with terms governing each such Time and Materials Service engagement in compliance with the Contract. The Time and Material pricing will be agreed to between the parties at time of service.

6. WARRANTY.

- **A.** Support Services. EMC shall perform the labor portion of Support Services in a workmanlike manner in accordance with generally accepted industry standards. Customer shall notify EMC of any failure to so perform as soon as reasonably possible, and in no event more than ten (10) days after the date on which such failure first occurs. A replacement part provided in connection with Support Services receives the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part.
- **B.** Customer Remedies. Customer's exclusive remedy and EMC's entire liability under the foregoing warranties shall be for EMC to, at its option, (i) use reasonable efforts to (a) re-perform the deficient labor services within a reasonable time, or (b) replace any replacement parts which become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty (60) days after installation thereof, whichever occurs later; and (ii) if, after reasonable efforts, EMC is not able correct such deficiencies, then Customer has the right to terminate for breach in accordance with Section 7.C.(2) below.
- C. No Further Warranties. EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, REPLACEMENT PARTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

7. TERM AND TERMINATION.

A. Software Support Services Term. Software related Support Services that are ordered at the same time as the license for such Software shall commence on the date of shipment of the physical media or electronic availability of the Software and continue for the period specified on the EMC quote. Renewals of Software related Support Services shall commence and expire in accordance with the dates on the applicable EMC quote.

B. Equipment Support Services Term. Support Services (including Support Option upgrades, if applicable) for Equipment provided during the warranty period. Renewals of Equipment related Support Services shall commence and expire in accordathe dates on the applicable EMC quote. Support Services for hardware upgrades installed into Equipment are coterminous with the Support Services that are then in effect for the Equipment into which such upgrades are installed.

C. Termination.

Termination for Convenience. Termination shall be in accordance withAppendix A, Section 11.B of Appendix A of the Contract. In addition to the term and termination provisions set forth in the main body of the Agreement, the following apply to support Services: In addition to Appendix A, Section 11.B Termination of the Contract, the following apply to Support Services:

- 1. **By EMC.** If EMC terminates for its convenience, Customer's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to refund to Customer the portion of any pre-paid Support Services fee that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period.
- 2. **By Customer**. If Customer terminates Support Services for its convenience, Customer's sole and exclusive remedy and EMC's sole and exclusive obligation shall be arrange for the issuance to Customer (in cases where Customer orders Support Services directly from EMC) or to the applicable EMC Channel Partner, as applicable, a credit that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period. Such credit may only be used against future purchases of Products or Support Services from EMC and may be reduced to recapture unearned discounts (meaning discounts to a Support Services fee that were based on a Customer obligation that can no longer be fulfilled due to the termination).
- 3. **Termination for Breach.** In addition to the term and termination provisions set forth in the Agreement, either party may terminate the Support Services for a specific Product for cause due to a failure of the other party to comply with the terms of this Support Exhibit with regard to such Product, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. If EMC terminates the Support Services for any Product(s) affected by such a failure by Customer, such termination shall be without further liability for EMC and without any obligation to refund any fees already paid therefore. If Customer terminates for EMC's breach, Customer's sole and exclusive remedy and EMC's sole and exclusive obligation shall be to either issue a credit for use against current or future purchases of Products or Support Services or arrange for the issuance of a refund (as selected by Customer) for that portion of any pre-paid Support Service fee that corresponds to the period between the effective date of the termination for breach and the end of the then current Support Services period.

Professional Services Exhibit

This Professional Services Exhibit ("Exhibit") sets forth the terms governing Professional Services provided by EMC to Customer.

1. DEFINITIONS.

A. All definitions set forth in the main body of DIR-TSO-4299 ("Contract") shall also apply to this Exhibit.

2. PROFESSIONAL SERVICES.

- **A. Scope.** Each project for Professional Services shall be governed by a separate SOW. Each SOW (excluding a Service Brief) shall (i) be signed by the parties; (ii) incorporate by reference this Contract and (iii) state the pertinent business parameters, including, but not limited to, pricing, payment, expense reimbursement, and a detailed description of the Professional Services to be provided. Professional Services are provided as a separate and independent service to Customer even if offered together with the sale or licensing of Products by EMC in the same EMC quote or Customer purchase order.
- **B. Placement of EMC Personnel**. EMC shall have the sole responsibility for personnel placement as well as for all other human resources issues (e.g. vacation). EMC will only utilize employees or contractors that are sufficiently qualified. If specific EMC personnel cease to perform due to illness, resignation or any other reason, EMC shall without undue delay use reasonable efforts to provide a substantially equivalent replacement as soon as reasonably possible. EMC's contact person responsible for liaising with Customer will exclusively be the person identified by EMC as being responsible for the project. No employee/employer relationship is intended or shall be established by any SOW.
- **C. Standard Work Day**. The standard work day is any eight (8) hour period of work, between 8:00 AM and 6:00 PM, Monday through Friday, excluding public holidays at the EMC location providing Professional Services.
- **D. Customer Responsibilities.** Customer shall provide EMC personnel with timely access to appropriate facilities, space, power, documentation, networks (including internet and telephone), files, information, additional software (if needed), and skilled and authorized Customer personnel to assist in the performance and cooperate with EMC. Customer shall also perform its specific obligations as described in the relevant SOW, and, if necessary, assist and support EMC in the provision of the Professional Services as reasonably requested by EMC, and shall provide all conditions in its business necessary for due performance of Professional Services by EMC.
- **3. PROPRIETARY RIGHTS. Appendix A, Section 14. Proprietary Rights** of the Contract shall apply to Professional Services provided under this Exhibit
- **4. PAYMENT AND INVOICING.** EMC shall submit invoices for fees and reimbursable costs and are expenses and be paid in

the manner specified in the applicable SOW, and in accordance with the terms of the Appendix A, Section 8.J of the DIR contract, DIR-TSO-4299.

5. TRAINING SERVICES.

- **A. Courses.** EMC's standard training Services are available through the applicable catalogue or website. EMC customized training Services are available pursuant to an SOW.
- **B. Cancellation and Refunds.** If Customer prepays and subsequently cancels standard training Services, EMC shall provide (i) a full refund, if EMC receives written notice of cancellation two (2) or more weeks before the scheduled start date; or (ii) a 50% refund, if EMC receives written notice of cancellation less than two (2) weeks before, but prior to, the scheduled start date. Cancellation charges for customized training Services shall be as mutually agreed between the parties in the applicable SOW.

6. WARRANTY.

- **A. Professional Services**. EMC shall perform Professional Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify EMC of any failure to so perform within ten (10) days after the performance of the applicable portion of Professional Services.
- **B.** Customer Remedies. EMC's entire liability and Customer's sole remedy under the foregoing warranty for EMC's failure to so perform shall be for EMC to, at its option, (i) correct such failure; and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.
- EXCEPT AS EXPRESSLY C. No Further Warranties. STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

Appendix E

MASTER OPERATING LEASE AGREEMENT

DIR-TSO-4299

- 1. <u>Definitions</u>. Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.
- (a) "Assets" refers to the Products as allowed within the Contract, including the Hardware, Software, and related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).
- (b) "Contract" refers to DIR Contract number DIR-TSO-4299 into which this Appendix is incorporated.
- (c) "Event of Default" is defined in Section 23, "Default."
- (d) "Event of Loss" means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.
- (e) "Hardware" refers to the computer machinery and equipment specifically identified on the applicable Schedule.
- (f) "Lease" means the financing transaction described in this MOLA.
- (g) "Lessee" means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.
- (h) "Lessor" means Dell Financial Services.
- (i) "MOLA" means this Master Operating Lease Agreement (Appendix E). Any reference to "MOLA" includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.

- (j) "Rent Payment" means the amount payable by Lessee for the Assets as specified in the applicable Schedule.
- (k) "Schedule" or "Supplementary Schedule" to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee, applicable Rent Payment, and term of the Lease. To be effective, a Schedule must be executed by both Lessor and Lessee.
- (l) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on the applicable Schedule.
- (m)"Software" refers to the computer programs specifically identified on the applicable Schedule.
- (n) "Stipulated Loss Value" is the value of each unit of Hardware at various times during the Lease as specified in the applicable Schedule; however, in no event will the Stipulated Loss Value of a Hardware unit exceed its fair market value.

2. Lease.

- (a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code Leases, Tex. Bus. & Comm. Code Article 2A. Under no circumstances shall this MOLA or any Schedules entered into under it be construed as a "finance lease" as defined in Tex. Bus. & Comm. Code § 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Tex. Bus. & Comm. Code § 2A.511.
- (b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on each Schedule. Each such Schedule constitutes a separate agreement between Lessor and Lessee. In addition, each Schedule is subject to the terms and conditions of this MOLA as if a separate MOLA were executed for such Schedule by the parties.
- (c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Schedule applicable to such Assets. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.
- (d) Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or provided any legal or management advice to Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in a Rider to the MOLA or the Schedule. To the extent that any of the provisions of the MOLA conflict with any of the terms contained in any Schedule, the terms of this MOLA shall control.
- (e) If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Assets for its own use, DIR is not a party to any Schedule executed

under this MOLA and is not responsible for Rent Payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or Lessor (or both of them) arising from the use of this MOLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MOLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 ("Default") of this MOLA.

3. Term of MOLA.

The term of this MOLA shall commence (a) upon commencement of the term of the Contract, if this MOLA was agreed to under the Contract, or (b) on the Effective Date specified in Amendment Number (XX), if this MOLA is added to the Contract under such Amendment. The term of this MOLA shall continue until the last to occur of the following: (i) the Schedule Term of each Schedule entered into by the parties has expired or been terminated, or (ii) the Contract has expired or been terminated. In the event of any termination or expiration of the Contract or termination of this MOLA, any provisions of the Contract and this MOLA as may be necessary to preserve the rights of Lessor or Lessee hereunder shall survive said termination or expiration.

4. Term of Schedule.

The term for each Schedule agreed to by a Lessee and Lessor under this MOLA shall commence on either (i) the effective date specified in the Schedule (and, if no date is specified, then on the date the Schedule was signed by Lessee, provided Lessor has also signed the Schedule) or (ii) if applicable, the date specified in the Lessee Certificate of Acceptance, as described in Section 10. Unless earlier terminated as provided for herein, the Schedule shall continue for the number of whole months or other payment periods set forth in it (the "Schedule Term"). Specifically, with respect to Hardware, under no circumstances shall the Schedule Term exceed seventy five percent (75%) of the economic life of the Hardware, nor shall the present value of the Rent Payments for the Hardware on the Schedule Commencement equal or exceed ninety percent (90%) of the value of the Hardware. Lessee shall provide confirmation that its lease of assets satisfies the two foregoing percentage limitations. The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 ("Appropriation of Funds") of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, or (v) as otherwise set forth herein.

5. Administration of MOLA.

(a) When a prospective Lessee wishes to lease Assets under this MOLA, the prospect will submit its request directly to Lessor. Lessor shall apply the applicable pricing discounts as stated in Section 4 of the Contract or the price as agreed upon by Lessee and Lessor in the applicable Schedule, whichever is lower and submit the lease proposal to the prospective Lessee. If the prospective Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease directly with the prospective Lessee.

- (b) With respect to Lessor's obligations under Section 5 of the Contract to report the sale and make payment of the DIR administrative fee as defined in that Section, all leasing activities in conjunction to this MOLA shall be treated as a "purchase sale." Notwithstanding treatment of this Lease as a "purchase sale" as to the transaction between Lessor and DIR under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 ("Lease") hereof for the transaction(s) between Lessor and Lessee.
- (c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated on the applicable Schedule to Lessor for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions on the Schedule issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Schedule Term, and the Rent Payments), Lessor's order acknowledgement form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.
- (d) Until a Schedule is entered into by Lessor and a Lessee per the process set forth in this MOLA, neither DIR nor any Lessee is obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to a Lessee.

6. Rent Payments.

- (a) During the Schedule Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the Rent Payments set forth in the relevant Schedule for each Asset. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.
- (b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be refunded to Lessee within ninety (90) calendar days.
- (c) Lessee acknowledges and agrees, except as specifically provided for in Section 8 ("Appropriation of Funds") of this MOLA and excluding claims resulting from a breach of Lessor's obligations as set forth in this MOLA or any Schedule or of Lessee's rights under Section 16 ("Quiet Enjoyment") hereof, that Lessee's obligation to pay Rent and other sums payable hereunder, shall not be abated, reduced or subject to offset or diminished as a result of any past, present or future claims Lessee may have against Lessor under this Lease. Notwithstanding the foregoing, nothing in this Section or any other provision of this MOLA shall affect or preclude Lessee from enforcing any and all other rights it may have against

Lessor and its assignees under this MOLA or otherwise affect any right Lessee may have against the manufacturer or licensor of the Assets or any party other than Lessor.

7. <u>Liens</u>.

Lessee shall keep the Assets free and clear of all levies, liens and encumbrances, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of the Assets.

8. Appropriation of Funds.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any fiscal period (as set forth on the Schedule) of Lessee beyond the fiscal period first in effect at the commencement of the Schedule Term, Lessee may terminate the Schedule with regard to those of the Assets on the Schedule so affected. Lessee shall endeavor to provide Lessor with written notice sixty (60) days prior to the end of its current Fiscal Period confirming which Assets on the Schedule will be so affected by the termination. All obligations of Lessee to make Rent Payments due with respect to those Assets after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in those Assets will terminate, Lessee shall surrender those Assets in accordance with Section 15 ("Option to Extend; Surrender of Assets") of this MOLA, and the applicable Schedule shall be deemed amended. Lessee represents and warrants it has adequate funds to meet its obligations during the first fiscal period of the Schedule Term. Lessor and Lessee intend that the obligation of Lessee to make Rent Payments under this MOLA shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas, as applicable, beyond the fiscal period for which sufficient funds have been appropriated to make Rent Payments hereunder.

9. Assignment of Warranties.

Each Schedule is intended to be a true lease and operating lease as defined in Tex. Bus. & Comm. Code Article 2A. Lessor has acquired or will acquire the Assets in connection with this MOLA and hereby agrees to assign to Lessee any warranties provided to Lessor with respect to the Assets during the Term of the applicable Schedule, to the extent the warranties are assignable. Unless Lessor is the manufacturer or is otherwise liable under the Contract, Lessor shall not be liable for damages for any reason for any act or omission of the manufacturer of the Assets. Except as provided in Section 24 ("Remedies") hereof, Lessee acknowledges that none of the following shall relieve Lessee from the obligations under this MOLA during the Schedule Term unless due to Lessor's acts or omissions: (i) Lessee's dissatisfaction with any unit of the Assets, (ii) the failure of an Asset to remain in useful condition for the Schedule Term, or (iii) the loss or right of possession of the Assets (or any part thereof) by Lessee. Lessee shall have no right, title or interest in or to the Assets except the right to use the same upon the terms and conditions herein contained. The

Assets shall remain the sole and exclusive personal property of Lessor and not be deemed a fixture whether or not it becomes attached to any real property of Lessee.

10. Inspection and Acceptance.

Promptly upon delivery of the Assets, Lessee will inspect and test the Assets. No later than twenty (20) business days following its date of delivery (or, if the Assets are part of a system, the date of last delivery of the Assets comprising the system), Lessee will execute and deliver either (i) a Certificate of Acceptance, or (ii) written notification of any defects in the Assets. If Lessee has not given notice within such time period, the Assets shall be deemed accepted by Lessee as of the twentieth (20th) business day, as described above. In the event Lessee does not accept the Assets, Vendor will promptly remove the Assets from Lessee's premises and deliver conforming Assets within ten (10) business days thereafter. If conforming Assets are not delivered within that timeframe, Lessee may terminate the Schedule on written notice to Lessor. Lessee's acceptance of any Assets shall not be deemed to waive any rights Lessee may have against the manufacturer or licensor, as applicable. Lessor and its assigns, including either of their respective agents shall have the right to inspect the Assets upon reasonable notice to Lessee and during normal business hours provided that anyone who does so has first executed a non-disclosure agreement acceptable to Lessee.

11. Installation and Delivery; Use of Assets; Repair and Maintenance.

- (a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.
- (c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing and to the extent permitted by applicable law, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

12. Relocation of Hardware and Software.

Except as set forth on the applicable Schedule, Lessee shall at all times keep the Hardware and Software within its exclusive possession and control. Lessee may move the Hardware or Software to another location of Lessee within the continental United States, provided Lessee is not in default on any Schedule and pays all costs associated with such relocation. If such relocation requires Lessor's prior written consent, Lessee shall obtain such consent prior to relocating the Hardware or Software, as applicable, which consent Lessor shall not unreasonably withhold. Notwithstanding the foregoing, in those situations where consent is otherwise required, Lessee may move the Hardware or Software to another location within Texas without notification to, or the consent of, Lessor; provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Hardware and Software at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Hardware and Software, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Hardware and Software.

13. Taxes.

Unless otherwise agreed by the parties on the applicable Schedule, Lessor will pay any Imposition or file any forms or returns with respect thereto. Lessee shall, when billed, and with copy of Imposition invoice(s) with respect to Assets specified on the Schedule, reimburse Lessor for such payment. For purposes of this paragraph "Impositions" means all taxes, including personal property taxes and fees, without pro-ration as described in the Financial Disclosure Summary Work Sheet (Attachment 1) hereafter imposed, assessed or payable during the term of the relevant Schedule including any extension thereof. Because the reimbursement date for an Imposition may occur after the expiration or termination of the term of the relevant Schedule, it is understood and agreed that Lessee's liability to reimburse for such Impositions shall survive the expiration or termination of the term of the relevant Schedule.

14. Ownership.

The Hardware and Software shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties' rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Hardware except a leasehold interest as provided for herein. Lessee agrees that the Hardware shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of Lessor. Upon Lessor's request, Lessee will enter into agreements necessary to ensure that the Hardware remains the personal property of Lessor.

15. Option to Extend; Surrender of Hardware and Software Assets.

(a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term, Lessor shall notify Lessee in writing of options to extend the Schedule for continued use of the Hardware or Software specified in that Schedule. If Lessee desires to exercise any of the options offered by Lessor (and provided that, with respect to Hardware, any extension does not exceed seventy five percent (75%) of its economic life), Lessee shall give Lessor irrevocable written notice of the option Lessee intends to exercise at least forty-five (45) days before the expiration of such Schedule Term. In the event the Lease is extended for some but not all of the Hardware and Software specified on a Schedule, the Schedule shall be updated to reflect those changes. At the end of the Schedule Term (as well as with respect to

- any Hardware and Software not extended as described immediately above), Lessee will surrender and return the Hardware and Software to Lessor in compliance with Section 15(b) below.
- (b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Schedule, Lessee, at its cost and expense, shall promptly return the Hardware, freight prepaid, to Lessor in good repair and working order, with reasonably unblemished physical appearance and with no defects which affect the operation or performance of the Hardware ("Return Condition"), reasonable wear and tear excepted. If the Hardware is not in Return Condition, Lessee shall, at its option, either restore the Hardware (at Lessee's cost) to Return Condition or pay for the Hardware at its Stipulated Loss Value if the Hardware is not reasonably repairable. Lessee shall arrange and pay for the de-installation and packing of the Hardware in suitable packaging, and return the Hardware to Lessor at the location specified by Lessor; provided, however, that such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. At its option and expense, Lessor shall have the right to supervise and direct the preparation of the Hardware for return. If, upon termination or expiration of the Schedule for any reason, Lessee fails or refuses to return to Lessor a Hardware unit or Software program specified in that Schedule or to pay Lessor the Stipulated Loss Value for a Hardware unit, Lessee shall remain liable for Rent Payments for that unit or program up to the date on which the unit or program is returned to the address specified by Lessor (or on which Lessee has paid Lessor the Stipulated Loss Value). In such event and specifically with respect to the Hardware, Lessor shall also have the right to enter Lessee's premises or any other premises where the Hardware may be found upon reasonable written notice to the Lessee and during normal business hours, and subject to Lessees reasonable safety and security requirements to take possession of and to remove the Hardware, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Hardware. However, as an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession except as provided by Paragraph b. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the Constitution and laws of the State of Texas, Lessee's obligation to return Hardware may, at Lessor's option, be specifically enforced by Lessor.

16. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Assets as long as an Event of Default (as hereinafter defined in Section 23 ("Default") of the MOLA) has not occurred.

17. Warranties regarding the Assets.

Lessor acknowledges that warranties made by the manufacturer or licensor of the Assets, if any, inure to the benefit of Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer or licensor of the Assets and shall not pursue any such claim against Lessor.

18. No Warranties by Lessor regarding the Assets.

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessee specifically waives all right to make claim against Lessor for breach of any warranty of any kind whatsoever; and with respect to Lessor, Lessee leases the Hardware and Software "as is". Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature caused directly or indirectly by any Hardware or Software leased hereunder, or by the use or maintenance thereof, or by the repairs, service or adjustment thereto or any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused. Lessor agrees to assign to Lessee, upon Lessee's request therefor, any warranty of a manufacturer or licensor or seller relating to the Hardware and Software that may have been given to Lessor.

19. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to the Hardware specified on the Schedule, whether partial or complete, from any cause whatsoever. Lessee shall promptly notify Lessor regarding any Event of Loss. Upon any Event of Loss, Lessee shall, at its option: (a) immediately repair the affected Hardware so that it is in good condition and working order, (b) replace the affected Hardware with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value for such affected Hardware unit, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Hardware for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of a Hardware unit for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of Lessee with respect to such Hardware unit (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA and each Schedule between Lessor and Lessee:

(a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a),

Texas Government Code) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, this MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any Schedule between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MOLA or any Schedule between Lessor and Lessee;
- (f) The use of the Assets is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MOLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided Lessee or Lessor with any legal or management advice regarding the MOLA or any Schedule executed pursuant thereto;
- (b) This MOLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding agreement of DIR, enforceable in accordance with its terms;

- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MOLA;
- (d) The entering into and performance of the MOLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Hardware or Software pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MOLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract; and
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law.

22. Representations and Warranties of Lessor.

Lessor represents and warrants for the benefit of DIR and each Lessee:

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MOLA and each Schedule executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or any Schedule;
- (d) The entering into and performance of the MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and Schedules thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MOLA or any Schedule;

(f) Lessor acknowledges that DIR and any Lessee that is a state agency, as government agencies, are subject to the Texas Public Information Act, and that DIR and Lessees that are state agencies will comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (b) Lessee's material breach of this MOLA, any Schedule, or any applicable software license agreement, which is not cured within thirty (30) days after written notice thereof from Lessor; (c) Lessee's filing of any proceedings commencing bankruptcy or the taking of other similar action by Lessee under any state insolvency or similar law, (d) the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (e) subjection of a substantial part of Lessee's property or any part of the Hardware to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (f) any representation or warranty made by Lessee in this MOLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Assets being or becoming untrue in any material respect.

24. Remedies.

- (a) Lessor's Remedies.
 - i. Upon the occurrence of an "Event of Default," Lessor may, in its sole discretion, do any one or more of the following:
 - A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate any or all Schedules executed by Lessor and the defaulting Lessee;
 - B. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule;
 - C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Schedule is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 ("Option to Extend; Surrender of Hardware and Software Assets") hereof;
 - D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of:

- I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the Stipulated Loss Value of the Hardware at the end of the Schedule Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;
- II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and
- III. interest on (I) from the date of default at 1½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (II) from the date Lessor incurs such fees, costs or expenses.
- ii. Upon return or repossession of the Hardware, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Hardware, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Hardware, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Hardware shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Hardware shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Hardware, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
- iii. No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default by Lessee shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- iv. Neither DIR nor non-defaulting Lessees shall be deemed in default under the MOLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

- (b) Lessee's Remedies. Anything herein to the contrary notwithstanding, Lessee shall have all rights provided under Tex. Bus. & Comm. Code § 2A.508 through § 2A.522, including without limitation, the right to cancel a Schedule and recover damages from Lessor in the event of nonperformance of or other default by Lessor hereunder.
- (c) Each party agrees that any delay or failure by the other party to enforce that party's rights under this MOLA or a Schedule does not prevent that party from enforcing its rights at a later time.

25. Notices and Waivers.

- (a) All notices relating to this MOLA shall be delivered to DIR or Lessor as specified in Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MOLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.
- (b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and each Schedule, Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MOLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MOLA, any Schedule and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under any Schedule; and DIR and each Lessee leasing Hardware under the MOLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MOLA. Each Lessee leasing Assets through Schedules under this MOLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Lessor shall remain liable for performance under the MOLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) Lessee will not sell, assign, sublet, pledge or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except otherwise

permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

27. <u>Delivery of Related Documents</u>.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance (if Acceptance has taken place); (b) Opinion of Counsel; (c) Financial Statements; (d) incumbency certificate; and (e) other documents specified in the applicable Schedule as being reasonably required by Lessor.

28. Miscellaneous.

- (a) Prior to delivery of any Assets, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control. In such event, the obligation of Lessee to commence Rents for such Assets shall also be suspended.
- (b) Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Assets, other than as set forth in this MOLA, including the Contract, and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MOLA, including the Contract, and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee, order acknowledgement and other forms issued by Lessor, and the like. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MOLA and the Contract and that both contain the entire agreement between them. The terms and conditions of this MOLA may be amended only by written instrument executed by Lessor and DIR. The terms of a Schedule may only be amended in a writing signed by both Lessee and Lessor.

Attachment 1 to the Master Operating Lease Agreement Financial Disclosure Summary

Lease Rate Factor(s):	Response	Notes
Equipment Type A		
Equipment Type B		
Equipment Type C		
How is Daily Rental calculated?		
Is Daily Rental invoiced separately or rolled into monthly rental?	☐ Yes ☐ No ☐ N/A	
Is this a Step Lease?	☐ Yes ☐ No	
Does this lease include software?	☐ Yes ☐ No	
If yes, who owns the software?	☐ Agency ☐ Lessor	
Personal Property Tax	Response	Notes
Estimated PPT		
PPT Payment made by	☐ Agency ☐ Lessor on Agency behalf	
PPT calculation method	 □ Agency pays direct □ Lessor pays and passes invoice through □ Lessor estimates and includes □ Lessor sets PPT at disclosed rate 	
If PPT rate changes, how are charge backs or short falls handled?	 □ N/A - Agency pays direct □ N/A - Lessor pays/passes invoice through □ Lessor is responsible □ Lessee is invoiced for short fall 	
Equipment Schedule Details	Response	Notes
Can Agency make decisions at asset level (extend, purchase, return)?	☐ Asset level ☐ All and not less than all	
Does this ES auto extend?	☐ Yes ☐ No	
If Yes, how long?		
What is the cost of the Auto extension?		
What is the notice period?		

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Are negotiated extensions FMV	□ Yes	
based?	□ No	
On FMV, can Agency select own	☐ Yes	
evaluator?	□ No	
Is asset and lease information	☐ Yes	
available online?	□ No	
End of Lease Details	Response	Notes
Where are the assets returned to?		
What is the return freight cost?		
Who pays the return freight cost?	☐ Agency ☐ Lessor	
	□Yes	
Do I need to return original	□No	
packaging?	If yes, what is the cost if not	
F0-0-	returned?	
	☐ Yes	
Do I need to return original	□No	
manuals and documentation?	If yes, what is the cost if not	
	returned?	
	☐ Yes	
5	□No	
Do I need to return software?	If yes, what is the cost if not	
	returned?	
	□ Yes	
Is there an FMV purchase cost	□ No	
cap?	If yes, what is the cost cap	
	percentage?	
What is the cost for a lost asset?		
What is the cost for missing		
equipment?		
What is the cost for data		
sanitization on assets with		
memory?		
What is the cost for data		
sanitization?		
What is the cost for on-site data		
destruction?		

Appendix F

MASTER LEASE AGREEMENT DIR-TSO-4299

1. Scope.

Dell Financial Services, L.L.C (Lessor) hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Supplementary Schedule ("Schedule"), which is a separate agreement executed from time to time by Lessor and Lessee and makes specific reference to this Master Lease Agreement ("MLA"). The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA and made subject to such terms and conditions as if a separate MLA were executed for each Schedule by the Lessee. Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within a Rider to the MLA or the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term "Equipment" shall refer to the Products and any related Services as allowed within said Contract number DIR-TSO-4299, as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Equipment for its own use, DIR is not a party to any Schedule executed under this MLA and is not responsible for Rents, payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or the Lessor or both of them arising from the use of this MLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 of this MLA.

Any reference to "MLA" shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by DIR and Lessor.

As to conditions precedent to Lessor's obligation to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as the Schedule, the Acceptance Certificate, Opinion of Counsel, and any other documentation as may be required by the Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee's financial condition except as provided for within Section 7 of this MLA.

2. Term of MLA.

The term of this MLA shall commence on the last date of approval by DIR and Lessor of Amendment Number XXX (XX) and shall continue until (i) the obligations of Lessee under every Schedule are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises their termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

The term for each Schedule, executed in conjunction to this MLA, shall commence on the date of execution of an Acceptance Certificate by the Lessee or twenty (20) days after the delivery of the last piece of Equipment to the Lessee ("Commencement Date"), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 of this MLA.

4. Administration of MLA.

- (a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.
- (b) All leasing activities in conjunction to this MLA shall be treated as a "purchase sale" in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the Contract.
- (c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR- TSO-4299 on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.

(d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

5. Rent Payments.

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MLA and any Schedule. All Rent Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to the Lessor. Any sum received by the Lessor later than ten (10) business days after its due date will bear interest from such due date at the rate of one-percent (1%) per month (or the maximum rate allowable by law, if less) until paid. Late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assignees, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

(a) This paragraph applies only to Lessees designated as state agencies defined in Section 2054.003, Texas Government Code, including institutions of higher education as defined in Texas Education Code, Section 61.003 and those state agencies utilizing a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be so terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

(b) This paragraph applies only to Lessees designated as local government entities.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated for Lessee to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of the Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, the Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period first in effect at the commencement of the Schedule Term will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term.

8. Selection of Equipment.

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor agrees, to the extent they are assignable, to assign the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term. Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

9. Inspection and Acceptance.

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate, or (ii) written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of

the tenth (10th) business day. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

10. Installation and Delivery; Use of Equipment; Repair and Maintenance.

- (a) All transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by the Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.
- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment.

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within

Texas without notification to, or the consent of, Lessor. Provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

12. Ownership.

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

13. Purchase and Renewal Options; Location and Surrender of Equipment.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together will all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN. THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.
- (b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which

affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs required to restore the Equipment to Return Condition. Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians, approved by Lessor and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. IF, UPON TERMINATION OR EXPIRATION OF THE SCHEDULE FOR ANY REASON, LESSEE FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR. Notwithstanding the foregoing, Lessor shall have the right, without notice or demand, to enter Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Equipment. As an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Texas, Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

14. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 23 of the MLA) has not occurred.

15. Warranties.

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer of the Equipment and shall not pursue any such claim against Lessor. Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

16. No Warranties.

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR

USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEROF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATESOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

17. Indemnification.

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee shall indemnify, protect, save and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.
- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR individually and collectively assume all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR agree to indemnify, save and hold harmless Lessor from any and all such claims and all expenses incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.
- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment. Lessee further agrees that

it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment.

18. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected Equipment, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

19. Insurance.

At its expense, Lessee shall keep the Equipment insured against all risks of loss and damage with companies acceptable to Lessor for an amount equal to the original cost of the Equipment, with Lessor or its assign(s) named as a loss payee. Lessee shall also maintain comprehensive general liability insurance, with Lessor or its assign(s) named as an additional insured. Lessee shall be liable for any loss not covered by insurance. All said insurance shall be in form and amount satisfactory to Lessor. Lessee shall pay the premiums therefor and deliver to Lessor or its assign(s) the certificates of insurance or duplicates thereof or other evidence satisfactory to Lessor or its assign(s) of such insurance coverage. Evidence of such insurance coverage shall be furnished no later than the Schedule Commencement Date of each Schedule and from time to time as Lessor or its assign(s) may request. Lessee agrees to use reasonable efforts to provide, or cause its insurer to provide, notice to Lessor or its assign(s) thirty (30) days prior written notice of any material decrease to or cancellation of any such insurance coverage. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any said insurance policy. Lessee may self-insure with respect to the required coverage.

Further, Lessees that are defined as state agencies in accordance with Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and

those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, may self-insure their obligations in this section.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MLA or any Schedule between Lessor and Lessee;
- (f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided the Lessee or the Lessor with any legal or management advice regarding the MLA or any Schedule executed pursuant thereto;
- (b) This MLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding Agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MLA;
- (d) The entering into and performance of the MLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Equipment pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract;
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law; and
- (h) DIR is a government agency subject to the Texas Public Information Act. Lessor acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney Generals' office concerning this Act.

22. Representations and Warranties of Lessor.

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MLA and each Schedule executed in conjunction to this MLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;

- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;
- (d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound; and
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA or any Schedule.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (c) failure by Lessee to perform or observe any other term, covenant or condition of this MLA, any Schedule, or any applicable software license agreement, which is not cured within ten (10) days after notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any representation or warranty made by Lessee in this MLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being or becoming untrue in any material respect.

24. Remedies.

(a) Upon the occurrence of an "Event of Default" and at any time thereafter Lessor may, in its sole discretion, do any one or more of the following: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate any or all Schedules executed by Lessor and the defaulting Lessee; (ii) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages, including all of Lessor's economic loss for the breach thereof; (iii) whether or not the Schedule is terminated, upon notice to Lessee, take possession of the Equipment wherever located, without demand, liability, court order or other process of law, and for such purposes Lessee, to the extent authorized by Texas law, hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Equipment is located or cause Lessee, and Lessee hereby agrees, to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages, as a remedy and not as a penalty, the sum of (a) the present value of the Rent owed from

the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Equipment is not returned to or repossessed by Lessor, the present value of the estimated in-place fair market value of the Equipment at the end of the Schedule Term as determined by Lessor, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

- (b) Upon return or repossession of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Equipment shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at the Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
- (c) No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- (d) Neither DIR nor non-defaulting Lessees shall be deemed in default under the MLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

25. Notices and Waivers.

All notices relating to this MLA shall be delivered to DIR or the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the

Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes. This MLA and those Schedules in conjunction hereof are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Default shall not be a waiver of any other or subsequent Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor. No failure on the part of Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and DIR and each Lessee leasing Equipment under the MLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MLA. Each Lessee leasing Equipment through Schedules under this MLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Each Lessee leasing Equipment through Schedules under this MLA and DIR acknowledge that the assigns do not assume Lessor's obligations hereunder and agree to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which DIR or the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE'S CONSENT. LESSEES THAT ARE STATE AGENCIES, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AGREE THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR'S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR

ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER. Without the prior written consent of Lessor, DIR shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance; (b) Opinion of Counsel; (c) proof of self-insurance acceptable to Lessor; (d) Financial Statements; (e) Incumbency Certificate; and (f) Other documents as reasonably required by Lessor.

28. Lessee's Waivers.

To the extent permitted by applicable law, Lessee hereby waives the following rights and remedies conferred upon Lessee by the Uniform Commercial Code: to (i) cancel any Schedule under the MLA; (ii) repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time.

29. Security Interest and UCC Filings.

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code ("UCC"). Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

30. Miscellaneous.

- (a) Applicable Law and Venue. The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. In the event of a dispute between the parties, exclusive venue for any legal action shall be in the state court where Lessee has its principal office or where the Equipment is located, with the following exception: if a Lessee is designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, then exclusive venue shall be in the state district court of Travis County, Texas.
- (b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an "Original" for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a "Copy". NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY "COPY" OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE "ORIGINAL" COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.
- (c) Suspension of Obligations of Lessor. Prior to delivery of any Equipment, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control.
- (d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and Contract Number DIR-TSO-4299 and that both contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.
- (f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.
- (g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.
- (h) Lessor Certifications. Lessor certifies that:

- (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this MLA and/or any Schedules executed hereunder;
- (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- (v) during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision making authority,
- (vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;
- (vii) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;
- (viii) Lessor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration:
- (ix) as of the effective date of the MLA, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (x) to the extent applicable to this scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xi) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time

- comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (xii) Vendor agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xiii) Lessor agrees that any payments due under this MLA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiv) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; if Section 669.003 applies, Vendor or Lessor as applicable, will complete the following information: Name of Former Executive; Name of State Agency; Position with Vendor and Date of Employment with Vendor.
- (xv) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (xvi) Lessor represents and warrants that the Lessee's payment to Lessor and Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
- (xvii)Under Section 2155.006, Government Code, Lessor certifies that the individual or business entity in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate. In addition, Lessor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the MLA; and (xviii) Lessor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

During the term of the MLA, Lessor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Lessor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties

(i) Dispute Resolution. The following paragraph applies only to Lessees designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this

chapter. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and rules promulgated there under shall be used by the Lessee and Lessor to attempt to resolve any claim for breach of agreement made by Lessor.

(j) Sovereign Immunity. Nothing herein shall be construed to waive the State's sovereign immunity.

(k) 31. Amendments.

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and DIR.



Department of Information Resources

Request for Offer DIR-TSO-TMP-422

Data Storage, Data Communications & Networking Equipment and Related Services

Issued: 03/20/2018

Initial Responses Due: 05/04/2018 2:00 PM (CT)

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1. Introduction

1.1. Purpose

The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide Data Storage, Data Communications & Networking Equipment and Related Services to the State of Texas, acting by and through the Department of Information Resources (DIR).

As a result of this RFO, DIR expects to receive and evaluate responses and select one or more qualified Vendors with whom to enter into negotiations. Section 5 of this RFO contains more information regarding the response evaluation and Vendor selection process. DIR reserves the right to make a single award or multiple awards from this RFO. All contracts awarded shall be indefinite quantity contracts with no minimum guarantees of any purchases.

As a result of this RFO, DIR expects to create a contract vehicle that satisfies statewide procurement requirements for Data Communications and Data Storage Products and Related Service; and Networking Equipment and Related Services contracts that improve the efficiency of the procurement process by shortening the time required to procure Data Storage, Data Communications & Networking Equipment and Related Services.

As part of DIR's initiatives to identify strategic sourcing opportunities, DIR reserves the right to make a single award or multiple awards as determined by DIR to achieve the highest overall best value to the state.

1.2. Background

1.2.1 Information Technology Acquisition

Through its Cooperative Contracts Program, DIR assists state agencies and local governments (Customers) with cost-effective acquisition of their information resources by negotiating, managing, and administering contracts with information technology providers. Customers include any Texas state agency, unit of local government, or institution of higher education as defined in Texas Government Code, Section 2054.003; the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code; those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Texas Government Code, Chapter 771; any local government as authorized through Texas Government Code, Chapter 791; the Interlocal Cooperation Act; the state agencies and political subdivisions of other states as authorized by Texas Government Code, Section 2054.0565; and for non-telecommunications IT Commodity products and services, "assistance organizations" defined in Texas Government Code, Section 2175.001.

DIR combines the buying power of authorized Customers to obtain volume-discounted pricing for selected technology products and services. In addition to offering volume-discounted pricing, DIR created the Cooperative Contracts (Co-op Contracts) Program to

make it easier for Customers to acquire these products and services. Customers place orders with and issue payments directly to the Vendors participating in the Co-op Contracts Program. Subject to DIR rights set forth in Sections 3.8 and 3.9 of this RFO, DIR will award and negotiate base contract documents with Vendors as a result of this RFO. Customers contact the Vendor for product and/or services and pricing information, negotiate their own service level agreements and additional terms and conditions, if any, and send their purchase orders (with the DIR contract number) and payments directly to the participating awarded Vendor, not to DIR. Information regarding the Co-op Contracts Program is located on DIR's Web site at http://dir.texas.gov/View-About-DIR/Pages/Content.aspx?id=41.

1.2.2 Texas Government Code, Section 2157.068

Texas Government Code, Section 2157.068, effective September 1, 2005, requires State agencies to buy commodity items, as detailed below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is a commercially available program that operates hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements and may include Software provided as a service. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staff augmentation, training, maintenance and subscription services. Seat management is a service through which a state agency transfers its responsibilities to a Vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

Technology services do not include telecommunications services. Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001 is excluded. The following services were awarded under the TEX-AN Next Generation Procurement: Long Distance Services, Internet Services (including SOHO), Voice over Internet Protocol (VoIP), Local Voice Service, Wireless Service, Fixed Satellite and Access and Transport.

Institutions of higher education, K-12, and local governments are not required to purchase IT commodities from DIR, but may do so voluntarily. Information regarding Texas Government Code §2157.068, including processes and guidelines, is located on DIR's Web site at:

http://dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=25

1.2.3 Cost Avoidance Performance Measures

As part of its performance measures reported to state leadership, DIR must show the cost avoidance realized by the State for the products and services obtained under DIR

contracts. Cost avoidance is the difference between the negotiated DIR contract price and the prevailing market price.

1.2.4 Cost Recovery

DIR recovers the costs of negotiating, executing, and administering the Co-op Contracts through an administrative fee. DIR is authorized to charge a reasonable administrative fee to all customers per Section 2157.068(d) of the Texas Government Code. The administrative fee must be included in the Vendor's price to the customer and paid to DIR by the Vendor. The fee has been set at a not-to-exceed level of 2.00% by the current appropriations act of the State Legislature. For the purposes of responding to this RFO, the administrative fee of 0.75% shall be used in calculating the pricing specified in Bid Package 2. DIR may change the administrative fee at any time during a contract term. DIR will notify Vendors of any change in the administrative fee.

1.2.5 Historical Sales

Contracts negotiated and managed through the Cooperative Contracts Program resulted in over \$5 billion in Customer purchases for the past three (3) fiscal years combined. Information contained within the table below shows the total purchases for the past three (3) fiscal years by Customer segment. These purchases represent contracts that are hardware, software, and services related. The State's fiscal year runs September 1st through August 31st.

	2015	2016	2017
Assistance Org	\$2,698,755.30	\$2,357,384.76	\$3,140,797.08
Higher Ed	\$402,325,577.21	\$351,306,997.17	\$338,555,841.28
K-12	\$677,730,203.21	\$628,703,140.22	\$577,858,667.24
Local Government	\$433,721,905.98	\$462,736,727.05	\$461,433,333.12
Out of State	\$10,944,441.03	\$8,767,492.85	\$20,451,872.88
State Agency	\$540,953,164.15	\$515,716,174.70	\$492,152,560.00
Total:	\$2,068,374,046.88	\$1,969,587,916.75	\$1,893,593,071.60

1.2.6 Current Contracts

DIR currently has multiple contracts which provide Data Storage, Data Communications & Networking Equipment and Related Services. The volume of products sold through the contracts for Fiscal Year 2014 to Fiscal Year 2017 was approximately \$293,178,430.

1.2.7 Exclusions

The following manufacturers which would be within the scope of this RFO, are excluded due to direct contracts with those manufacturers:

- Apple
- Cisco
- Dell

- Hewlett Packard
- IBM
- Lenovo
- Novell
- Oracle
- Panasonic
- Motorola
- Google

In the event that DIR identifies other Publishers to be excluded, the Publisher names will be included in a future addendum. Vendors should submit a written request should they have questions about a specific publisher on a current DIR contract. This does not preclude the Vendor from proposing the utilization of these manufacturers as part of a total solution. However, if utilized as part of a total solution, the same product brand may not be offered outside of that package or sold as a stand-alone product.

Excluded Services include Hosted and the following Cloud Services:

- Cloud Platform as a Service (PaaS). The capability to provide to the consumer (DIR Customer) the ability to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider.
- Cloud Assessment. The purpose of cloud assessment is to assist an organization in establishing a strategy and roadmap for moving applications to the cloud. Assessments enable the customer to identify candidates for cloud services, identify risks and benefits based on a set of criteria such as operational readiness, security, application characteristics, complexity, cost, etc. The cloud assessment may be provided as a service, as a tool to be used by the customer or a combination.

2. Vendor Information System (VIS) Portal - BidStamp

DIR's BidStamp Vendor Information System (BidStamp VIS) provides prospective bidders (Vendors) with the ability to create a profile that supports the key functions required during the solicitation response process. The high-level processes associated with the portal include vendor account/profile creation, vendor contact creation, vendor account management, and response submission. In addition to the account management and solicitation response capabilities enabled by the BidStamp VIS portal, Vendors will be able to view open solicitations and additional information about DIR.

2.1. Solicitation Response Requirement

Any Vendor responding to this RFO must submit their response through the BidStamp VIS. Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact DIR at the point of contact in section 4.1 of this solicitation. Please allow at least five business days for response.

2.2. VIS Account Request Process

Before users can access any of the BidStamp VIS portal functionality, they will be required to provide login credentials to access a new or existing account. Vendors will access the BidStamp VIS Portal via http://dircommunity.force.com/BidStamp, and enter in their access credentials. If a Vendor does not yet have login credentials, it will request one by clicking on "Are you a vendor and need to request an account?" button that is located on the login page.

Instructions for VIS account access and using the BidStamp VIS portal to submit solicitation response can be found on DIR's website Information for Vendors page.

3. Scope

3.1. Products

DIR intends to contract to provide Data Storage, Data Communications & Networking Equipment and Related Services.

Services in support of networking equipment and data storage products may include but are not limited to: maintenance, technical services, managed services and training. Managed Services may include management of Customer owned equipment or a defined set of services to Customer. Related service for Data Communications & Networking Equipment may include Enterprise License Agreements.

Data Communication & Networking Equipment includes all data networking products, including, but not limited to:

- Routers:
- CSU/DSU;
- PBX's;
- Headsets;
- Phones:
- Remote access components;
- Multiplexers;
- Transceivers;
- Cabling;
- Firewalls;
- Patch panels;
- Wiring block;
- Patch cords;
- Network cable tools;
- Fiber optic accessories; and
- Telecommunication parts and supplies.

Technology services do not include telecommunications services. Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001 is excluded. The following services were awarded under the TEX-AN Next Generation Procurement: Long Distance Services, Internet Services (including SOHO), Voice over Internet Protocol (VoIP), Local Voice Service, Wireless Service, Fixed Satellite and Access and Transport.

Data Storage Product may include but not limited to:

- Online data storage via the internet;
- Portable storage;
- Traditional local storage;
- Colocation Services; and
- Cloud Services as applicable to Data Storage only.

Colocation is defined as a data facility in which a Customers may rent space for servers and other computing hardware. Colocations may include managed services that support Customers' business initiatives.

Cloud Services is excluded as a standalone service; however, Cloud Services may be proposed as part of an overall data storage, or networking solution. Customer's data must remain within the continental United states. Customer and Vendor may agree to an exception to this requirement. Cloud Services as applicable to Data Storage or Networking may include but not limited to:

- Cloud Infrastructure as a Service (laaS). The capability to provide a consumer (DIR Customer) processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- Cloud Broker(age). A cloud broker is an entity that manages the use, performance and delivery of cloud services, and negotiates relationships between cloud providers and cloud consumers. A cloud broker acts as the intermediary between consumer and provider and will help consumers through the complexity of cloud service offerings and may also create value-added cloud services.

Products currently on DIR contract may be considered within scope of this solicitation only if those products are a component of a more comprehensive Data Storage, Data Communications & Networking Equipment solution. This RFO is not a solicitation for hardware replacement, e.g. computers or computer peripherals. This RFO is not a solicitation for software products; however, software may be bundled with equipment provided that the software is necessary for product integration or product completeness or is part of an overall solution. Software may not be sold as a stand-alone product.

3.1.1 Pricing

Any Vendor responding to this RFO must submit specific pricing for the products requested herein. For the purposes of obtaining pricing and evaluating the responses to this RFO, the products and services, if any, shall be priced and discounted as instructed in this solicitation number DIR-TSO-TMP-422. All products for Data Storage, Data Communications & Networking Equipment and Related Services may be made available through a Contract.

Vendors must submit pricing on DIR's Automated Pricing Form in the BidStamp VIS per the instructions in Bid Package 2. Failure to respond as instructed may result in Vendor's offer being

disqualified from further evaluation.

- 1. **Discount Sheet**: Vendors will provide discounts for each brand proposed under the Products discount sheet. The Brands will be categorized as provided on the spreadsheet titled "Brand Product Detail" and entered in the BidStamp automated pricing tool as described in Bid Package 2. BidStamp fields include:
 - Product Category (Delivery) Example: data storage, colocation, networking equipment, data communication
 - Product Sub-Category (Hardware Genre) Example: Routers; CSU/DSU; PBX's; Remote
 access components; multiplexers, transceivers, cabling, firewalls, patch panels,
 wiring block, patch cords, network cable tools, fiber optic accessories, portable
 storage, traditional local storage, cloud services, SERVICES, etc.
 - Brand Example: Infoblox, Palo Alto, APC, Eaton, Aruba, Juniper etc.
 - Product Description: if line item is a service enter N/A
 - Service Description: if line item is a product, enter N/A
 - **Service Category Example**: maintenance, technical services, managed services, training, colocation services, and online data storage via the internet
 - Product Number: if providing detailed line item provide a product or service number, if not, enter N/A
 - Manufacturer: check if vendor is the manufacturer
 - Reseller: check if vendor is an authorized reseller of the line item
 - MSRP: provide MSRP if providing detailed line item or N/A if offering brand discount
 - Discount off MSRP: provide discount for detailed line item. Provide average discount for each brand
 - Service Zone: Example: Austin area, DFW Area, Statewide

Vendor will enter detailed product or service pricing and line item discounts in the Bid Package 2 spreadsheet as applicable. Vendors will offer an average discount for each Brand listed in the automated pricing form in BidStamp. Vendor will calculate the average discount for each brand proposed in the Bid Package 2 spreadsheet. The Vendor's average discount calculation entered in Bid Package 2 must match the discount entered in the BidStamp pricing sheet. DIR may disqualify the brand proposed if a discrepancy is found. The price to the DIR Customer shall include all shipping and handling fees. Bid Package 2 Spreadsheet will be part of vendor's response.

3.1.1.1 **Volume Pricing**

- 1) Volume Pricing: DIR encourages Vendors to offer VOLUME pricing for specific Products and/or Services on the spreadsheet tabs of Bid Package 2, Pricing Index.
- 2) In addition to VOLUME pricing for specific Products and/or Services, DIR encourages Vendors to propose increased discount based on total statewide aggregate contract sales for Products and Services. See Instruction tab in Bid Package 2, Pricing Index for volume pricing instructions.

DIR is not soliciting Data Storage, Data Communications & Networking Equipment and Related Services for the agency. DIR establishes statewide master contracts for use by DIR eligible customers. DIR competitively bids for information technology products and services.

Customers must identify their own needs, then contact an awarded DIR Vendor and obtain a price quote for products/services. Customers may submit a statement of work or purchase order to the Vendor when obtaining a quote based on their needs. The Customer makes the best value determination and issues a purchase order directly to the Vendor.

This RFO is **not** a solicitation for professional or consulting services as defined in Chapter 2254, Texas Government Code.

3.2. Related Services

Related services are any value-added service that Vendor may perform as related to the products proposed in Section 3.1. Related services include but are not limited to: product installation, maintenance and technical support, project management, managed services and product training. Any Vendor offering product-related services must submit a description of those services and the related pricing in the Automated Pricing Form in the BidStamp VIS.

This RFO is <u>not</u> a solicitation for professional or consulting services as defined in Chapter 2254 of the Texas Government Code.

3.3. Emerging Technologies

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of DIR-TSO-TMP-422. Vendor may propose such products and related services throughout the term of the contract. In order to meet the needs of DIR customers, DIR may request the addition of products and services within scope of DIR-TSO-TMP-422 by augmenting the original solicitation through a competitive bidding process. Pricing and terms will be negotiated upon DIR agreement. Any determination will be at DIR's sole discretion and any decision will be final.

3.4. Threshold and SOW Requirements

State Agency Customers (not including institutions of higher education), must adhere to the requirements of Senate Bill 533 (85R) relating to DIR Cooperative Contracts. Senate Bill 533 (SB533) requires state agencies to adhere to the following purchasing thresholds:

Threshold Requirements for IT Commodities (Hardware, Software and Services)

Contract Value	Number of DIR Vendors
\$50,000 or less	May award directly to DIR Vendor of choice
\$50,000.01 to \$1,000,000,00	Three (or all DIR Vendors in a category with less
	than three vendors)
\$1,000,000.01 to \$5 million	Six (or all DIR Vendors in a category with less than
	six vendors)
More than \$5,000,000.01	Agencies must conduct an independent
	procurement and cannot use DIR Cooperative
	Contracts

In addition, TGC Section 2157.0685 requires that state agencies procuring more than \$50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

Threshold and SOW review and signature processes do not apply to Institutions of higher education, K-12, local governments, assistance organizations, or out-of-state customers.

3.5. Electronic and Information Resources (EIR) Accessibility

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes <u>1 TAC 206</u>, <u>1 TAC 213</u>, and <u>WCAG 2.0 AA</u> as applicable, and when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Accordingly, all Vendors must submit completed VPAT form (Bid Package 5) or links to completed VPATs located on manufacturer websites for each proposed product or product family prior to an award for the proposed product or product family. Instructions on how to complete a VPAT® can be found on DIR's website.

Vendors claiming that a proposed product or family of products is exempt from accessibility requirements must use the VPAT form to: (1) specify each exempt product or product family and indicate "Not Applicable" in the "Supporting Features" column of the Summary Table; (2) provide an explanation in the "Remarks" column of Summary Table.

 For Consumer Off the Shelf (COTS) products, including Software as a Service (SAAS), a completed, <u>accurate</u> Voluntary Product Accessibility Template (VPAT) for each product or service included in the submitted pricelist.

Vendors who do not already have accessibility documentation should complete the form located here: http://www.itic.org/public-policy/accessibility. Vendors that claim their products are exempt from accessibility requirements must present that position to DIR as a question during the question and answer period of the solicitation.

For non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) Vendors should complete a **Vendor Accessibility Development Services Questionnaire** (Bid Package 6) which documents Vendor's capability or ability to produce accessible electronic and information resources.

In addition to the VPAT requirement, vendors <u>must</u> complete the **Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment**. (Bid Package 6)

3.6. Form of Contract

3.6.1 Sample Contract and Terms Negotiation

Negotiation: The final terms and conditions of any contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that

shall be included in any awarded contract are contained in the <u>sample</u> Contract for Products and Related Services attached as "Bid Package 4" and the Standard Terms and Conditions for Products and Related Services Contracts attached as "Bid Package 5" to the posting for this RFO, requisition number DIR-TSO-TMP-422, on the Electronic State Business Daily, http://www.txsmartbuy.com/sp

3.6.2 Proposed Changes and Exceptions

Caution: Vendors' Responses may be disqualified if their exceptions are excessive, or if they except to non-negotiable terms, as described below. Item 11 of Exhibit A contains the format for Vendor to note any exception to any provision, term, or condition specified in the Contract for Products and Related Services and Standard Terms and Conditions for Products and Related Services Contracts. Vendor should provide any proposed changes to contract language in redline in the "Proposed Language (redline)" column of the chart in Item 11 of Exhibit A. Vendors may request exceptions to standard contract terms and conditions; however, (1) where noted, exceptions to certain terms and conditions will not be allowed. If Vendor is unable to comply with these provisions, the Vendor's response may be subject to disqualification from further consideration for this solicitation; (2) DIR in its discretion may or may not accept the Vendor's requested exceptions; and (3) material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) may render the Offer non-responsive and may result in rejection of the bid. An explanation as to why the Vendor cannot comply with the provision, term, or condition and proposed alternative language must be included in the response. If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at some later date.

DIR anticipates a contract with an initial term of two years renewable automatically in one-year increments for three (3) additional years under the same terms and conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modifications of terms or not renew. In the event of prolonged contract negotiations DIR may in its discretion offer Vendor a shorter contract term.

DIR reserves the right to make changes to the *Contract for Products and Related Services* or the *Standard Terms and Conditions for Products and Related Services Contracts* if it is in the best interest of the State to do so. Should this occur prior to the award of any contracts as a result of this RFO, any Vendors selected for negotiations will be notified.

4. General Information

4.1. Point of Contact

All communications regarding this RFO must be addressed in writing to:

Carrie Cooper Department of Information Resources 300 W. 15th Street, Suite 1300 Austin, Texas 78701

Phone: 512-936-2353

Fax: 512-936-6896

Internet: carrie.cooper@dir.texas.gov

4.2. Contact with DIR Staff

Upon issuance of this RFO, employees and representatives of DIR other than the Point of Contact identified in Section 4.1 will not discuss the contents of this RFO with any Vendor or their representatives. Failure of a Vendor and any of its representatives to observe this restriction may result in disqualification of any related response. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

4.3. Anticipated Schedule

4.3.1 **RFO Schedule**

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. DIR reserves the right to modify these dates at any time. Prospective Vendors will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

Date/Time	Activity
3/20/2018	Publish RFO on Electronic State
, ,	Business Daily
03/26/2018 2:00 PM (CT)	Optional Vendor Conference
04/04/2018 02:00 PM (CT)	Deadline for submitting questions
04/13/2018 5:00 PM (CT)	Deadline for posting answers to
04/13/2018 3:00 FWI (CT)	questions on the ESBD
05/04/2018 2:00 PM (CT)	Deadline for DIR to receive Vendor
03/04/2018 2:00 FWI (CT)	references
05/04/2018 2:00 PM (CT)	Deadline for submitting responses to
03/04/2018 2:00 PW (C1)	RFO
	Evaluation of responses, oral
05/08/2018 – until completed	presentations (if requested),
	negotiation and contract execution

4.3.2 **Vendor Conference**

The Optional Vendor Conference will be held on the date and time specified in RFO Section 4.3.1 above at the location listed below. Please bring a copy of the RFO to the Vendor Conference, as DIR will only supply a limited amount of copies.

William P. Clements Building 300 W. 15th Street Room 103 Austin, Texas 78701

Webinar Information

A webinar will be held on the date and time specified in RFO Section 4.3.1 above.

To reserve a webinar seat, register at:

https://attendee.gotowebinar.com/register/4735973003216602371

After registering, you will receive a confirmation email containing information about joining the Webinar.

DIR will provide conference and webinar attendees with an opportunity to submit written questions at the conference. All questions submitted at the conference must reference the appropriate RFO page and section number. Although DIR may provide tentative verbal responses to questions at the conference, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, http://www.txsmartbuy.com/sp. DIR reserves the right to amend answers prior to the offer submission deadline.

Any addenda and/or amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESBD will in no way release the selected Vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

4.3.3 Written Questions and Official Answers

Vendors shall submit all questions regarding this RFO through the BidStamp VIS. Questions regarding this RFO will be accepted until the date and time specified above in Section 4.3.1, RFO Schedule. Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, requisition number DIR-TSO-TMP-422 on the Electronic State Business Daily (ESBD), http://www.txsmartbuy.com/sp. DIR reserves the right to amend answers prior to the offer submission deadline.

Any addenda and/or amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESBD will in no way release the selected Vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

4.4. Historically Underutilized Businesses

The purpose of the Historically Underutilized Business (HUB) Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency must make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

- 1. 11.2% for heavy construction other than building contracts;
- 2. 21.1% for all building construction, including general contractors and operative builders' contracts;
- 3. 32.9% for all special trade construction contracts;
- 4. 23.7% for professional services contracts;
- 5. 26.0% for all other services contracts;
- 6. 21.1% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161.252(b), and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

HUBs are strongly urged to respond to this RFO. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. Vendors who meet the qualifications are strongly encouraged to apply for certification as HUBs.

4.4.1 HUB Subcontracting Plan

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. The HUB Goal for this RFO is 21%. ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBS. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION. The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are available in the BidStamp VIS. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that Vendors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Vendor for more than five years. If the Vendor does not plan to subcontract, Vendor must state that fact in their plan. An original, signed paper copy of the HSP must be uploaded into BidStamp. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.

4.4.2 **HUB Continuing Performance**

Any contracts awarded as a result of this RFO shall include reporting responsibilities related to HUB subcontracting. Awarded Vendors may not change any subcontractor without submitting a revised HUB Subcontracting Plan (HSP). Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation.

4.4.3 **HUB Resources Available**

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Website at: https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. For additional information, contact the CPA's HUB program office at StatewideHUBProgram@cpa.texas.gov. If Vendors know of any businesses that may

qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

4.5. Vendor Qualifications

4.5.1 **Authorized Vendors**

Vendors who respond to this RFO must be one of the following:

- 1) Vendor who will sell directly to Customers through a Co-op Contract. Any proposing Vendor who is not the Manufacturer/Publisher must supply a signed letter from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products to the agencies and political subdivisions of the State, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. Signed letters of authorization must be submitted with Vendor's proposal through BidStamp. Failure to supply the letter may result in elimination of the related proposal from the solicitation process.
- 2) Vendor who will execute a Co-op Contract with DIR and designate one or more qualified dealers or resellers (Order Fulfillers) to sell directly to Customers on its behalf. Vendor may also sell directly to Customers. Vendors responding to this RFO must supply a signed letter from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products to the agencies and political subdivisions of the State, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. Signed letters of authorization must be submitted with Vendor's proposal through BidStamp. Failure to supply the letter may result in elimination of the related proposal from the solicitation process.

4.5.2 **Federal Requirements**

- 1) State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Vendor listed in the prohibited Vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Vendor awarded a Contract as a result of this RFO must agree that if at any time during the term of the contract the Vendor is listed on the Terrorism List, the Vendor shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure any Vendor awarded a contract as a result of the RFO remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the contract without recourse in the event Vendor becomes listed on the Terrorism List.
- 2) Should any Vendor or its principals awarded a Contract as a result of this RFO become suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration, the Vendor's contract will be terminated without recourse.
- 3) Vendor shall comply with the requirements of the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

4.5.3 Vendor Performance and Debarment

In accordance with 34 TAC, Chapter 20, Subchapter C, any Vendor that is debarred from doing business with the State of Texas will not be awarded a contract under this solicitation. The list of debarred Vendors is located on the CPA Web site at: http://comptroller.texas.gov/procurement/prog/vendor_performance/debarred/

4.5.4 Required Vendor and Subcontractor Current and Former State Employee Disclosures

Vendor shall disclose, for itself and on behalf of all of its Subcontractors, in its response to Section 12 of Exhibit A to the RFO, all of the following:

- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of DIR within the past five (5) years;
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of DIR. Disclosure of former state employees may be limited to the last five (5) years; and
- 3) Vendor will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

4.6. Response Deadline and Submission Requirements

Vendors are invited to submit responses in accordance with the requirements outlined in this document. Responses must be received by DIR on or before **the solicitation response due date listed in section 4.3.1.** No late responses will be reviewed. No facsimile or e-mail responses shall be accepted. No physical written responses will be accepted unless pre-approved and authorized by DIR in accordance with section 2.1 of this solicitation.

4.6.1 Official Timepiece

The clock in the DIR Purchasing Office at 300 W. 15th Street, 13th Floor, Room 1335, is the official timepiece for determining compliance with the deadline. All responses will be date and time stamped electronically in the BidStamp VIS or if accommodation is granted by DIR, when received by the Purchasing Office on the 13th floor.

4.7. Response Format and Contents

Per section 2.1 of this solicitation, any Vendor responding to this RFO must submit their response through the BidStamp VIS unless granted an accommodation by DIR by the appropriate deadline.

4.7.1 Mandatory Response Contents

VENDOR MUST PROVIDE THE ITEMS LISTED BELOW OR THE RESPONSE WILL BE REJECTED.

1) Vendor Information – Exhibit A of this RFO

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor. Vendors Response should offer information to support its capability to provide the products and services requested in this RFO. Attachments 1 and 2 must be completed and submitted with the response if applicable per Item 21, Canceled Contracts.

2) Vendor History and Experience - Exhibit B of this RFO

Vendors Response should offer information to support its capability to provide the products and services requested in this RFO.

3) Contract Marketing and Support Plan – Exhibit C of this RFO

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded.

4) HUB Subcontracting Plan Forms - Exhibit D of this RFO

All Vendors, INCLUDING THOSE WITH HUB DESIGNATION AND THOSE THAT DO NOT PLAN TO USE SUBCONTRACTORS, must submit a HUB Subcontracting Plan. The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal. Refer to Section 4.4 for more information regarding HUB subcontracting. Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors. The signed copy of the HSP must be uploaded and submitted in the BidStamp VIS.

5) Product Pricing

Vendor shall provide a detailed description and the specific pricing for any products and related services that Vendor is proposing to offer in response to this RFO via the Automated pricing Form in the BidStamp VIS. Vendor shall provide specific pricing for the products and related services applicable to their response.

6) Signed letter(s) from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products upon DIR request.

7) Software License Agreements and/or Service Agreements

Vendor shall provide any Software License Agreements and/or Service Agreements that are applicable to the services Vendor is proposing. These Agreements must, at a minimum, allow and provide for inclusion of the terms and conditions of the *Contract for Products and Related Services* (Bid Package 4).

8) Policy-Driven Adoption for Accessibility – Bid Package 6

Vendors must provide the PDAA form (Bid Package 6) as requested in Section 3.5, Electronic and Information Resources (EIR) Accessibility, of this RFO.

9) Sample Engagements and Vendor Qualifications – Bid Package 8

Vendors proposing Cloud as part of a solution shall provide complete responses to the questions listed in the Microsoft Word document that is attached as "Bid Package 8".

4.7.2 References

Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included on the questionnaire. Vendor may submit the Vendor Reference Questionnaire to companies or government agencies through the BidStamp VIS. DIR is not responsible for undeliverable e-mails or for non-responsive references. Vendor's references will be evaluated in accordance with Section 5.2.2. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. References may be contacted for clarification at DIR's discretion.

4.7.3 Accessibility of Electronic Response Documents

Vendor response documents should be submitted in a format that is accessible to people with disabilities. This can include, but is not limited to accessible Office, Adobe PDF, or other productivity document suite. **Vendor should not submit scanned documents.**

4.8. Rejection of Responses

DIR has sole discretionary authority and reserves the right to reject any and all responses received as a result of this RFO. Responses that do not comply with the mandatory submission requirements shall be rejected. In addition, DIR reserves the right to accept or reject, in whole or in part, any responses submitted, and to waive minor technicalities when in the best interest of the State.

4.9. Right to Amend or Withdraw RFO

DIR reserves the right to alter, amend or modify any provision of this RFO, or to withdraw this RFO, in whole or in part, at any time prior to the award of a contract if to do so is in the best interest of the State. DIR reserves the right to re-solicit for like or similar products and services whenever it determines re-solicitation to be in the best interest of the State.

Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-422 on the Electronic State Business Daily, http://www.txsmartbuy.com/sp. It is the responsibility of Vendors to monitor the web site for addenda. Vendor's failure to periodically check the ESBD will in no way release the vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO Pre-agreement Costs.

DIR shall not be responsible or liable for any cost incurred by any Vendor in the preparation and submission of its response to this RFO or for other costs incurred by participating in this

procurement process.

4.10. Ownership of Responses

All responses become the property of DIR. DIR reserves the right to use any and all information or materials presented in response to this RFO. Disqualification of a Vendor's response does not eliminate this right.

4.11. Public Information

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. Vendor may not mark its complete proposal "copyrighted" or mark every page as proprietary or confidential but if a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the Vendor must specify which exception(s) are applicable and provide detailed reasons substantiating the exception(s).

The Office of the Attorney General (OAG) has the sole authority to determine whether information is confidential and not subject to disclosure under the Public Information Act DIR shall comply with all decisions of the OAG.

DIR assumes no responsibility for asserting legal arguments on behalf of any Vendor. Vendors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

5. Evaluation, Negotiations, and Award

5.1. Evaluation of Responses

DIR will review proposals to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. All proposals determined to be responsive will go through a financial review overseen by the Chief Financial Officer's (CFO's) office. The financial review is a pass/fail determination that is final. Only proposals that receive a passing grade will proceed to the Evaluation Committee. DIR will establish an Evaluation Committee to review all responses that have not been rejected. At any time during the evaluation process, DIR may ask any or all Vendors to elaborate on or clarify specific points or portions of their response. DIR's request and Vendor's response shall be in writing. Once initial evaluation of responses has been completed, the Evaluation Committee shall turnover the tabulated scores to the DIR purchasing office and shall conclude their duties.

5.2. Evaluation Criteria

5.2.1 Pass/Fail Criteria

In addition to the weighted criteria listed below DIR also reviews additional Pass/Fail criteria as follows:

- DUNS Number and report is a Pass/Fail review conducted by the Finance Group (Exhibit A, Item 12)
- 2. Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
 - A score of less than 90% in the Vendor Performance System;
 - b. Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports,
 - c. Having purchase orders that have been cancelled in the previous 12 months for non-performance (including but not limited to late delivery, etc.).
- Completion of HUB Subcontract Plan (Exhibit D).

5.2.2 Weighted Evaluation Criteria

The criteria and weight to be used in determining the best value for the State are as follows:

- o 45% Pricing
- 30% Vendor History and Experience and References in providing the products and services requested. (Exhibit B of Bid Package 1, and Vendor References)
- 25% Vendor's plan for supporting the Contract Exhibit C

Vendors will be evaluated on performance under existing and prior contracts for similar products or services and the evaluation may include consideration of Vendor performance as recorded in the CPA Vendor Performance Tracking System as described in the Texas Administrative Code, 34 TAC 20.108(b).

5.3. Oral Presentations, Best and Final Offer

DIR in its discretion shall make the determination whether to request oral presentations and/or engage in the Best and Final Offer process. Both oral presentations and the he Best and Final Offer process, if held, will also be scored.

DIR reserves the right to continue to evaluate responses until such point as the best value, as defined by Texas Government Code, Section 2157.003, is obtained for the State.

5.4. Negotiations

At the conclusion of the evaluation, as described within Sections 5.1 through 5.3 above, DIR staff shall determine the number of Vendors with which it will start contract negotiations. In its discretion, DIR shall terminate contract negotiations when DIR determines that the best value for the State has been obtained. Then the staff will recommend award of one or more contracts to DIR Executive Management.

5.5. Award of Contract

DIR Executive Management shall make the decision to award any contracts, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final. Any award for this RFO shall be posted under requisition number on the Electronic State Business Daily, http://www.txsmartbuy.com/sp, upon execution of a contract with one or more Vendors. All responses and working papers pursuant to this RFO are not subject to disclosure under the Public Information Act until all contracts resulting from this RFO have been executed.

Any Contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

5.6. Vendor Protest Procedures

Any Vendor who is aggrieved in connection with this RFO, evaluation, or award of a contract may formally protest to DIR in accordance with the Vendor protest procedures posted on the DIR Web site at: http://dir.texas.gov/View-Information-For-Vendors/Pages/Content.aspx?id=21.

END OF RFO

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Exhibit A Vendor Information

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.

1)	Company Name:
2)	Comptroller of Public Accounts Vendor Identification Number:
3)	Principal place of business Address: City: State: Zip Code:
4)	Facility responsible for servicing the contract Address: City: State: Zip Code:
5)	Contact Person regarding Vendor's response to the RFO Name: Address: City, State, Zip: Phone Number: Fax: Email:
6)	Contact Person responsible for contract negotiation Name: Address: City, State, Zip: Phone Number: Fax: Email:
7)	Officer or Agent empowered to contractually bind the Vendor: Name: Title: Address: Phone Number: Fax: Email:

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8)		hether or not your com the State of Texas by Yes		ied H _No	listorically Underutilized Business	
9)	Provide th	ne year in which your c	ompany was cr	eate	d/incorporated.	
10)	Vendor must send the Vendor Reference Questionnaire to three (3) companies or government agencies. Instructions are included in Bid Package 5. DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. Should this occur, the reference will be scored with a zero (0).					
11)	11) List below by subsection all exceptions to the Contract for Services and Standard Terms an Conditions for Services Contracts in redline form. You must include the basis of you exceptions and provide proposed alternate language. If Vendor fails to list exceptions in it response, Vendor shall not be permitted to submit exceptions to the same section during the negotiation process or thereafter. Vendor shall not redline the contract or Exhibit A All exceptions must be listed in the chart below.				ur ts g	
	Section	Section Title	Explanation Exception		Proposed Language (redline)	
}						
12) Vendor and Subcontractor Conflict of Interest Disclosure List below all current or former employees of Vendor and/or proposed Vendor personnel we conflict of interests as follows: 1) Any current or former employees of Vendor who will spend 20% or more of their time or contract resulting from this RFO and are current or former employees of the State of Tex within the past five (5) years; and 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from the RFO 20% or more of their time who are related within two degrees of consanguinity of a current or former employees of the State of Texas. Disclosure of former state employees make be limited to the last five (5) years. Vendor Personnel: Current or Former Employees who are current Vendor Personnel related to State of				a as is		
	or routilet St	ate employees (see No	ole i above)	rex	as Employees (see Note 2 above)	

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Current or Former Employees of	Subcontractor Personnel related to State
Subcontractor(s) who are current or former	of Texas Employees (see Note 2 above)
State employees (see Note 1 above)	

- 3) Vendor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B. Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.
- 13) Proof of Financial Stability.

All Vendors responding to this RFO and all Vendors that will enter into a contract with DIR must be and remain current in payment of all taxes, including Sales and Franchise Taxes. In general, the Comptroller of Public Accounts must identify the Vendor to be "in good standing" and a Vendor with which the state is authorized to do business.

Vendors must provide a Dun and Bradstreet D-U-N-S number. The D-U-N-S number MUST be included in the Vendor's response. Failure to include the D-U-N-S number listed for the company may result in rejection of the response.

- 14) Electronic Product Environment Assessment Tool (EPEAT). To the extent Customers use products provided by Vendor in the delivery of Services offered under this RFO, indicate whether the products provided are EPEAT certified and identify the applicable EPEAT rating (bronze, silver or gold) for certified products. If products provided are not EPEAT certified, describe Vendor's efforts to obtain EPEAT certified products.
- 15) For each manufacturer, Vendor is proposing in the RFO, indicate whether or not the manufacturer has a program to recycle the manufacturer's computer equipment and if they recycle computers from other manufacturers. If you are a reseller, you must indicate whether your company has a recycling program or will use the manufacturer's recycling program for the products listed in this RFO.

Manufacturer Name			
Recycles their own computers?	Yes		No
Recycles other manufacturer's computers?		Yes	No
If Reseller, check one that applies:			
Will use Manufacturer's progra	ım		
Will use Respondent's own pro	ogram		
Provide documentation or citation (URL) whe DIR to verify compliance with this requiremen	,	cling prograr	n resides to enable

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16) Statement of Compliance

A. Checklist for the RFO

The following checklist is provided for the convenience of Vendors in their response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFO. Vendors must ensure that all mandatory requirements for this RFO are met, even if they are not included in this checklist. The mandatory documentation must be submitted with the original and each copy of the response.

A completed checklist shall not be binding on DIR's administrative review for compliance with the mandatory response contents specified in this RFO. As step one of the evaluation process, DIR will review all responses to ensure compliance with the mandatory response contents as specified in Section 3.7.3. of the RFO and reject any response that does not comply.

All responses must be received by DIR on or before the date and time specified in Section 3.3.1 of this RFO. No late responses will be reviewed.

Item	Check
Responses must be submitted in the BidStamp VIS Portal	
Mandatory Response Contents	
Vendor Information – Exhibit A	
Vendor History and Experience – Exhibit B	
Contract Support Plan – Exhibit C	
Manufacturer Letters, Section 3.5.1	
HUB Subcontracting Plan Forms – BidStamp VIS Form (Print, sign and upload)	
Pricing Form (BidStamp VIS Portal)	
Accessibility Documentation (PDAA), Section 3.3 RFO Requirement	
Service Agreement(s) (if applicable)	

B. Certification Statement

The undersigned hereby certifies on behalf of <u>insert company name here</u> that DIR-TSO-TMP-422; has been read and understood. In submitting its response <u>insert company name here</u> represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) To the extent applicable to this scope of this Solicitation, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services offered in the response to this solicitation number DIR-TSO-TMP-422;
- iv) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- v) as of the date of signature below, Vendor is not listed in the prohibited Vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- vi) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;

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- vii) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (viii) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
- (ix) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;
- (x) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- (xi) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (xii) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award; .Enter the name and Social Security Numbers for each person below (alternatively, if this section applies, Vendor may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- xiii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (xiv) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
- (xv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;
- (xvi) Vendor certifies for itself and its subcontractors that it has identified all current or former. within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xvii) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;
- (xviii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;

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- (xix) Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements); and
- (xx) Vendor agrees that these representations will be incorporated into any subsequent agreement(s) between Vendor and Customer that result from this RFO; and
- (xxi) Respondent certifies that there have been \square **yes** / \square **no** <u>canceled contracts</u> in the past five (5) years. Note: If yes is checked, Respondent must complete Exhibit A, Attachment 1 & 2 and submit with the response; and

(xxii) Vendor represent and warrant as required by Texas Government Code section 2270.002, by executing this Contract, that Vendor does not, and will not during the term of this Contract, boycott Israel. Vendor further certifies that no subcontractor of the Vendor boycotts Israel, or will boycott Israel during the term of this Contract. Vendor agrees to take all necessary steps to ensure this certification remains true during the term of this Contract.

Signature of Officer or Agent empowered to co	entractually hind the Vendor
Signature of Officer of Agent empowered to co	onliactually bind the vendor
Date	

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Exhibit A Attachment 1

List of Vendor's Cancelled Contracts

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR ANY IDENTIFIED CONTRACT CANCELLED WITHIN THE PAST FIVE YEARS REFERENCE AND SUBMITTED WITH THE RESPONDENT'S REQUIREMENTS SUBMISSION

RESPONDENT NA	ME:				
COMPANY NAME					
COMPANY ADDRESS (Street, City, State, Zip Code)					
*CONTACT NAME / PHONE					
*E-MAIL					
CONTRACT A	AWARD	OPERATIONS DATE:	START	CONTRACT DATE:	CANCELLATION
DESCRIPTION O	F SERVICE:				
REASON FOR CA	ANCELLATION:				
OOMBANN/	1				
COMPANY NAME					
COMPANY ADDRESS					
(Street, City, State, Zip Code)					
*CONTACT NAME / PHONE					
*E-MAIL					
CONTRACT DATE:	AWARD	OPERATIONS DATE:	START	CONTRACT DATE:	CANCELLATION
DESCRIPTION O	F SERVICE:				
REASON FOR CA	ANCELLATION:				

* Note: Do NOT complete these fields if DIR is the Cancelled Contract Reference

Department of Information Resources Data Storage, Data Communications & Networking Equipment and Related Services

Request for Offer DIR-TSO-TMP-422

Exhibit A Attachment 2 RESPONDENT RELEASE OF LIABILITY (TO REFERENCE)

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE (GENERAL REFERENCES AND CANCELLED CONTRACT REFERENCES) AND SUBMITTED WITH THE RESPONDENTS REQUIREMENTS SUBMISSION

Enter name of company (Respondent) or key staff person's name needing a

Enter name of company providing the reference here

You are hereby requested to provide a business reference for:

To company providing the reference:

reference

to the: Texas Department of Solicitation Evaluati	f Information Resources on Team
parties' business relation individual key staff pers reference, its agents, en named company providi	all information that you deem relevant relating to the above-named nship. By signing this document, the entity and, if applicable on signing below releases the above-named company providing a ployees, and all persons, natural or corporate, in privity with above ng a reference from any and all liability, claims or causes of action are of information pursuant to this request for a business reference.
Signed the	day of, 20
	(Respondent Signature)
	(Respondent Printed Name)
	(Respondent Title)
Signed the	day of, 20
	(Key Staff Signature or "N/A" if Respondent-level release)
	(Key Staff Printed Name)

Department of Information Resources Data Storage, Data Communications & Networking Equipment and Related Services

Request for Offer DIR-TSO-TMP-422

Exhibit B Vendor History and Experience

Provide a detailed history of your company.
Provide the number of years your company has sold the products/services requested in this RFO.
Provide the number of years your company has sold the products/services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of highe education.
Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the products/services listed in this RFO from you company within the last 12 months.
If yes, provide the entity names, total sales, quantity sold, and discount % off list price.
Indicate whether or not your company holds a contract for use by public entities (state agencies local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO.
local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO.
local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO. Yes No
local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO.
local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO. Yes No If yes, provide the entity names, total sales, quantity sold, and discount % off list price. Indicate whether or not your company holds a contract with any entity or consortium authorized by Texas law to sell the products and services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education. Yes No

Department of Information Resources Data Storage, Data Communications & Networking Equipment and Related Services Request for Offer DIR-TSO-TMP-422

END OF EXHIBIT B

Department of Information Resources Data Storage, Data Communications & Networking Equipment and Related Services Request for Offer DIR-TSO-TMP-422

Exhibit C Contract Marketing and Support Plan

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded. The plan must include the information listed below.

- Describe your company's strategy for marketing and selling the services listed in this RFO
 to eligible DIR Customers. A Contract Marketing Plan, as an example, would list the
 marketing elements Vendor would use like publishing on DIR website, email signature tag,
 Trade Publication Advertisements etc.
- 2) Describe your company's strategy for providing sales, order processing, and support of eligible DIR Customers throughout the State of Texas.
- 3) Provide the projected total sales of the services listed in this RFO that your company anticipates making to eligible DIR Customers within the next 12 months. If available, show the projected sales breakdown between the following segments: State and Local Governments, Higher Education, and K-12.
- 4) Do you have other existing DIR Contracts? If yes, list those existing DIR contracts, and explain how this contract will impact the marketing and support of your other contracts? How will your other contracts impact the marketing of this contract, should you receive an award?
- 5) Provide an overview of the management and customer relationship team that will be responsible for managing the State's relationship in the event of being awarded a contract. Address the following:
 - a. Describe the geographical reach of the Vendor, teaming partners and subcontractors (if any), to include, at a minimum, locations of corporate and branch offices as well as locations where work is currently taking place. Explain how these locations and any proposed new locations will be used in the performance of this contract.
 - b. Provide names, titles, prior account management experience for accounts of the State's size and type.
 - c. Provide an organization chart identifying the chain of command for managing this contract, including resource sourcing responsibility, and organization components that support this contract. In a narrative, describe how the Vendor will manage the contract to ensure uninterrupted, high quality performance and overall contract effectiveness.

END OF EXHIBIT C

Solicitation Exhibit C v.04/2017

Sample HUB Subcontracting Plan

Complete an automated version of the HUB Subcontracting Plan in BidStamp. Note: Vendors must also print, sign, and upload the signed HSP. (reference Vendor Guide Section 5.4)

Rev. 2/17



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

>	If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
	Section 2 c Yes
	Section 4 - Affirmation
	GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you <u>do not</u> have a <u>continuous contract</u> * in place for more than five (5) years <u>meets or exceeds</u> the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
	and Non-HUB vendors.
	Section 2 c No
	Section 2 d Yes
	Section 4 - Affirmation GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB
	vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
	Section 2 c No
	Section 2 d No
	Section 4 - Affirmation
	GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
	Section 1 - Respondent and Requisition Information
	Section 2 a No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
	☐ Section 3 - Self Performing Justification ☐ Section 4 - Affirmation
	C Occupit 4 - Millillation

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.





c. Requisition #:

HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- · 23.7 percent for professional services contracts,
- · 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may denits subcontracting opportunities if the total value of the respondent's subcontracts with Texas agency specific HUB goal, whichever is higher. When a respondent uses this method to demonwhich it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this required be subcontracted to HUBs with which the respondent does not have a continuous contract HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009.	certified HUBs meets or exceeds the statewide HUB goal or the strate good faith effort, the respondent must identify the HUBs with uirement, only the aggregate percentage of the contracts expected in place for more than five (5) years shall qualify for meeting the
SECTION 1. Proposition AND Production Incorporation	
SECTION 1: RESPONDENT AND REQUISITION INFORMATION	
a. Respondent (Company) Name:	State of Texas VID #:
Point of Contact:	Phone #:
E-mail Address:	Fax #:
b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No	

Bid Open Date:

Enter your company's name here:	Requisition #:	Item 22.

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
 - ☐ Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
 - □ *No*, I will not be subcontracting <u>any</u> portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)
- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		Non-HUBs		
Item #	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php).

C.	Check the appropriate box (Yes or No) that indicates	whether you will be using only	Texas certified HUBs to perform a	of the subcontracting opportunities
	you listed in SECTION 2, Item b.			

- <i>Yes</i> (I	f <i>Yes</i> ,	continue	to SEC	CTION 4	4 and complete ar	"HSP	Good Fai	th Effort	 Method A 	(Attachment	A)" fo	or <u>each</u> of the	subcontracting	opportunities	you listed.

- No (If No, continue to Item d, of this SECTION.)
- d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."
 - Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
 - No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

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Enter your company's name here:

Requisition #:

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		HL	Non-HUBs	
Item #	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here:	Requisition #:	Item 22.
SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, responded "No" to SECTION 2, Item a, in the space provided below explain how your compaterials and/or equipment.		
SECTION 4: AFFIRMATION As evidenced by my signature below, I affirm that I am an authorized representative of the respondenting documentation submitted with the HSP is true and correct. Respondent understands a		
• The respondent will provide notice as soon as practical to all the subcontractors (HUBs a contract. The notice must specify at a minimum the contracting agency's name and its subcontracting opportunity they (the subcontractor) will perform, the approximate dollar va the total contract that the subcontracting opportunity represents. A copy of the notice requipoint of contact for the contract no later than ten (10) working days after the contract is awar	s point of contact for the contract, the contract lue of the subcontracting opportunity and the exp ired by this section must also be provided to the	award number, the pected percentage of
 The respondent must submit monthly compliance reports (Prime Contractor Progress A compliance with the HSP, including the use of and expenditures made to its st https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportF 	ubcontractors (HUBs and Non-HUBs). (The Pa	
 The respondent must seek approval from the contracting agency prior to making any m subcontractors and the termination of a subcontractor the respondent identified in its HSP. respondent may be subject to any and all enforcement remedies available under the contract state contracting. 	If the HSP is modified without the contracting age	ency's prior approval,
 The respondent must, upon request, allow the contracting agency to perform on-site revieware being performed and must provide documentation regarding staffing and other resources. 		ite where services

Reminder:

Signature

If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.

Printed Name

If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b. 876

Date (mm/dd/yyyy)

Title

HSP Good Faith Effort - Method A (Attachment A)

Item 22.

Enter your company's name here:	Requisition #:
IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the Method A (Attachment A)" for each of the subcontracting opportunities you listed in page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hut	n SECTION 2, Item b of the completed HSP form. You may photo-copy this
SECTION A-1: SUBCONTRACTING OPPORTUNITY	
Enter the item number and description of the subcontracting opportunity you listed the attachment.	in SECTION 2, Item b, of the completed HSP form for which you are completing
Item Number: Description:	
CECTION A 2. CURROWERS STOR CELECTION	

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certifi	ied HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	□- Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	□- Yes	□- No		\$	%
	□ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No	_	\$	%
	☐ - Yes	□- No	_	\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No	·	\$	%
	☐ - Yes	□- No	·	\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	- Yes	□- No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to <u>all</u> the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days</u> after the contract is awarded.

HSP Good Faith Effort - Method R (Attachment R)

	a B (macrimeth B)	Item 22.
Enter your company's name here:	Requisition #:	
IMPORTANT: If you responded " No " to SECTION 2, Items c and d of the complete Method B (Attachment B)" for <u>each</u> of the subcontracting opportunities you listed in SECTION page or download the form at		

information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.	Date Notice Sent (mm/dd/yyyy)	Did the HUB	Respond?
			- Yes	☐ - No
			- Yes	☐ - No
			☐ - Yes	☐ - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php.
- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		🗌 - Yes 📗 - No
		☐ - Yes ☐ - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Item 22

Enter your company's name here:			Requisition #	t:			
SECTION B-4: SUBCONTRACTOR SELECTION Enter the item number and description of the subcontracting opportunity you the attachment. a. Enter the item number and description of the subcontracting opportunity Item Number: Description: b. List the subcontractor(s) you selected to perform the subcontracting op HUB and their Texas Vendor Identification (VID) Number or federal subcontracted, and the expected percentage of work to be subcontract you use the State of Texas' Centralized Master Bidders List	portunity you list Emplioyer Iden ted. When sear (CMBL) - His	are comple sted in SEC diffication N ching for Te torically U	cting this Attachment B continuous continuous Attachment B continuous CTION B-1. Also identify umber (EIN), the approximexas certified HUBs and velocutilized Business (HI	nuation page. whether they are a late dollar value of rifying their HUB stauus) Directory Sea	Texas certified the work to be atus, ensure tha		
Company Name	http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Texas vido or federal EIN Do not enter Social Security Numbers. If you do not know their vido / EIN, leave their vido / EIN, leave their vido / EIN, leave their vido / EIN field blank.						
	☐ - Yes	□- No		\$	%		
	🗆 - Yes	□ - No		\$	%		
	□ - Yes	□ - No		\$	%		
	□ - Yes	□ - No		\$	%		
	□ - Yes	□ - No		\$	%		
	- Yes	□ - No		\$	%		
	□ - Yes	□ - No		\$	%		
	□ - Yes	□ - No		\$	%		
	□- Yes	□ - No		\$	%		
	□- Yes	□ - No		\$	%		
c. If any of the subcontractors you have selected to perform the subcontra justification for your selection process (attach additional page if necess		y you listed	d in SECTION B-1 is <u>not</u> a	Texas certified HUI	3, provide <u>writte</u>		

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to <u>all</u> the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days</u> after the contract is awarded.



HUB Subcontracting Opportunity Notification Forl

Item 22.

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least https://exas.certified-HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

identified in Section C, item 1. Submit your response to the point-or-contact referenced in Section A.	
SECTION A: PRIME CONTRACTOR'S INFORMATION	
Company Name:	State of Texas VID #:
Point-of-Contact:	Phone #:
E-mail Address:	Fax #:
SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION	
Agency Name:	
Point-of-Contact:	Phone #:
Requisition #:	Bid Open Date:
	(mm/dd/yyyy)
SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION,	REQUIREMENTS AND RELATED INFORMATION
1. Potential Subcontractor's Bid Response Due Date:	
If you would like for our company to consider your company's bid for the subcontracti	ing opportunity identified below in Item 2,
we must receive your bid response no later than on	
Central Time	Date (mm/dd/yyyy)
to us submitting our bid response to the contracting agency, we must provide notice of each of or organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C) (A working day is considered a normal business day of a state agency, not including weekends, federaby its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HU is considered to be "day zero" and does not count as one of the seven (7) working days.)	c American, Black American, Hispanic American, Native . al or state holidays, or days the agency is declared closed
2. Subcontracting Opportunity Scope of Work:	
3. Required Qualifications:	- Not Applicable
4. Bonding/Insurance Requirements:	- Not Applicable
5. Location to review plans/specifications:	- Not Applicable

Department of Information Resources Request for Offer DIR-TSO-TMP-422 Data Storage, Data Communications & Networking Equipment and Related Services

BID PACKAGE 2 - PRICING SHEET Instructions

VENDORS RESPONDING TO THIS RFO MUST ENTER THEIR PROPOSED AVERAGE BRAND DISOUNT IN THE BIDSTAMP VENDOR INFORMATION SYSTEM (VIS). CATEGORIES MUST BE ENTERED IN BIDSTAMP EXACTLY AS LISTED IN THE DISCOUNT SHEET.

1) TAB 1 - BRAND PRODUCT DETAIL - will be completed in accordance with RFO Bid Package 1 Section 3.1.1 Pricing Item 1 Discount Sheet, and entered in BIDSTAMP.

If Vendor is proposing multiple discounts for the same brand, the branded products must be listed separately with the associated discount or grouped with an associated discount. Vendor will calculate the average discount per brand in this Bid Package 2. The brand average will be entered in BidStamp per instructions in Bid Package 1 Section 3.1.1. For example:

Brand ABC

ABC Network Product, Router - Customer Discount - 15% (BRAND ABC)

ABC Network Product, multiplexer - Customer Discount - 25% (BRAND ABC)

ABC Network Product, All other products - Customer Discount -10% (Average Discount 16.67% will be entered in BidStamp)

Discount range (e.g., 0% - 99%) is not allowed.

2) TAB 2 - PRODUCTS DISCOUNT SHEET - The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).

Vendor will provide a MSRP price list of products being proposed

Discount range (e.g., 0% - 99%) is not allowed.

Vendor shall provide a link to Manufacturer Suggested Retail Published Pricing List.

Product detail list Pricing information is not entered in the BidStamp VIS.

Brand product detail will be entered in Brand Product Detail tab and submitted in BidStamp VIS in EXCEL spreadsheet format.

TAB 4 - VOLUME DISCOUNT SHEET- The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).

<u>Volume Pricing information is not entered in the BidStamp VIS.</u> If Vendor is proposing Volume Discounts, the product must be listed on the Volume Discount Tab with the associated type or grouped with an associated discount.

For example:

ABC Product, 1-5 Units - 10.00% - two decimals

ABC Product, 6-10 Units - 20.00% - two decimals

ABC Product, 10+ Units - 30.00% - two decimals

All Volume Discounts will be listed on the Volume Discount Tab and will be submitted in the EXCEL spreadsheet format.

- 5) For all Tabs above Price to DIR Customer shall include all shipping and handling fees.
- 6) DO NOT CREATE TABS BY BRAND ALL ENTRIES WILL BE COMPLETED ON THE TABS PROVIDED IN THIS BID PACKAGE 2.

Data Storage, Data Communications & Networking Equipment and Related Services

BID PACKAGE 2 - PRICING SHEET

All Brands Discounts must be entered into DIR's Automated Pricing Form THIS SPREADSHEET WILL BE PART OF VENDOR'S RESPONSE

EXAMPLES for use. Respondent must enter the Brand Categories (green highlight) in BidStamp VIS, exactly as written in section 3.1.1 of the RFO Bid Pakcage 1. Failure to do so may result in Respondent's bid not tablulating correctly.

CATEGORY	SUBCATEGORY	BRAND	PRODUCT DESCRIPTION	SERVICE DESCRIPTION	SERVICE CATEGORY	MANUFACTURER	RESELLER	MSRP	Discount % off MSRP (AVERAGE FROM BRAND PRODUCT DETAIL TAB)	SERVICE ZONE	UNIT
Data Storage	lcal server	Tegile	10T Super server	N/A	N/A	7		N/A	25.00%	N/A	per unit
	ON PREM/Cloud	Texas Data Foundary	Hybrid solution	N/A	N/A	<u> </u>		N/A	30.00%	N/A	per month
Networking Equipment	Router	Juniper	ABC router	N/A	N/A		<u> </u>	N/A	25.00%	N/A	per unit
Data Communication	PBX	Antigua	VOIP PHONE	N/A	N/A		V	\$100.00	15.00%	N/A	each
SERVICES	N/A	Juniper	N/A	Gold Level: Annual	Maintenance	Ø		\$1,000.00	50.00%	All	per year
SERVICES	N/A	Tegile	N/A	Server Installation	Installation		V	\$2,000.00	75.00%	All	per install

Department of Information Resources Request for Offer DIR-TSO-TMP-422 Data Storage, Data Communications & Networking Equipment and Related Services

BID PACKAGE 2 - PRICING SHEET

IF VENDOR IS PROVIDING THE ENTIRE LINE FOR A SPECIFIC BRAND, PROVIDE CATALAGUE LINK AND LIST HERE MOST SOLD PRODUCTS

* For Vendor reference: DIR CUSTOMER PRICE contains 0.75% DIR Administrative Fee and it will be AUTOMATICALLY calculated once all other cells are filled.

For reference purposes, the formula to calculate DIR Customer Price is: DIR Customer Price = MSRP x (1-DIR Discount%) x (1+0.75%)

DO NOT make any changes to the format of the grids. Insert additional rows as needed.

CATEGORY	SUBCATEGORY	BRAND	PRODUCT DESCRIPTION	SERVICE DESCRIPTION	SERVICE CATEGORY	PRODUCT/SERVICE PART NUMBER	MSRP	DIR Customer Discount % off MSRP	DIR Customer Price*	AVERAGE BRAND DISCOUNT
EXAMPLE: Data Storage	local Server	Tegile	10T Super server	N/A	N/A	XB-2000	\$ 1,000.00	15.00%	\$ 856.38	
EXAMPLE: Data Storage	local Server	Tegile	20T Super server	N/A	N/A	XB-2001	\$ 2,000.00	25.00%	\$ 1,511.25	
EXAMPLE: Data Storage	local Server	Tegile	50T Super server	N/A	N/A	XB-2002	\$ 10,000.00	10.00%	\$ 9,067.50	16.67%
									\$ -	
									\$ -	
									\$ -	
									\$ -	
									\$ -	
									\$ -	
									\$ -	
									\$ -	
									\$ -	
									\$ -	
									\$ -	

<-- Enter the Average in BidStamp

Department of Information Resources Request for Offer DIR-TSO-TMP-422 Data Storage, Data Communications & Networking Equipment and Related Services

BID PACKAGE 2 - PRICING SHEET

Type of Volume	Product Category	DIR Customer Discount % off MSRP
Ву QТҮ		
1-99 units		
100-500 units		
500+ units		

Additional Discount Based On Aggregate Sales							
Contract Sales Threshold	Product or Category Description	Part Number if Applicable	Original Discount	Additional Discount	Total Discount		
Example: \$50,000.00			20.00%	(+) 5.00%	25.00%		

Vendor	Contract No.
v Chuoi	Contract 110.

STATE OF TEXAS DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

VENDOR NAME

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and *VENDOR NAME* (hereinafter "Vendor"), with its principal place of business at *VENDOR ADDRESS*.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-422, on 3/20/2018, for Data Storage, Data Communications & Networking Equipment and Related Services. *DIR subsequently issued a BAFO opportunity on BAFO DATE*. Upon execution of this Contract, a notice of award for DIR-TSO-TMP-422 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A. Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-422, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-422, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-422, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-422, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases,

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vendor y		

the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then Appendix E or Appendix F, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, the contract will renew automatically in one-year increments for three additional years under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification or term or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to *insert product description here* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to *insert SPECIFIC* services here as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is *insert number* percent (*insert number*%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$*insert dollars*.

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B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647

Phone: (512) 475-1647 Facsimile: (512) 475-4759

Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Vendor Representative
Company Name
Address
City, State Zip
Phone: () Facsimile: () -

Email:

7. Software License, Service and Leasing Agreements

A. Software License Agreement

- 1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. rder Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.
- 2) Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License

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Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix E of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2)

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venuoi	Commact No.	

imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

No exceptions have been agreed to by DIR and Vendor.

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This Contract is executed to be effective as of the date of last signature.

VENDOR NAME	
Authorized By:	-
Name:	
Title:	
Date:	
The State of Texas, acting by and through	the Department of Information Resources
Authorized By:	
Name: <u>Hershel Becker</u>	
Title: Chief Procurement Officer	
Date:	
Office of General Counsel:	

Bid Package 4: DIR-TSO-TMP-422 Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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7	Com	•	
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Bid Package 4: DIR-TSO-TMP-422 Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

3. Definitions

- A. Customer any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:
 - 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
 - 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
 - 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
 - 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
 - 5) A local workforce development board created under Section 2308.253;
 - **6**) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
 - 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
 - 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
 - 9) A nonprofit organization that provides affordable housing.
- **B.** Compliance Check an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract

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- management staff or their designees.
- **C. Contract** the document executed between DIR and Vendor into which this Appendix A is incorporated.
- **D. CPA** refers to the Texas Comptroller of Public Accounts.
- **E. Day** shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- **F.** Order Fulfiller the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- **G. Purchase Order** the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- **H.** State refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
- 2) If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other

parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

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

H. Proof of Financial Stability

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

5. Intellectual Property Matters

A. Definitions

1)" Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations,

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manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

- 2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.
- **4)** "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.
- 5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon

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creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and

prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

- 1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

- 1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).
- 2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all

necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

- a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
- **b**) DIR reserves the right to require the Vendor to rescind any such Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.
- **d**) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.
- e) Vendor shall not prohibit Order Fulfiller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiller List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 7.B.1.a above.

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall

only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the products and services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;
- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- 1) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Webpage Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's webpage will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this webpage is compliant with the pricing as stated in the Contract.

4) Webpage Changes

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Vendor and Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

If DIR receives Vendor's or Order Fulfiller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller' trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include reporting requirements. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

J. Performance Review Meetings

DIR may require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract, at DIR's discretion. The meetings may be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1

1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.
- 3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for

the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (http://www.window.state.tx.us/procurement/prog/stmp/). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller.

Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Invoices shall be submitted by the Vendor or Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Vendor or Order Fulfiller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.
- 2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.
- 3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

9. Contract Administration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute

resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

- a) Vendor shall be responsible for reporting all products and services purchased through Vendor and Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.
- **b**) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

- a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- **b)** Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

- a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.
- b) DIR may change the amount of the administrative fee upon thirty (30) calendar days

written notice to Vendor without the need for a formal contract amendment.

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

- a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- **b)** Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract..

C. Records and Audit

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)

- 1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- 2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books,

documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

- 1) Prior to execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.
- 2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts E-Mail Box information.

10. Vendor Responsibilities

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W

A. Indemnification

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or

performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- **b)** Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to

- receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas:
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of

- appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and
- (xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

D. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

E. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of

its obligations under the Contract.

G. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

H. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- **2)** Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

K. Limitation of Liability

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

For any claims or cause of action arising under or related to the Contract: i) to the extend permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

L. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

M. Prohibited Conduct

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

O. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other resources of the Customer or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

P. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security¹s E-Verify system to determine the eligibility of:

• all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and

• all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

No public disclosures or news releases pertaining to this contract shall be made by Vendor without prior written approval of DIR.

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Substitutions are not permitted without the written permission of DIR or Customer.

S. Secure Erasure of Hard Disk Products and/or Services

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

- 1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- 2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.
- 3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas

Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

7) Vendor or Order Fulfiller Rights Under Termination Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office Department of Information Resources Attn: Public Information Officer 300 W. 15th Street, Suite 1300 Austin, Texas 78701 (512) 475-4759, facsimile

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

Request for Offer Data Storage, Data Communications & Networking Equipment and Related Services DIR-TSO-TMP-422 Bid Package 5

VPATTM

Voluntary Product Accessibility Template®

Version 1.3

The purpose of the **Voluntary Product Accessibility Template**, or **VPAT**[™], is to assist Federal contracting officials and other buyers in making preliminary assessments regarding the availability of commercial "Electronic and Information Technology" products and services with features that support accessibility. It is assumed and recommended that offerers will provide additional contact information to facilitate more detailed inquiries.

The first table of the Template provides a summary view of the Section 508 Standards. The subsequent tables provide more detailed views of each subsection. There are three columns in each table. Column one of the Summary Table describes the subsections of subparts B and C of the Standards. The second column describes the supporting features of the product or refers you to the corresponding detailed table, e.g., "equivalent facilitation." The third column contains any additional remarks and explanations regarding the product. In the subsections. The second column describes the supporting features of the product with regard to that paragraph. The third column contains any additional remarks and explanations regarding the product.

- 4.0.		
Name of Prod	uct:	
Contact for m	ore Information (name/phone/email):

Date:

Summary Table VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
Section 1194.21 <u>Software</u> <u>Applications and Operating</u> <u>Systems</u>		
Section 1194.22 Web-based Internet Information and Applications		
Section 1194.23 Telecommunications Products		
Section 1194.24 <u>Video and Multi-media Products</u>		
Section 1194.25 <u>Self-Contained,</u> <u>Closed Products</u>		
Section 1194.26 <u>Desktop and</u> <u>Portable Computers</u>		
Section 1194.31 <u>Functional</u> <u>Performance Criteria</u>		
Section 1194.41 <u>Information</u> , <u>Documentation and Support</u>		

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Section 1194.21 Software Applications and Operating Systems – Detail

VPATTM

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Criteria	Supporting Features	Remarks and explanations
(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.		
(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.		
(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that Assistive Technology can track focus and focus changes.		

(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to Assistive Technology. When an image represents a program element, the information conveyed by the image must also be available in text.	
(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.	
(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.	
(g) Applications shall not override user selected contrast and color selections and other individual display attributes.	
(h) When animation is displayed, the information shall be displayable in at least one nonanimated presentation mode at the option of the user.	
(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.	
(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.	

(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.	
(I) When electronic forms are used, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.	

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Section 1194.22 Web-based Internet information and applications – Detail VPAT™

Criteria	Supporting Features	Remarks and explanations
(a) A text equivalent for every non- text element shall be provided (e.g., via "alt", "longdesc", or in element content).		
(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.		
(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup.		

	1
(d) Documents shall be organized so they are readable without requiring an associated style sheet.	
(e) Redundant text links shall be provided for each active region of a server-side image map.	
(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.	
(g) Row and column headers shall be identified for data tables.	
(h) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.	
(i) Frames shall be titled with text that facilitates frame identification and navigation	
(j) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.	
(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply with the provisions of this part, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.	
(I) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by Assistive Technology.	

(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with §1194.21(a) through (l).	
(n) When electronic forms are designed to be completed on-line, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.	
(o) A method shall be provided that permits users to skip repetitive navigation links.	
(p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.	

Note to 1194.22: The Board interprets paragraphs (a) through (k) of this section as consistent with the following priority 1 Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5 1999) published by the Web Accessibility Initiative of the World Wide Web Consortium: Paragraph (a) - 1.1, (b) - 1.4, (c) - 2.1, (d) - 6.1, (e) - 1.2, (f) - 9.1, (g) - 5.1, (h) - 5.2, (i) - 12.1, (j) - 7.1, (k) - 11.4.

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Section 1194.23 Telecommunications Products – Detail VPAT™

Criteria	Supporting Features	Remarks and explanations
(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.		
(b) Telecommunications products which include voice communication functionality shall support all commonly used crossmanufacturer non-proprietary standard TTY signal protocols.		
(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.		
(d) Voice mail, messaging, auto- attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.		
(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.		
(f) For transmitted voice signals, telecommunications products shall		

provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.	
(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.	
(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.	
(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.	
(j) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.	
(k)(1) Products which have mechanically operated controls or keys shall comply with the	

following: Controls and Keys shall be tactilely discernible without activating the controls or keys.	
(k)(2) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be operable with one hand and shall not require tight grasping, pinching, twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2N) maximum.	
(k)(3) Products which have mechanically operated controls or keys shall comply with the following: If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.	
(k)(4) Products which have mechanically operated controls or keys shall comply with the following: The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.	

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Section 1194.24 Video and Multi-media Products – Detail VPAT™

Criteria	Supporting Features	Remarks and explanations
a) All analog television displays 13 inches and larger, and computer equipment that includes analog television receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. As soon as practicable, but not later than July 1, 2002, widescreen digital television (DTV) displays measuring at least 7.8 inches vertically, DTV sets with conventional displays measuring at least 13 inches vertically, and stand-alone DTV tuners, whether or not they are marketed with display screens, and computer equipment that includes DTV receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. (b) Television tuners,		
including tuner cards for use in computers, shall		

be equipped with secondary audio program playback circuitry.	
(c) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.	
(d) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.	
(e) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.	

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Section 1194.25 Self-Contained, Closed Products – Detail

VPATTM

Criteria	Supporting Features	Remarks and explanations
(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach Assistive Technology to the product. Personal headsets for private listening are not Assistive Technology.		
(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		
(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(d) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(e) When products provide auditory output, the audio signal shall be		

provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the	
(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.	
(g) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.	
(h) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.	

(i) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.	
(j) (1) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length on products which are freestanding, non-portable, and intended to be used in one location and which have operable controls.	
(j)(2) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.	

(j)(3) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.	
(j)(4) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Operable controls shall not be more than 24 inches behind the reference plane.	

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Section 1194.26 Desktop and Portable Computers – Detail VPAT™ Voluntary Product Accessibility Template® Criteria Supporting Features Remarks and explanations

(a) All mechanically operated controls and keys shall comply with §1194.23 (k) (1) through (4).	
(b) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).	
(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.	
(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards	

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Section 1194.31 Functional Performance Criteria – Detail VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for Assistive Technology used by people who are blind or visually impaired shall be provided.		
(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for Assistive Technology used by people who are visually impaired shall be provided.		
(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for Assistive Technology used by people who are deaf or hard of hearing shall be provided		
(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an		

enhanced auditory fashion, or support for assistive hearing devices shall be provided.	
(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for Assistive Technology used by people with disabilities shall be provided.	
(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.	

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Section 1194.41 Information, Documentation and Support – Detail VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) Product support documentation provided to end-users shall be		

made available in alternate formats upon request, at no additional charge	
(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.	
(c) Support services for products shall accommodate the communication needs of end-users with disabilities.	

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Department of Information Resources

Request for Offer DIR-TSO-TMP-422

Data Storage, Data Communications & Networking Equipment and Related Services

Bid Package 6

Vendor ICT Accessibility Policy Assessment (PDAA)

Organization information



2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
 3 My organization uses reports to make organizational changes to improve ICT accessibility.

Department of Information Resources Request for Offer DIR-TSO-TMP-422 Data Storage, Data Communications & Networking Equipment and Related Services

BID PACKAGE 6

Vendor ICT Accessibility Policy Assessment

This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations.

Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment is not a substitute for other requested accessibility information such as VPATs.

All questions, inquiries, etc. regarding Bid Package 10, Vendor ICT Accessibility Policy

(PDAA) should be directed to Jeff Kline: Phone: 512-463-3248 Email: Jeff.Kline@dir.texas.gov

Organization name:	
Organization address: _	
Responder contact infor	nation:
Date of assessment com	letion:
My organization is	a (choose one or more if applicable)
☐ Manufacturer:	Ay organization develops and sells its own ICT products / services
 Service Provide 	: My organization sells IT development services
☐ Integrator: My	rganization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
☐ Reseller or Cata	og Supplier: Does not develop or have its own products, but offers COTS 3rd party products
For each criteria st	atement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant to your organization today.
Responses	
	1. Develop, implement, and maintain an ICT accessibility policy.
0	My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)
	1a. Having an ICT accessibility policy.
1	My organization is developing an ICT accessibility policy.
	My organization is finalizing an ICT accessibility policy.
3	My organization has approved an ICT accessibility policy.
	1b. Having appropriate plans in place to implement and maintain the policy.
	My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
	My organization has completed planning for initial implementation and maintenance of our accessibility policy.
3	My organization has approved plans for accessibility policy implementation and maintenance.
	1c. Establishing metrics and tracking progress towards achieving compliance to the policy.
1	My organization is identifying metrics that can be used to gauge policy compliance.
2	My organization is collecting metrics and has begun designing progress reporting based on them.
3	My organization is tracking progress on policy adoption and continues to refine the metrics.
	Section 1 Comments (Provide any comments or additional information on this section here.)
	2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.
0	My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)
	2a. Developing an organization wide governance system.
	My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
	My organization is finalizing plans that will result in an organization wide governance system.
3	My organization has approved plans for an organization wide governance system.
	2b. Designating one or more individuals responsible for implementation.
	My organization has identified key individuals in the implementation process.
3	My organization has assigned implementation duties and responsibilities to appropriate individuals.
	2c. Implementing reporting/decision mechanism and maintain records.
1	My organization is developing tools and procedures for tracking ICT accessibility issues.

Section 2 Comments (Provide any comments or additional information on this section here.)

3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.

Manufacturers: Address processes that pertain to your development of ICT products.

Service providers: Address processes that pertain to your development of ICT services.

Integrators: Address processes that pertain to your ICT integration services and solutions.

Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings.

0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)

3a. Identifying candidate processes for criteria integration.

- 1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
- 2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
- 3 My organization has approved plans to integrate accessibility criteria into these processes.

3b. Implementing process changes.

- 1 My organization has begun modifying its key business processes to integrate accessibility criteria.
- 2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
- 3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.

3c. Integrate fully into all key processes.

- 2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings.
- 3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.

Section 3 Comments (Provide any comments or additional information on this section here.)

4. Provide processes for addressing inaccessible ICT.

Manufacturers: Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d.

Service providers: Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d.

Integrators: Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d.

Catalogue Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings in 4e.

0 We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of this section.)

4a. Creating plans that include dates for compliance of inaccessible ICT.

- 1 We are developing plans to identify and test ICT developed and sold by our organization.
- 2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance.
- 3 We perform accessibility testing on all products / serviced developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.

4b. Providing alternate means of access until the ICT is accessible.

- 0 We do not have plans for providing alternate means of access for our organization's ICT offerings.
- 1 We are developing plans for providing alternate means of access for our organization's ICT offerings.
- 2 We are implementing methods providing alternate means of access for our organization's ICT offerings.
- 3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.

4c. Implementing a corrective actions process(s) for handling accessibility technical issues and defects

- ${\bf 1} \ {\bf We} \ {\bf are} \ {\bf developing} \ {\bf a} \ {\bf corrective} \ {\bf actions} \ {\bf process} \ {\bf for} \ {\bf handling} \ {\bf accessibility} \ {\bf technical} \ {\bf issues} \ {\bf and} \ {\bf defects}$
- 2 We are implementing a corrective actions process for handling accessibility technical issues and defects
- 3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.

4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking.

- 1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
- 1 We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
- 2 We have a record keeping system for tracking the accessibility status of current and future products / services.
- 2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
- 3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.
- 3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.

4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Catalogue Vendor/Reseller only)

- 1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

0 We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)

5a. Defining skills/job descriptions.

- 1 We have defined general skills and knowledge needs for ICT accessibility.
- 2 We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect, application developer, quality assurance tester, and /or training/instructional designer.)
- 3 We have mapped key accessibility skills and knowledge needs to specific fields of practice.

5b. Identifying existing resources that match up and address gaps.

- 2 We have performed a gap analysis correlating accessibility skills and knowledge and current resources.
- 3 We have organized the gaps in order of priority.

5c. Managing progress in acquiring skills and allocating qualified resources.

- 1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.
- 1 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation.
- 2 We have developed a process to track resource training and augmentation.
- 3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place.

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

0 We do not have a plan to make our accessibility policy or other accessibility information publically available. (If selected, skip to next section or provide comments at the end of this section.)

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
- 1 Our accessibility policy and documentation (VPATs, etc.) for <u>some</u> products is publicly available or available upon request.
- 2 Our accessibility policy and documentation (VPATs, etc.) for <u>all released</u> products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATs

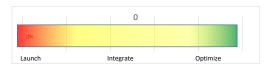
- 2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
- 3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.

6c. ICT Accessibility policy and documentation availability

- 2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
- 3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.

Section 6 Comments (Provide any comments or additional information on this section here.)





Frequently Asked Question (FAQ) for Vendors regarding Policy-Driven Adoption for Accessibility (PDAA)

What is PDAA?

Policy-driven Adoption for Accessibility (PDAA) is a tool that Vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles:

- Integrating accessibility policies and practices into their business and culture enables organizations to drive themselves towards the creation of accessible offerings over the long term.
- Enabling products for accessibility requires integrating accessibility criteria into all phases of a product life cycle, and other business processes where accessibility plays a role.
- Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards. Gaps in Vendor internal governance systems and leadership commitment inhibit their ability to meet these standards.
- Agency procurement organizations need assurances that vendors have the ability to produce accessible offerings and continue to improve them over time.

2. Why are buying organizations requesting information on company accessibility policy?

Making an organization's information and communications technology (ICT) offerings accessible to people with disabilities requires commitment in many areas of that organization. PDAA data helps buying organizations understand a Vendor's accessibility policy, progress and commitment to accessibility holistically.

A mature accessibility policy implementation signals that the Vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the Vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning consistently results in a friendlier product for all users, including those with disabilities.

3. Why is PDAA information important to the buying organization?

The requested information provides insight into Vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings, which can increase the procuring organizations' confidence in the accuracy of Vendor's accessibility documentation.

Current ICT accessibility reporting formats such as VPATs (Voluntary Product Assessment Templates) only apply to COTS products and services. In many cases, Vendor VPATs lack credibility due to limited knowledge about their offerings' accessibility. Additionally, there is no standard reporting format for non-COTS offerings such as development services for websites, web applications, system software, etc.

4. How will this information be used?

The initial completed form will establish a baseline for where a vendor stands with regard to its ICT accessibility policy. The baseline illustrates the depth and maturity of the Vendor's support for accessibility policy and practices as illustrated via the PDAA Maturity Model (Link on next line. If prompted for a password, select "cancel")

(http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

The questionnaire may also be included in future solicitations so that progress can be assessed. The Vendor responses from the questionnaire may be considered as an element in Vendor selection; however, this would be determined by the procuring organization.

Additionally, Vendor organizations can use the results as a roadmap for implementing their organization-wide ICT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.

5. We already submit VPATs as part of solicitation responses. Is that adequate?

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. The expectation is that organizations with mature approaches to PDAA will greatly improve the levels of accessibility in products. It should also result in well documented, accurate VPATs, improving their value in product-level assessments

6. What is the PDAA Maturity Model?

Based on the Capability Maturity Model (CMM) concept, the PDAA Maturity Model (Link on next line) provides buying organizations and vendors with a simple dashboard or matrix to track and demonstrate Vendors' progress toward full system-wide support of accessibility.

(http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

7. Where can I obtain more information on Accessibility Policy implementation for my organization?

(http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement)

Or contact the Statewide EIR Accessibility Coordinator via Email at:

statewideaccessibilitycoordinator@dir.texas.gov

For government organizations/agencies

8. What is PDAA?

Policy-driven Adoption for Accessibility (PDAA) is a tool that Vendors can use to demonstrate the extent to which their organization has implemented accessibility best practices within operations. The PDAA concept is based on the following principles:

- · Integrating accessibility policies and practices into their business and culture enables organizations to drive themselves towards the creation of accessible offerings over the long term.
- Enabling products for accessibility requires the integration of accessibility criteria in all phases of a product life cycle, and other business process where accessibility plays a role.
- · Many state and federal agencies are required by law to procure or develop accessible offerings based on technical standards, but gaps in internal governance and commitment by industry inhibits the adoption and implementation of these standards.
- Agency procurement organizations need assurances that vendors have the ability to produce accessible offerings and continue to improve them over time.

9. Does the PDAA replace VPATs?

No. VPATs (Voluntary Product Assessment Templates) are product-specific. PDAA is a holistic presentation of the organization's approach to accessibility. VPATs are still a valuable tool at the product level, and the expectation is that vendors with mature approaches to PDAA will have accurate and informative VPATs.

10. Why a "maturity model" of evaluation?

Successfully enabling an organization for ICT accessibility requires implementation within various areas of an organization. As with any organization-wide initiative, implementation cannot occur all at once. The PDAA Maturity Model is used to gauge progress towards the complete implementation of PDAA core criteria. (Link on next line. If prompted for a password, select "cancel") (http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity%20Matrix.pptx)

11. Why should we support vendors who have mature PDAA practices?

A mature accessibility policy implementation signals that the vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner with minimal friction. It also makes it more likely that the vendor understands that accessibility is more than meeting a set of technical guidelines or standards, and that usability will be a factor in how they go about meeting the technical requirements. Accessibility that is planned, designed, and built in from the beginning consistently results in a friendlier product for all users, including those with disabilities.

12. How should we score PDAA information?

In general, the PDAA questionnaire is meant to ensure that the same information is collected from all bidders, and how the agency uses that information will depend on circumstances. While scoring has not yet been established for PDAA, the responses from the questionnaire may be used as criteria in selecting offerings or Vendors by the procuring organization. PDAA evaluation is an area that will need some practical experience, and we hope that organizations will share what they learn.

13. Where does the PDAA information fit within the procurement process?

Using consistent information in evaluating bids is a key element of open and competitive public procurements. The information given in a PDAA report can help judge the ability of a Vendor to: complete a VPAT correctly, produce accessible custom ICT offerings (web sites, web applications, software, etc.), resolve accessibility defects when discovered, and otherwise be a partner in helping you meet your compliance obligations. The specific role of PDAA responses may be determined in part by the procurement laws, policies and practices for your organization.

14. What happens if the vendor claims the information is confidential or a trade secret?

Vendors often claim this for information required in procurements. Your organization's procurement laws, policies, or practices may already address how you handle such claims.

15. What other states are using the PDAA model?

The PDAA model is in its early stages. A coalition of states are working with several national associations to harmonize the criteria for this model, and for obtaining and evaluating PDAA information. The goal is for more states and other government entities to adopt the PDAA model in their procurement processes.

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16. Where can I obtain more information on Accessibility Policy implementation for my organization?

(http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement)

Or contact the Statewide EIR Accessibility Coordinator at:

_statewideaccessibilitycoordinator@dir.texas.gov

Organization information

EXAMPLE



Vendor ICT Accessibility Policy Assessment

This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations.

Please complete this form by checking a box for each topic that most closely match the current state of your organization. A completed example is available using the "Example" tab of the worksheet. This assessment is not a substitute for other requested accessibility information such as VPATs.

All questions, inquiries, etc. regarding

Bid Package 10, Vendor ICT Accessibility Policy (PDAA) should be directed to Jeff Kline: Phone: 512-463-3248 Email: Jeff.Kline@dir.texas.gov

Organization name	:Company X
	ess: _ 1111 State Blvd. Anytown, TX 78701
Responder contact	
Date of assessment	tompletion:1/1/15
My organizatio	on is a (choose one or more if applicable)
	on is a Crotose one or more in applicative) reserving regardation develops and sells its own ICT products / services
	rier: my organization develops and seins its own it. in products 7 services vider: My organization selection (Sevelopment services vider: My organization sells if development services
	My organization develops customer solutions using a combination of products / services from manufacturers and products / components developed by my organization
	Catalogue Supplier: Does not develop or have its own products, but offers COTS 3rd party products
	ia statement, please enter the number corresponding to your response in the shaded areas of the "Response" column for the status statement in each grouping that is most relevant to your organization today
Responses	
	1. Develop, implement, and maintain an ICT accessibility policy.
	0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section or provide comments at the end of this section)
2	1a. Having an ICT accessibility policy.
	1 My organization is developing an ICT accessibility policy.
	2 My organization is finalizing an ICT accessibility policy.
	3 My organization has approved an ICT accessibility policy.
1	1b. Having appropriate plans in place to implement and maintain the policy.
-	1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is maintained.
	2 My organization be completed planning for initial implementation and maintenance of our accessibility policy.
	2 my organization has approved plans for accessibility policy implementation and maintenance. 3 My organization has approved plans for accessibility policy implementation and maintenance.
1	
1	1c. Establishing metrics and tracking progress towards achieving compliance to the policy.
	1 My organization is identifying metrics that can be used to gauge policy compliance.
	2 My organization is collecting metrics and has begun designing progress reporting based on them.
	3 My organization is tracking progress on policy adoption and continues to refine the metrics.
	Section 1 Comments (Provide any comments or additional information on this section here.)
	2. Establish and maintain an organizational structure that enables and facilitates progress in ICT accessibility.
	0 My organization has no plan to develop a governance system to support ICT accessibility. (If selected, skip to next section or provide comments at the end of this section)
1	2a. Developing an organization wide governance system.
	1 My organization is investigating opportunities to improve organization wide governance for ICT accessibility.
	2 My organization is finalizing plans that will result in an organization wide governance system.
	3 My organization has approved plans for an organization wide governance system.
2	2b. Designating one or more individuals responsible for implementation.
	2 My organization has identified key individuals in the implementation process.
	3 My organization has assigned implementation duties and responsibilities to appropriate individuals.
	2c. Implementing reporting/decision mechanism and maintain records.
1	1 My organization is developing tools and procedures for tracking ICT accessibility issues.
	2 My organization is tracking and keeping records of ICT accessibility reporting and decisions.
	3 My organization uses reports to make organizational changes to improve ICT accessibility.
	Section 2 Comments (Provide any comments or additional information on this section here.)
	3. Integrate ICT accessibility criteria into key phases of development, procurement, acquisitions, and other relevant business processes.
	Manufacturers: Address processes that pertain to your development of ICT products.
	Service providers: Address processes that pertain to your development of ICT services.
	Integrators: Address processes that pertain to your ICT integration services and solutions.
	Catalog Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings.
	0 My organization has no plan to integrate accessibility criteria into key business processes. (If selected, skip to next section or provide comments at the end of this section.)
1	3a. Identifying candidate processes for criteria integration.
	1 My organization has a plan to identify and evaluate its key business processes for accessibility gaps.
	2 My organization has evaluated its key business processes for accessibility gaps and is developing plans to better integrate accessibility criteria into these processes.
	3 My organization has approved plans to integrate accessibility criteria into these processes.
1	3b. Implementing process changes.
	1 My organization has begun modifying its key business processes to integrate accessibility criteria.
	2 My organization has completed accessibility criteria modification for some of its key business processes and has begun using these modified processes.
	3 My organization has completed accessibility criteria modification for most of its key business processes and has begun using these modified processes.
	3c. Integrate fully into all key processes.
	2 My organization has fully integrated accessibility criteria into all of its key business processes and is using these processes to improve the accessibility of its product / service offerings.
	3 My organization has fully integrated accessibility criteria ACROSS its key business processes and is using these integrated processes to improve the accessibility of its product / service offerings.
	Section 3 Comments (Provide any comments or additional information on this section here.)
	4. Provide processes for addressing inaccessible ICT.
	Manufacturers: Address processes that pertain to your development of ICT products in 4a, 4b, 4c, and 4d.
	Service providers: Address processes that pertain to your development of ICT services in 4a, 4b, 4c, and 4d.
	Integrators: Address processes that pertain to your ICT integration services and solutions in 4a, 4b, 4c, and 4d.
	Catalogue Vendor/Reseller: Address processes that pertain to your reseller or catalogue offerings in 4e.
	0 We do not have plans to provide processes for bringing ICT developed and sold by our organization into accessibility compliance. (If selected, skip to next section or provide comments at the end of this section.)
2	4a. Creating plans that include dates for compliance of inaccessible ICT.
	1 We are developing plans to identify and test ICT developed and sold by our organization.
	2 We have begun identifying and testing for accessibility in ICT products / services developed and sold by our organization and are developing plans that include dates for bringing inaccessible ICT into compliance.
	3 We perform accessibility testing on all products / serviced developed and sold by our organization, and have plans in place that include dates for bringing inaccessible ICT into compliance.
2	4b. Providing alternate means of access until the ICT is accessible.
	We do not have plans for providing alternate means of access for our organization's ICT offerings.
	1 We are developing plans for providing alternate means of access for our organization's ICI offerings.
	2 We are implementing methods providing alternate means of access for our organization's ICT offerings.
	3 We have fully implemented a repeatable process for providing alternate means for our organization's ICT offerings.
2	4c. Implementing a corrective actions process(s) for handing accessibility technical issues and defects
2	4c. implementing a Corrective actions process) for handing accessibility technical issues and defects 1 We are developing a corrective actions process for handing accessibility technical issues and defects
	We are implementing a corrective actions process for infaming accessibility technical issues and defects We are implementing a corrective actions process for handling accessibility technical issues and defects
	2 we are implementing a corrective actions process on training accessionity technical issues and defects. 3 We have fully implemented an integrated corrective actions process for handling accessibility technical issues and defects.
1	s we nave may implemented an integrated corrective actions process for harituming accessioning technical issues and derects. 4d. Maintaining records of identified inaccessible ICT, corrective action, and tracking.
1	40. Maintaining records or identified inaccessible LL, corrective action, and tracking. 1 We plan to develop a record keeping system for tracking the accessibility status of current and future products / services.
	we plan to develop a record keeping system for tracking the accessionity status or current and tuture products / services. We plan to develop a record keeping process for corrective action tracking and handling of accessibility related issues / defects.
	We have a record keeping system for tracking the accessibility status of current and future products / services. We have a record keeping system for tracking the accessibility status of current and future products / services.

2 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects.

3 We have a record keeping system for tracking the accessibility status of current and future products / services and use this system to improve the accessibility of our offerings.
3 We have a record keeping process for corrective action tracking and handling of accessibility related issues / defects and use this system to improve the accessibility of our offerings.

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- 4e. Maintaining records of identified inaccessible ICT, corrective action, and tracking. (Catalogue Vendor/Reseller only)
- 1 We have a plan to develop a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.
- 2 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization.

 3 We have a record keeping system for obtaining and tracking accessibility documentation for vendor products and services offered through our organization, and use this system to improve the accessibility of our offerings.

Section 4 Comments (Provide any comments or additional information on this section here.)

5. Ensure the availability of relevant ICT accessibility skills within (or to) the organization.

- 0 We do not have plans in place to define, identify existing, or acquire ICT accessibility skills. (If selected, skip to next section or provide comments at the end of this section.)
- 5a. Defining skills/job descriptions.
- ${\bf 1}\,$ We have defined general skills and knowledge needs for ICT accessibility
- 2 We have identified the fields of practice that require at least some level of accessibility knowledge and/or skills (examples include, but are not limited to: product manager, project manager, product/system designer, application architect,
- application developer, quality assurance tester, and /or training/instructional designer.)

 3 We have mapped key accessibility skills and knowledge needs to specific fields of practice
- 5b. Identifying existing resources that match up and address gaps
- ${\bf 2} \ \ {\bf We \ have \ performed \ a \ gap \ analysis \ correlating \ accessibility \ skills \ and \ knowledge \ and \ current \ resources.}$
- 3 We have organized the gaps in order of priority.

5c. Managing progress in acquiring skills and allocating qualified resources.

- 1 We have a high level management plan in place to acquire accessibility skills and/or allocate those resources.
- 1 We have developed a training plan for in-house resources and identified external resources for training and/or augmentation
- 2 We have developed a process to track resource training and augmentation.
- 3 All resources have the appropriate skills and continuous monitoring and improvement systems are in place

Section 5 Comments (Provide any comments or additional information on this section here.)

6. Make information regarding ICT accessibility policy, plans, and progress available to customers.

0 We do not have a plan to make our accessibility policy or other accessibility information publically available. (If selected, skip to next section or provide comments at the end of this section.)

6a. ICT Accessibility policy and VPAT documentation availability

- 1 Our ICT accessibility policy is publicly available.
- 1 Our accessibility policy and documentation (VPATs, etc.) for <u>some</u> products is publicly available or available upon request.
- 2 Our accessibility policy and documentation (VPATs, etc.) for all released products is complete and publicly available or available upon request.

6b. Availability of other accessibility documentation beyond policy and VPATs

- 2 We are beginning to make other accessibility technical information available such as how accessibility testing is performed.
- 3 We make accessibility information available beyond policy and VPAT information including information on how accessibility testing is performed and other information that demonstrates our organization's capability to produce accessible product / services.

6c. ICT Accessibility policy and documentation availability

- 2 We are implementing an accessibility support program within our organization to address questions related to our accessibility documentation.
- 3 We have a fully implemented accessibility support program within our organization to provide requested documentation and address questions related to the accessibility of our products.









Bid Package 7

Department of Information Resources

Data Storage, Data Communications & Networking Equipment and Related Services

Request for Offer DIR-TSO-TMP-422

Vendor References

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VENDOR REFERENCES

Data Storage, Data Communications & Networking Equipment and Related Services Request for Offer DIR-TSO-TMP-422

REFERENCE DEADLINE TO DIR: No later than 05/04/2018 02:00 PM

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for this Request for Offer (RFO) that has been issued. The Vendor that is responding to this RFO is providing this document for you to fill out and return directly to DIR at the following email address: DataStorageNetworkRFO@dir.texas.gov

This portion to be completed by the Vendor requesting reference information						
Vendor Name						
Dates of Performance: Starting Date Ending Date	=					-
Total Est. Contract Dollar Amount						
This position to be completed by the Cretower providing re-	£			.4		
This portion to be completed by the Customer providing re DataStorageNetworkRFO@dir.texas.gov	<u>iere</u>	iice a	nu re	turne	eu lo DIR al	
Rating: (0) Unsatisfactory; (1) Marginally Satisfactory; (2) Satisfactory; (3) Exc Definitions for each rating category are contained on the following page.	eeds	Expect	ations	; N/A. N	Not Applicable	
Please provide your opinion by rating the following:						
Quality of Data Storage, Data Communications & Networking Equipme	nt an	d Rela	ted S	ervices	<u>s.</u>	
 Have you purchased any of the above type Products and Related Service Yes No 	ces fr	om this	Venc	lor in th	ne past 2 years?	,
 Vendor's ability to provide the products or services in a timely manner? Vendor's knowledge of and ability to answer questions regarding 	0	1	_ 2	3	N/A	
the products?	0	1	_ 2	3	N/A N/A	
4. Vendor's ability to resolve problems?	0	1	_ 2	3	N/A	
Cost						
5. Timely, current, accurate & complete invoices	0	1	_ 2	3	N/A	
Timeliness of Performance						
6. Adherence to delivery schedule (major tasks, milestones)	0	1	_ 2	3	N/A	
Business Relations & Customer Satisfaction						
7. Effectively communicated with customer management & staff	0	1	2	3	N/A N/A N/A	
8. Vendor personnel (professional, cooperative & flexible)	0	1	_ 2	3	N/A	
Vendor's attitude toward customer service	0	1	_ 2	3	N/A	
10. Overall Satisfaction with Vendor	0	1	_ 2	3	N/A	
Comments: (Please use additional page if necessary)						
						_
In your opinion, should this Vendor be used again for any of the above type Yes No	Produ	ucts an	d Rela	ated Se	ervices?	
In your opinion, should this Vendor be recommended to others? Yes	No_	·				
Rater's Name:	D	ate:				
Organization:						
T(4)						

Fax Number: Email address:

Phone Number:

Vendor Reference Evaluation Scoring

Excellent (3)			
There are no quality problems.	There are no cost issues.	There are no delays.	Responses to inquiries, technical, service, and administrative issues are effective and responsive.
Satisfactory (2)			•
Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is usually effective and responsive.
Marginal (1) Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Cost issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.
Unsatisfactory (0) Nonconformances are compromising the achievement of contract	Cost issues are compromising performance of contract requirements.	Delays are compromising the achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is not
requirements.			effective and responsive.

Bid Package 8 Sample Engagements and Vendor Qualifications

Vendors should complete the following sections:

If you are bidding Infrastructure as a Service (IaaS) – complete sections A, B, C If you are bidding Cloud Broker Services – complete sections A, B, D

A. <u>SAMPLE ENGAGEMENTS – ALL VENDORS</u>

All Vendors should complete this section.

Vendors shall provide two (2) engagements initiated within the last three (3) years <u>for each category</u> (laaS and Cloud Broker) in which they are bidding. Vendors shall provide the following information for each engagement:

a)	Customer Name
b)	Customer Telephone Number
c)	Customer Email Address
d)	Statement of Work Scope
e)	Statement of Work Description
f)	Engagement Schedule (start date and end date (if applicable) [mm/yyyy]). Identify and describe phases of deployment (e.g., solutioning, ordering, provisioning, testing, production release, decommission)
g)	Engagement Budget (original and final - for this specific referenced project). Describe any variance, if applicable.
h)	Describe, in general terms, the goals and objectives of the engagement and your opinion of your performance.
i)	Describe communications and interactions with customer throughout the engagement. Include Communication Plan if applicable.
j)	Lessons learned during engagement
k)	Performance measures/service levels contractually required for this engagement reported to the customer

- I) Security and authentication responsibilities and activities, if applicable
- m) Disaster Recovery responsibilities and activities, if applicable

DIR reserves the right to contact any provided engagement contact names for further information/clarification.

B. VENDOR QUALIFICATIONS - IAAS AND CLOUD BROKER

Vendors bidding on IaaS and Cloud Broker shall complete the following questions regarding the services they provide directly.

B.1. GENERAL

- 1) Describe Vendor's basic service model. Describe the ways Vendor offers better than industry-standard services. How will Vendor handle different customer segments (local government, state government, higher education, K-12 schools, etc.) within the framework of a master agreement?
- 2) Describe Vendor's pricing model and any incentives it provides to reduce customer costs.
- 3) Describe Vendor's process to address and correct any differences between customer requirements and service solution.
- 4) Provide a list of standard deliverables available, including reports, for proposed services. (Samples may be requested at a later date. Do not provide at this time.)
- 5) Describe Vendor's ability and experience providing add-on services, including architectural design and solutions.

B.2. SECURITY AND PRIVACY

1) Indicate security certifications audits or asserted compliance by Vendor and/or services.

Certification/Audit	Vendor Certified or Audit Compliant	Date of Certification or Audit
Description	(yes/no)	
SSAE 16		
SOC 1		

SOC 2	
PCI DSS	
FISMA	
HIPAA	
FERPA	
CJIS	
Additional:	

- 2) Describe any data privacy procedures for the services provided. Include protections Vendor provides for personal identifying information.
- 3) Describe Vendor's procedures for responding to subpoenas for customer data.
- 4) List and explain any security or privacy breaches involving customer data that have occurred in the last five years. Include steps taken to prevent future incidents and the Vendor's process for responding if a security breach is identified, whether caused by a vulnerability in the application code, in the hosted environment, or otherwise.
- 5) Describe the process by which the customer and/or any affected party will be notified of a security or privacy incident.
- 6) Describe the measures that will be taken to ensure that data is protected against anticipated threats to the privacy, security, and integrity of the customer's data and to prevent unauthorized access or alteration to the data.
- 7) Will data be encrypted at all times during transmission? What encryption protocols are supported?
- 8) What site-to-site VPN capabilities are supported?
- 9) Will data be encrypted at rest?
- 10) How is data separated at rest from data of other customers?
- 11) Describe Vendor supported authentication and authorization mechanisms.
- 12) Describe Vendor provided authentication mechanisms.
- 13) Describe how Vendor provides guidance to allow customers to make an informed choice on the security level they require for their solution.

- 14) Describe the Vendor's process for managing identity and user accounts. Describe the environment's ability to prevent users from changing application code or data without proper authorization.
- 15) Describe the ability for the solution's data protection controls to comply with the requirements of Texas Administrative Code § 202, Information Security. Indicate the degree to which customers have the capability to ensure compliance through audit of the environment.

B.3. OPERATIONAL (Note: Cloud Brokers shall respond based on services they provide directly rather than the cloud services that they broker.)

- 1) Describe the Vendor's use of operational process and best practice standards. What standards are used (Ex: ITIL, PMP, CMM, etc)? Include any percentage of staff certified.
- 2) Describe all performance targets for the proposed services, including availability, reliability, time to provision virtual machines and virtual data centers, incident response/incident resolution times, and any other performance targets as applicable. NOTE: DIR requires that data is accessible 99.5% including all planned and unplanned downtime. Planned downtime must be coordinated. Detail how Vendor's solution meets this requirement.
- 3) Is the Solution available and accessible to all users 24 hours a day, 7 days a week, except for prescheduled maintenance periods? If no, please explain.
- 4) Describe any remedies offered for missed performance targets.
- 5) Describe any compensation provided to customers for financial loss due to lack of availability.
- 6) Provide availability performance metrics for Vendor's system on a month-by-month basis for all customers over the past 12 months.
- 7) Provide reliability performance metrics for Vendor's system on a month-by-month basis over the past 12 months.
- 8) Describe the Vendor's incident management process. Include root cause analysis, problem identification, and successful prevention strategies.
- 9) Provide average time to provision virtual machines and virtual data centers to all customers on a month-by-month basis over the past 12 months.
- 10) Provide average incident response and incident resolution time to all customers on a month-bymonth basis over the past 12 months.

- 11) What fault tolerance, failover or other measures do you offer that provide continuity and redundancy to ensure availability of services?
- 12) Describe the Vendor's change management process. How will Vendor ensure minimal interference with mission-critical activities? At a minimum, include:
 - a) Approach to scheduled maintenance
 - b) Current maintenance schedule
 - c) Standard change freeze windows
 - d) Notification process; and
 - e) Emergency and expedited maintenance process.
- 13) Under what conditions, if any, do you reserve the right to suspend or terminate the service? Under what conditions, if any, do you reserve the right to suspend or terminate end-user accounts?
- 14) Describe Vendor's methods for managing, maintaining and enhancing capacity, reducing latency or accelerating traffic at both network and customer levels that fulfill associated performance metric targets.

B.4. SUPPORT (Note: Cloud Brokers shall respond based on services they provide directly rather than the cloud services that they broker.)

- 1) Describe the Vendor's incident response process and response time goals, addressing how the Vendor will manage unscheduled outages, interrupted services, or a customer's report of degradation in service. Include specifics as to how the Vendor will investigate and resolve service level interruptions. Explain how/if the Vendor can meet the following: Notifying a designated Customer representative within 30 minutes of an unplanned outage and providing an estimated recovery time or hourly status updates until the recovery time is known.
- 2) Describe the Vendor's standard incident notification process.
- 3) Describe in detail the Vendor's end-user support services, including but not limited to:
 - a) Telephone support
 - b) Online support
 - c) Customer training
 - d) Availability (e.g., 24-hour technical telephone contact)
 - e) When and how each customer's help desk can escalate to Vendor
 - f) Process to respond to provisioning requests. Include timeframes.
 - g) Process to respond to support requests. Include timeframes.
 - h) Real-time incident reporting, including the ability for customers to review past, present and ongoing incidents for service quality.

- i) Number of days in advance customers receive notice about operational changes that affect access to data, including migration, upgrades or other changes to the environment that require downtime.
- 4) Describe Vendor's process for on-boarding and training new customers.
- 5) Describe training available to customers throughout the service lifecycle.

B.5. BUSINESS CONTINUITY (Note: Cloud Brokers should respond based on services they provide directly rather than the cloud services that they broker.)

- 1) Provide a copy of the Vendor's disaster recovery/business continuity plan or provide a detailed overview of the Vendor's disaster recovery/business continuity plan.
- 2) Describe locations of data centers, including any geographic diversity or redundancy. NOTE: All DIR Customer data, including backup data, must be located in the Continental US. Vendor should detail how it meets this requirement.
- 3) Describe the Vendor's data backup plan. Address recovery for both the Vendor's systems (infrastructure) and the customer's configurations and data. Is all data backed up every 24 hours at Vendor's site?
- 4) Can the Vendor restore data within one business day of notification?
- 5) Describe the Vendor's data protection policy.
- 6) Describe the Vendor's clearance process for physical access.
- 7) Describe assurance of security from a personnel access standpoint. Are all data center employees and subcontracts subjected to background checks?
- 8) Describe the physical and logical controls in place at the Vendor's data center.
- 9) What liability will the Vendor assume for data recovery?
- 10) What guarantees or remedies are provided for in the event of a loss of data?
- 11) Can the environment detect and recover from file integrity issues (e.g., data corruption)? Please provide a detailed explanation.

B.6. INTEGRATION (Note: Cloud Brokers shall respond based on services they provide directly rather than the cloud services that they broker, if applicable.)

- 1) Describe how the service will integrate with various customer identity and access management systems.
 - a) What directory services does the service integrate with (e.g., LDAP, Microsoft Active Directory (AD))? How does the service integrate with each that is supported?
 - b) What authentication services does the service integrate with (i.e., LDAP, Kerberos, AD, Shibboleth, SAML v1/v2, WebAuth)?
 - c) If a password is stored within the service, can password policies be enforced? If so, what complexity and/or expiration settings are available?
 - d) Does the service allow the setup of users and groups that are logically segregated from each other to allow segregated management of specific groups by different administrators?
- 2) Explain any mechanisms that exist within the service to allow integration with other existing and future services the customer may use.
 - a) Does the service support open standards for interoperability with other products? If so, which open standards and/or products are supported?
 - b) Is there an Application Programming Interface (API) for the service? If so, please explain how it is utilized and what functions are available within it.

C. VENDOR QUALIFICATIONS - IAAS

Vendors bidding on IaaS shall complete the following questions:

C.1. GENERAL

- 1) "Adaptability" is the ability of the service provider to adjust services based on customer's request. Describe the Vendor's ability to respond to customer requests for upgrade/downgrade or service level changes from the catalog of offering. Include any additional charges or penalties for changing service levels, minimum terms at the original service level, and standard intervals for service level change requests.
- 2) "Elasticity" is how much a Cloud service can be scaled during peak times. Describe the elasticity of the cloud services provided, specifically:
 - a) Describe the Vendor's ability to expand capacity during peak load.
 - b) Provide standard interval to expand or contract the service capacity.
 - c) Describe Vendor's ability to provide bursting above specified capacity.
- 3) "Usability" is the ease of using a cloud service. Provide evidence of the ease of use by quantifying the average time experienced by the users of the cloud service to operate, learn, install and understand.

- 4) "Stability" is the variability in the performance of a service. Provide stability metrics equals deviation from the performance specified in the SLA.
- 5) Describe Vendor's capacity to support specialty processing environments such as geographic information systems and their requisite storage, processing and transmission requirements.
- 6) Describe any Application Program Interfaces (APIs) or web services available, if applicable. Include those designed to:
 - a) provide access and functionality to support integration of databases, messaging, systems, portals, and storage components
 - b) control specific cloud resources and their distribution
 - c) rapidly provision or de-provisioning of cloud resources, network configurations and workload management
 - d) access resources from other cloud environments
 - e) allow workloads to be distributed across a unified network infrastructure; and
 - f) integrate with external billing, license management and service catalogs
- 7) Describe Vendor's process for data management when data is deleted from application.
- 8) Describe Vendor's process for data management if service is discontinued.

C.2. DATA INSERTION AND EXTRACTION

- 1) Describe how data is imported or exported to the system.
 - a) What methods exist for the customer to extract a partial or full extract of data at manual and/or scheduled intervals for backing up all customer content to customer's premises?
 - b) What methods exist for the customer to import bulk data into the Vendor's service from customer's premise?
 - c) Upon service termination, what methods exist for transferring data out of the service to a service managed by a customer or a third party? Describe the Vendor's method of securely destroying all deleted data and/or expired backups at the end of that time period and at customer's election. Can Customer data under the protection of the Vendor (under its care, custody and control) be returned to the Customer upon notice, with the data/ metadata transferred in Comma Separated Value (CSV) file format that can be recovered for use within a SQL compatible relational database management system (RDBms) environment?

D. VENDOR QUALIFICATIONS – CLOUD BROKER

D.1. GENERAL

Vendors bidding on Cloud Broker services shall complete the following questions:

- 1) How does Vendor present providers' performance metrics for customer review?
- 2) Describe the process for qualifying cloud service providers. Include, at minimum:
 - a) Standard terms and conditions
 - b) Standard performance measures
 - c) Security controls, audits or certifications that are requested or preferred
- 3) How does Vendor manage incidents (e.g., outages, impairments, defects) for the cloud services that it brokers? Include a description of Vendor's communication process with customers.
- 4) What additional timeframes are added to the cloud service providers' provisioning times, support times, etc.?
- 5) Describe escalation processes, including how and when the customer may contact the cloud service provider directly.
- 6) Describe Vendor's process to handle billing disputes, including the process to request and apply service credits and other remedies.
- 7) Describe the Vendor's standard notification process for cloud service incidents.
- 8) Describe the Vendor's incident response process for the cloud services it brokers, including but not limited to how the Vendor will manage:
 - a) unscheduled cloud services outages
 - b) interrupted cloud services
 - c) customer's report of degradation in cloud services
 - d) resolution of cloud service interruptions.
- 9) Describe how Vendor provides guidance to allow customers to make an informed choice on the security level they require for their solution.
- 10) Describe how Vendor provides objective guidance to allow customers to make an informed choice regarding providers.



Addendum #1

This addendum to Request for Offer (RFO) DIR-TSO-TMP-422 contains:

- 1. Written Questions and Official Answers
- 2. Modifications to RFO Schedule
- 3. Addition of Bid Package 9 Master Operating Lease
- 4. Addition of Bid Package 10 Master Lease Agreement
- 5. Vendor Conference presentation slides
- 6. Vendor Conference webinar sign-in sheet

1. WRITTEN QUESTIONS AND OFFICIAL ANSWERS

1) **Question**: The documentation package includes the Package #5 for VPAT's. However, the checklist does not have it listed as a mandatory submission. Please clarify. It is listed as a requirement in the RFP?

Answer: See Section 3.5 Electronic and Information (EIR) Accessibility. Accordingly, All Vendors must submit completed VPAT form (Bid Package 5) or links to completed VPATs located on manufacturer websites for each proposed product or product family prior to an award for the proposed product or product family. VPAT is a requirement before any potential contract award. Vendors are strongly encouraged to submit VPAT forms with their response.

2) **Question**: Exhibit A Item 2) Page 1 -- What is the Comptroller of Public Accounts Vendor Identification Number? Is this our federal ID number?

Answer: Vendors must be authorized to do business in Texas prior to any potential contract award. The Comptroller of Public Accounts will issue a Texas Identification Number (TIN) as part of that process. Vendor may use their Federal Employer Identification Number (EIN) to respond to this RFO.

3) Exhibit A Item 16 A. Page 4 third paragraph -- All responses must be received by DIR on or before the date and time specified in Section 3.3.1 of this RFO. No late responses will be reviewed. When I refer to the RFO document there is no Section 3.3.1. I do see a in the RFO 4.7.1 Mandatory Response Content. Should Section 3.3.1 actually be 4.7.1?

Answer: Correction, the section in reference is 4.3.1.



Addendum #1

4) Question: Exhibit A Item 16 A Page 4 -- Mandatory Response Contents when compared to the RFO 4.7.1 Mandatory Response Contents has an extra item listed. This item is 4.1.7
 9) Sample Engagements and Vendor Qualification Bid Packet 8. Is this an optional submission? If we are not proposing Cloud should this be omitted from the response?

Answer: Vendors proposing Cloud as part of a solution shall provide complete responses to the questions listed in the Microsoft Word document that is attached as "Bid Package 8". Bid Package 8 may be omitted if Vendor is NOT proposing Cloud services.

5) Question: Exhibit A Item 16 B Page 4 --- Certification Statement (XXI) Respondent certifies that there have been □ yes / □ no canceled contracts in the past five (5) years. What is the definition of 'contract'? For the purposes of this response, is a contract an individual project with a defined product deliverable and time frame for installation? Is a contract a service contract?

Answer: Contract is defined as a formal and legally binding agreement between Vendor and Customer to provide products and/or services.

6) **Question:** Exhibit A Item 16 B Page 6 -- Certification Statement Signature - How would you like this signature submitted? Scanned and uploaded into the Bidstamp VIS system?

Answer: Yes, Print, sign, scan the document, and upload into BidStamp.

7) Question: Exhibit A Attachment 2 Page 8 -- Respondent Release of Liability – How would you like this signature submitted? Scanned and uploaded into the BidStamp VIS system?

Answer: See response to Question 6.

8) **Question:** RFO DIR-TSO-TMP-422 Item 3.1 Page 6 -- Last paragraph states "Software may not be sold as a stand-alone product." Our company has two products that can operate as a standalone software for security and routing, are these products eligible for the contract?

Answer: The software may not be sold as a stand-alone product. The software may be bundled with equipment provided that the software is necessary for product integration or product completeness or is part of an overall solution. For software only offerings, Vendors should consider responding to DIR-TSO-TMP-416 posted on the ESBD and due April 16, 2018 at 2:00 PM (CT)



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9) **Question:** RFO DIR-TSO-TMP-422 Item 4.5.1 Page 14 -- Authorized Vendors Our company is the manufacturer and we will be naming resellers to sell directly to customers on our behalf. Does our company need to supply a signed letter of authorization, stating we are the manufacturer and authorizing ourselves to sell to DIR through our resellers?

Answer: No, a manufacturer letter is not required if your company is the manufacturer.

10) Question: RFO DIR-TSO-TMP-422 Item 4.7.3 Page 17 -- Accessibility of Electronic Response Documents states in the last sentence Vendor should not submit scanned documents. What is the proper way to submit the required signatures in Exhibit A Vendor Information Certification Statement and Exhibit A Attachment 2 respondent Release of Liability?

Answer: Vendors should print, sign, scan, and upload all documents requiring a signature. All other documents should be submitted as accessible PDFs, or other Microsoft Office format (Word, Excel).

11) **Question:** Bid Package 2 – Pricing Sheet Tab 2 Product Discount Sheet Is this tab missing from the Bid Package 2?

Answer: Bid Package 2, Pricing Sheet, Tab 2, is not missing from Bid Package 2. Vendors will enter product line item detail in Bid Package 2, and average discount by brand or product line in BidStamp. See Section 3.1.1.

Question: Bid Package 2 – Pricing Sheet Tab 1 Brand Product Detail this tab states IF VENDOR IS PROVIDING THE ENTIRE LINE FOR A SPECIFIC BRAND, PROVIDE CATALAGUE LINK AND LIST HERE MOST SOLD PRODUCTS. If a catalogue link is not available, may we enter in the entire line? What is the correct process if a catalogue link is not available?

Answer: Submit the products in the Pricing Sheet, Tab 2, Brand Products Detail. Vendors will enter product line item detail in Bid Package 2, and average discount by brand or product line in BidStamp.

13) **Question:** I did not see Bid Package 3 Product Contract Sample listed in Exhibit A Mandatory Response Contents (Page 4) and I did not see it listed in the RFO item 4.7.1 (Page 16 and 17) Mandatory Response Contents. Is Bid Package 3 part of the required submission?



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Answer: No, it is not a required submission. Bid Package 3 is a sample of a DIR contract.

14) **Question:** I did not see Bid Package 5 listed in Exhibit A Mandatory Response Contents (Page 4) and I did not see it listed in the RFO item 4.7.1 (Page 16 and 17) Mandatory Response Contents. Is Bid Package 5 part of the required submission?

Answer: See Section 3.5 of the RFO. Accordingly, all Vendors must submit completed VPAT form (Bid Package 5) or links to completed VPATs located on manufacturer websites for each proposed product or product family prior to an award of a contract for the proposed product or product family.

15) **Question:** Bid Package 6 – Vendor ICT Accessibility Policy Assessment - Assessment Tab Cells B 131 and B 132 do not appear to be adding up the totals from Column A. Should this be an automatic calculation?

Answer: Yes, the cells automatically calculate the entries.

16) **Question:** Bid Package 8 Sample Engagements and Vendor Qualifications -- Am I correct that this is an optional submission? Submit if proposing Cloud as part of the solution and do not submit if no Cloud is being proposed?

Answer: See response to Question 4.

17) **Question:** According to 4.7.1 #5 (page 16), product pricing, do the vendors need to respond with pricing that includes the DIR discounts listed on the DIR website?

Answer: See Bid Package 2. Vendors will enter product line item detail in Bid Package 2, and average discount by brand or product line in BidStamp.

18) **Question:** Are we supposed to respond with pricing to all products listed on 3.1 (page 5)? What quantity is being asked for each product? Are we expected to include maintenance costs or installation? Pricing structure verification would be most appreciated.

Answer: Vendors may submit pricing for proposed products. Vendors will enter product line item detail in Bid Package 2, and average discount by brand or product line in



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BidStamp. See Section 3.1.1 for details on pricing. Respondents may include related services in their pricing sheet. See Bid Package 2 for instructions on pricing.

19) Question: Where can we find the DIR discounts?

Answer: Vendors submitting a response to a DIR solicitation submit product pricing and provide DIR discounts in their pricing sheet.

20) Question: Bid package 6 is missing.

Answer: Bid Package 6 is posted on the ESBD.

21) **Question:** This question pertains to the Hub Subcontracting Plan, I have filled out the HSP within the BidStamp application. For final submission, should I fill out and sign a pdf-based HSP, or do I print the BidStamp-based form, sign, and upload. Also, to whom can I send my HSP draft so that it can be reviewed prior to final submission?

Answer: Print the HSP, sign, scan and upload the signed HSP in BidStamp. You may contact our HUB department for review of your HSP at dir.hub@dir.texas.gov

22) **Question:** Section 3.1.1, page 6 states that we have to submit pricing on DIR's Automated Pricing Forms. On our account, I do not see the "Create Pricing Form" button.

Answer: The Pricing Form is activated, and the button is available. Please contact DIR for technical assistance if needed.

23) **Question:** There are references to Appendices that do not appear to be included. Example - C. Services Agreement - Appendix E.

Answer: Vendors may submit agreements that apply to the proposed product/services. The Agreements will allow and provide for inclusion of the terms and conditions of the Contract. The Contract provided as Bid Package 3 is a sample.

Question: Is Telecommunication Testing Equipment within the scope of Data Storage, Data Communications & Networking Equipment and Related Services DIR-TSO-TMP-422? Class-Item 730-72 *Radio, Sound, and Telecommunications Testing Equipment: AF Generators, Deviation Meters, Meter Panels, Test Fixtures and Jigs, etc.



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Answer: Submit the telecommunication testing equipment in your proposal. DIR will review and determine if it is within scope of the RFO.

25) **Question:** Bid package 1 RFO, Scope, 3.1 Products, page 6 – Can operating systems for HW being include on this contract? The software is necessary for product integration of product solution, but they are not bundled on the price list.

Answer: Hardware for operating systems may be included within scope of the RFO. Software may be bundled with equipment provided that the software is necessary for product integration or product completeness or is part of an overall solution. Software may not be sold as a stand-alone product.

26) Bid package 1 RFO, Scope, 3.5 Electronic and Information Resources (EIR) Accessibility, page 9 – Can products / product lines be included on the price list if VPAT certification is in process? Can products / product lines be included on the price list if they have not been VPAT certified?

Answer: Yes, products or product lines may be included in the price list. See response to Question 14.

27) Appendix A, 9 Contract Administration, B Reporting and administrative fees, 3 HUB subcontractor reports, page 14 – What is the HUB Subcontract Report? Is there a template? Or is this the HUB Subcontracting Plan (HSP)?

Answer: The prime vendor shall maintain business records documenting its compliance with the HSP and shall submit a Progress Assessment Report (PAR) to the ordering entity monthly and in the format required by the contract documents.

28) Question: Would DIR consider extending the deadline for this RFP by one week?

Answer: The RFO due date has been extended by one week. See RFO schedule.

29) **Question:** General Question (no reference) Can the RFP deadline date for this response be extended? Our company's fiscal EOY ended 3/31/18 and we are booked the week of April 16th-20th in corporate meetings on the upcoming year and goals.

Answer: See response to Question 28.



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30) **Question:** General Questions (no reference): At the Vendor Conference it was asked whether the Storage Section of the RFP can offer Converged / Hyperconverged solutions. It was unclear if these solutions would be allowed. To make the RFP as streamlined as possible can we get a ruling on this question?

Answer: Yes, Vendors may propose Converged / Hyper-converged Solutions in their proposal.

31) **Question:** General Question (no reference): Due to the volume of information being provided for this RFP response, what degree of technical information does DIR want on each product offered. a) Very Thorough b) Thorough?

Answer: See Bid Package 2, Pricing Form, tab one for product description and pricing. Also see Section 3.1.1 of the RFO. Vendor should offer a product description that allows for market comparison. DIR may request additional information as required.

32) **Question:** Reference: DIR-TS0-TMP-422 Bid Package 2 Pricing Sheet. In reviewing the pricing worksheet, it appears that each vendor will choose their own volume pricing tiers, i.e. Quantity 2-5, 6-10. Is this correct?

Answer: Yes, that is correct.

33) **Question:** The RFO for DIR-TSO-TMP-422 for data storage, data communications and networking equipment does not contain the MOLA nor MLA as requirements. Was this an oversight and will they both be required documents for any award?

Answer: Leasing documents have been added as an option in this addendum.

34) **Question:** Regarding Exhibit B - Vendor History and Experience, page 1 - questions 5 & 6 asks vendors to provide information about contracts held, including discount off list. It is difficult to provide one discount per contract as a contract could have many discounts depending on product category. Would you waive the requirement to provide discount off list?

Answer: DIR will not waive this requirement. Provide an average of the product line discounts.



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35) Question: Bid Package 8 (Sample Engagements and Vendor Qualifications) indicates that vendors should only provide responses based on services they provide directly. Our company is a reseller/distributor of cloud products, and will be including IaaS manufacturers as part of our bid. However, we will not be providing any cloud services directly. Can DIR provide additional instructions on how we should fill out this form, if needed at all? Should we ask our cloud manufacturers to fill out for us? We want to make sure that DIR has all the information needed to make an informed award decision but do not have the resources in-house to provide the detailed responses requested in Bid Package 8.

Answer: The cloud service provider will need to submit Bid Package 8 and demonstrate how cloud is integrated with hardware. Note: Cloud Services is excluded as a standalone service; however, Cloud Services may be proposed as part of an overall data storage, or networking solution.

36) **Question:** Section 4.5, Subsection 4.5.1. Will DIR accept letters of authorization from a distributor?

Answer: Yes. The distributor authorization letter or agreement must state that the reseller is authorized to purchase, receive standard warranty support and to resell products from listed manufacturers. The brands being offered by the reseller must appear on the list.

37) **Question:** Section 3.1, last paragraph: If a customer has purchased a solution that includes a Manufacturer's hardware and the manufacturer introduces a new software product at a later date that will add functionality to the existing hardware purchased by the customer, can the new software product be sold as a stand-alone product?

Answer: The new software may be considered as an upgrade to the total solution. If awarded a contract, Vendor will work with the DIR contract manager to determine eligibility. See RFO Section 3.3 Emerging Technology.

38) **Question:** DIR-TSO-TMP-422- RFO 1- Page 5 Section 3.1 Is it acceptable to bid OEM equivalent parts or do they need to be OEM original parts?

Answer: Vendors should propose products that are within scope of the RFO. Use of equivalent OEM parts should be disclosed in the pricing sheet.



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39) **Question:** DIR-TSO-TMP-422- RFO 1- Page 5 Section 3.1 When filling in the various part numbers for components will the price comparison be made based on OEM part number and/or description or the bidding company's part number and/or description? For example: Bidders PN: GESFP-SX-CSC Bidders Description: SFP 1000Base-SX 550m, Cisco Systems compatible or OEM PN: GLC-SX-MM OEM Description: 1000BASE-SX short wavelength. Please clarify the desired format so we can generate the proper description and part number or part number reference format for comparison.

Answer: DIR will use all the information on the Pricing sheet to compare price. Vendor should enter both part numbers, Bidder and OEM. Vendor may identify the OEM part number in the description field.

40) **Question:** DIR-TSO-TMP-422- RFO 1, Section 3.1, page 6 last paragraph Can we add additional parts to the price list once the contract has been awarded?

Answer: Vendor should include all products and service being offered in their proposal, Bid Package 2. Additional products may be added in accordance with RFO Section 3.3 Emerging Technology.

41) **Question:** DIR-TSO-TMP-422- RFO 1, Exhibit B & C Can we submit for consideration a package of supplemental material that supports and expands upon our answers to Exhibit B Question 1, Exhibit C Question 5c, and similar?

Answer: Yes, additional supplemental material supporting Exhibits B & C may be submitted. The supporting documents should be clearly identified as supporting documents to the exhibits.

42) **Question:** DIR-TSO-TMP-422- RFO 1 Page 18, section 5.1 Will there be a sole source from one vendor?

Answer: No.

43) DIR-TSO-TMP-422- RFO 1 Page 18, section 5.1 If not sole source how many vendors will be awarded?

Answer: DIR may make multiple awards to the RFO to achieve overall best value to the state.



Addendum #1

44) **Question:** DIR-TSO-TMP-422, RFO 1, Page 18, section 4.11 Is the MSRP pricing used for the Public Record? Or is the discounted Price used for the Public Record?

Answer: The discount off MSRP or List Price shall be posted on Vendor's webpage. The DIR discount will be posted on Vendor's DIR webpage. See Bid Package 4 Appendix A, Section 7.E for public requirements.

45) **Question:** DIR-TSO-TMP-422- RFO 1 Bid Package 7 For Vendor References is it best to use current DIR users?

Answer: Reference questionnaire must be sent to companies or government agencies who have contracted with the Vendor.

46) **Question:** DIR-TSO-TMP-422- RFO 1, page 11 Section 4.3.1 When is the Vendor Conference Deck that was held on 3/26/2018 going to be posted to the ESBD?

Answer: The Vendor Conference presentation is included in this Addendum.

47) **Question:** DIR-TSO-TMP-422- RFO 1- Bid Stamp / Bid Package 2 Pricing Sheet We have a large product portfolio (100+ SKUs). Is there a capability of uploading products to BidStamp in bulk (via the Package 2 Excel spreadsheet or similar), or does each item have to be entered individually?

Answer: If Vendor is proposing the entire line for a specific brand, provide a catalogue link in the Bid Package 2 Pricing Sheet, Tab 2. Vendors will enter product line item detail in Bid Package 2, and average discount by brand or product line in BidStamp.

48) DIR-TSO-TMP-422- RFO 1 page 1(in re Exhibit C): How much detail is required for the Contract Marketing Plan?

Answer: It is the Vendor's discretion to the detail of its contract marketing plan. Exhibit C is part of the overall response evaluation. Vendors are encouraged to provide a response that shows they can market to DIR customers and provide best value for the state.

49) **Question:** for DIR-TSO-TMP-422 - Data Storage, Data Communications & Networking Equipment and Related Services solicitation will ethics 1295 form be required?

Answer: No, 1295 form is not required for the solicitation.



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50) **Question:** for DIR-TSO-TMP-422 - Data Storage, Data Communications & Networking Equipment and Related Services solicitation does any of this bid need to be hand delivered or is everything submitted through the BidStamp portal only?

Answer: Physical responses will not be accepted unless an ADA accommodation is requested and approved by DIR. Proposals must be submitted through BidStamp portal only.

51) **Question:** for DIR-TSO-TMP-422 - Data Storage, Data Communications & Networking Equipment and Related Services solicitation can we upload documents and information on BidStamp and save as we complete sections or does everything have to be uploaded, saved, and submitted at the same time?

Answer: Vendors do not have to upload and complete their response in one sitting. Vendors may return to their BidSTamp response as needed to complete their proposals. Once Vendor clicks on "Submit" they may not return to make changes to its proposal.

52) **Question:** For DIR-TSO-TMP-422 - Data Storage, Data Communications & Networking Equipment and Related Services solicitation particularly the pricing form do all sections need to be filled out specifying every single part # for every vendor per each pricing line or can we list the category, manufacturer and % discount?

Answer: Vendor must complete Bid Package 2 requested for product/services being proposed as specified in the Pricing Sheet instruction. Vendors will enter product line item detail in Bid Package 2, and average discount by brand or product line in BidStamp.

53) **Question:** for DIR-TSO-TMP-422 - Data Storage, Data Communications & Networking Equipment and Related Services solicitation is there a way to upload information on the pricing form in BidStamp?

Answer: The pricing form has been activated in BidStamp. Vendors may enter their pricing information. Vendors will enter product line item detail in Bid Package 2, and average discount by brand or product line in BidStamp.

54) **Question:** Bid Package 2 states that a link can be provided for the Manufacturer Suggested Retail Published Pricing List; however, most manufacturers do not publicly post their price lists. If a link is unavailable, can DIR please waive the requirement to provide a



Addendum #1

complete price list? Depending on the number of manufacturers in our response, this could result in hundreds of thousands of line items in the spreadsheet.

Answer: Vendor should upload the manufacturer MSRP price list in Bid Package 2. Vendor should enter their average cost in the BidStamp pricing form.

55) **Question:** Can we get a copy of this presentation?

Answer: The Vendor Conference presentation is attached to this Addendum.

Question: Exhibit A Item 16 A Page 4 -- Mandatory Response Contents when compared to the RFO 4.7.1 Mandatory Response Contents has an extra item listed. This item is 4.1.7
 Sample Engagements and Vendor Qualification Bid Packet 8. Is this an optional submission? If we are not proposing Cloud should this be omitted from the response?

Answer: This is may be omitted from the response if not proposing Cloud Services.

57) **Question:** Will questions submitted through BidStamp be made available to everyone.

Answer: Questions submitted through BidStamp are answered through this Addendum.

58) **Question:** If a link to a manufacturer's MSRP price list is not available, may we submit this as a document with the bid submission in BidStamp?

Answer: See response to Question 54.

59) **Question:** Are VPATs for all products a requirement? Can our response include products that are not VPAT certified if the process has been started?

Answer: Yes, products / product lines may be included in the price list. See response to Question 14.

60) **Question:** Where is Exhibit C Located at in the documents.

Answer: Exhibit C is available for download on the ESBD. It is part of Bid Package 1 of the RFO.



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61) **Question:** How will DIR evaluate pricing? Is it lowest on single unit pricing or volume discount?

Answer: DIR will evaluate on single unit discount.

62) **Question:** How will GSA pricing (or other contract vehicles) comparison be taken into consideration?

Answer: GSA or other contract vehicles will be considered during negotiations as part of benchmarking pricing.

63) **Question:** What section do you put the product specification in? Or is it on Exhibit?

Answer: The product specification is in Section 3. Scope Products. Vendors will enter product line item detail in Bid Package 2, and average discount by brand or product line in BidStamp.

64) **Question:** Does the RFO include clauses regarding converged infrastructure? For example, can we bid converged and/or hyperconverged infrastructure under this RFO such as: 1). Hyperconverged Infrastructure including some combination of CPU (e.g. Servers CPU)? 2) Cameras and other surveillance solutions with converged storage, data communication and networking.

Answer: Vendors may propose converged and/or hyperconverged infrastructure Cameras and other surveillance is out of scope of this RFO.



Department of Information Resources Data Storage, Data Communications & Networking Equipment and Related Services

Request for Offer DIR-TSO-TMP-422

Addendum #1

2. MODIFICATIONS TO RFO SCHEDULE

Bid Package 1, Section 4.3.1 RFO Schedule, is revised, as follows:

Date/Time	Activity	
3/20/2018	Publish RFO on Electronic State Business Daily	
03/26/2018 2:00 PM (CT)	Optional Vendor Conference	
04/04/2018 02:00 PM (CT)	Deadline for submitting questions	
04/13/2018 5:00 PM (CT)	Deadline for posting answers to questions on the ESBD	
05/04/2018 2:00 PM (CT) 05/11/2018 2:00 pm (CT)	Deadline for DIR to receive Vendor references	
05/04/2018 2:00 PM (CT) 05/11/2018 2:00 pm (CT)	Deadline for submitting responses to RFO	
05/14/2018 – until completed	Evaluation of responses, oral presentations (if requested), negotiation and contract execution	

3. ADDITION OF BID PACKAGE 9 MASTER OPERATING LEASE

See next page

4. ADDITION OF BID PACKAGE 10 MATER LEASE AGREEMENT

See next page

5. **VENDOR CONFERENCE PRESENTATION SLIDES**

See next page

6. VENDOR CONFERENCE WEBINAR SIGN-IN SHEET

See next page

BID PACKAGE 9

MASTER OPERATING LEASE AGREEMENT

- 1. <u>Definitions</u>. Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.
- (a) "Assets" refers to the Products as allowed within the Contract, including the Hardware, Software, and related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).
- (b) "Contract" refers to DIR Contract number DIR-TSO-XXXX into which this Appendix is incorporated.
- (c) "Event of Default" is defined in Section 23, "Default."
- (d) "Event of Loss" means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.
- (e) "Hardware" refers to the computer machinery and equipment specifically identified on the applicable Schedule.
- (f) "Lease" means the financing transaction described in this MOLA.
- (g) "Lessee" means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.
- (h) "Lessor" means the Vendor identified in the Contract.
- (i) "MOLA" means this Master Operating Lease Agreement (Appendix E). Any reference to "MOLA" includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.
- (j) "Rent Payment" means the amount payable by Lessee for the Assets as specified in the applicable Schedule.
- (k) "Schedule" or "Supplementary Schedule" to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee,

- applicable Rent Payment, and term of the Lease. To be effective, a Schedule must be executed by both Lessor and Lessee.
- (l) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on the applicable Schedule.
- (m) "Software" refers to the computer programs specifically identified on the applicable Schedule.
- (n) "Stipulated Loss Value" is the value of each unit of Hardware at various times during the Lease as specified in the applicable Schedule; however, in no event will the Stipulated Loss Value of a Hardware unit exceed its fair market value.

2. Lease.

- (a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code Leases, Tex. Bus. & Comm. Code Article 2A. Under no circumstances shall this MOLA or any Schedules entered into under it be construed as a "finance lease" as defined in Tex. Bus. & Comm. Code § 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Tex. Bus. & Comm. Code § 2A.511.
- (b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on each Schedule. Each such Schedule constitutes a separate agreement between Lessor and Lessee. In addition, each Schedule is subject to the terms and conditions of this MOLA as if a separate MOLA were executed for such Schedule by the parties.
- (c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Schedule applicable to such Assets. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.
- (d) Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or provided any legal or management advice to Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in a Rider to the MOLA or the Schedule. To the extent that any of the provisions of the MOLA conflict with any of the terms contained in any Schedule, the terms of this MOLA shall control.
- (e) If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Assets for its own use, DIR is not a party to any Schedule executed under this MOLA and is not responsible for Rent Payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or Lessor (or both of them) arising from the use of this MOLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both

of those parties arising from the use of this MOLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 ("Default") of this MOLA.

3. Term of MOLA.

The term of this MOLA shall commence (a) upon commencement of the term of the Contract, if this MOLA was agreed to under the Contract, or (b) on the Effective Date specified in Amendment Number (XX), if this MOLA is added to the Contract under such Amendment. The term of this MOLA shall continue until the last to occur of the following: (i) the Schedule Term of each Schedule entered into by the parties has expired or been terminated, or (ii) the Contract has expired or been terminated. In the event of any termination or expiration of the Contract or termination of this MOLA, any provisions of the Contract and this MOLA as may be necessary to preserve the rights of Lessor or Lessee hereunder shall survive said termination or expiration.

4. Term of Schedule.

The term for each Schedule agreed to by a Lessee and Lessor under this MOLA shall commence on the date specified in the Lessee Certificate of Acceptance, as described in Section 10, . Unless earlier terminated as provided for herein, the Schedule shall continue for the number of whole months or other payment periods set forth in it (the "Schedule Term"). Specifically with respect to Hardware, under no circumstances shall the Schedule Term exceed seventy five percent (75%) of the economic life of the Hardware, nor shall the present value of the Rent Payments for the Hardware on the Schedule Commencement equal or exceed ninety percent (90%) of the value of the Hardware. Lessee shall provide confirmation that its lease of assets satisfies the two foregoing percentage limitations. The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 ("Appropriation of Funds") of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 ("Remedies") of this MOLA, or (v) as otherwise set forth herein.

5. Administration of MOLA.

- (a) When a prospective Lessee wishes to lease Assets under this MOLA, the prospect will submit its request directly to Lessor. Lessor shall apply the applicable pricing discounts as stated in Section 4 of the Contract or the price as agreed upon by Lessee and Lessor in the applicable Schedule, whichever is lower and submit the lease proposal to the prospective Lessee. If the prospective Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease directly with the prospective Lessee.
- (b) With respect to Lessor's obligations under Section 5 of the Contract to report the sale and make payment of the DIR administrative fee as defined in that Section, all leasing activities in conjunction to this MOLA shall be treated as a "purchase sale." Notwithstanding treatment of this Lease as a "purchase sale" as to the transaction between Lessor and DIR under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 ("Lease") hereof for the transaction(s) between Lessor and Lessee.

- (c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated on the applicable Schedule to Lessor for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions on the Schedule issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Schedule Term, and the Rent Payments), Lessor's order acknowledgement form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.
- (d) Until a Schedule is entered into by Lessor and a Lessee per the process set forth in this MOLA, neither DIR nor any Lessee is obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to a Lessee.

6. Rent Payments.

- (a) During the Schedule Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the Rent Payments set forth in the relevant Schedule for each Asset. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.
- (b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be refunded to Lessee within ninety (90) calendar days. All Rent Payments shall be paid to Lessor at the address stated on the Schedule or any other such place as Lessor or its assigns may hereafter direct to Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to Lessor. Lessor's (including its assignees') remedy for late payments is as set forth in Chapter 2251, Texas Government Code.

Lessee acknowledges and agrees, except as specifically provided for in Section 8 ("Appropriation of Funds") of this MOLA and excluding claims resulting from a breach of Lessor's obligations as set forth in this MOLA or any Schedule or of Lessee's rights under Section 16 ("Quiet Enjoyment") hereof, that Lessee's obligation to pay Rent and other sums payable hereunder, shall not be abated, reduced or subject to offset or diminished as a result of any past, present or future claims Lessee may have against Lessor under this Lease. Notwithstanding the foregoing, nothing in this Section or any other provision of this MOLA shall affect or preclude Lessee from enforcing any and all other rights it may have against Lessor and its assignees under this MOLA or otherwise affect any right Lessee may have against the manufacturer or licensor of the Assets or any party other than Lessor.

7. Liens.

Lessee shall keep the Assets free and clear of all levies, liens and encumbrances, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of the Assets.

8. Appropriation of Funds.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any fiscal period (as set forth on the Schedule) of Lessee beyond the fiscal period first in effect at the commencement of the Schedule Term, Lessee may terminate the Schedule with regard to those of the Assets on the Schedule so affected. Lessee shall endeavor to provide Lessor with written notice sixty (60) days prior to the end of its current Fiscal Period confirming which Assets on the Schedule will be so affected by the termination. All obligations of Lessee to make Rent Payments due with respect to those Assets after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in those Assets will terminate, Lessee shall surrender those Assets in accordance with Section 15 ("Option to Extend; Surrender of Assets") of this MOLA, and the applicable Schedule shall be deemed amended. Lessee represents and warrants it has adequate funds to meet its obligations during the first fiscal period of the Schedule Term. Lessor and Lessee intend that the obligation of Lessee to make Rent Payments under this MOLA shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas, as applicable, beyond the fiscal period for which sufficient funds have been appropriated to make Rent Payments hereunder.

9. Assignment of Warranties.

Each Schedule is intended to be a true lease and operating lease as defined in Tex. Bus. & Comm. Code Article 2A. Lessor has acquired or will acquire the Assets in connection with this MOLA and hereby agrees to assign to Lessee any warranties provided to Lessor with respect to the Assets during the Term of the applicable Schedule, to the extent the warranties are assignable. Unless Lessor is the manufacturer or is otherwise liable under the Contract, Lessor shall not be liable for damages for any reason for any act or omission of the manufacturer of the Assets. Except as provided in Section 24 ("Remedies") hereof, Lessee acknowledges that none of the following shall relieve Lessee from the obligations under this MOLA during the Schedule Term unless due to Lessor's acts or omissions: (i) Lessee's dissatisfaction with any unit of the Assets, (ii) the failure of an Asset to remain in useful condition for the Schedule Term, or (iii) the loss or right of possession of the Assets (or any part thereof) by Lessee. Lessee shall have no right, title or interest in or to the Assets except the right to use the same upon the terms and conditions herein contained. The Assets shall remain the sole and exclusive personal property of Lessor and not be deemed a fixture whether or not it becomes attached to any real property of Lessee.

10. Inspection and Acceptance.

Promptly upon delivery of the Assets, Lessee will inspect and test the Assets. No later than twenty (20) business days following its date of delivery (or, if the Assets are part of a system, the date of last delivery of the Assets comprising the system), Lessee will execute and deliver either (i) a Certificate of Acceptance, or (ii) written notification of any defects in the Assets. If Lessee has not given notice within such time period, the Assets shall be deemed accepted by Lessee as of the twentieth (20th) business day, as described above. In the event Lessee does not accept the Assets, Vendor will promptly remove the Assets from Lessee's premises and deliver conforming Assets within ten (10) business days thereafter. If conforming Assets are not delivered within that timeframe, Lessee may terminate the Schedule on written notice to Lessor. Lessee's acceptance of any Assets shall not be deemed to waive any rights Lessee may have against the manufacturer or licensor, as applicable. Lessor and its assigns, including either of their respective agents shall have the right to inspect the Assets upon reasonable notice to Lessee and during normal business hours provided that anyone who does so has first executed a non-disclosure agreement acceptable to Lessee.

11. Installation and Delivery; Use of Assets; Repair and Maintenance.

- (a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.
- (c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

12. Relocation of Hardware and Software.

Except as set forth on the applicable Schedule, Lessee shall at all times keep the Hardware and Software within its exclusive possession and control. Lessee may move the Hardware or Software to another location of Lessee within the continental United States, provided Lessee is not in default on any Schedule and pays all costs associated with such relocation. If such relocation requires Lessor's prior written consent, Lessee

shall obtain such consent prior to relocating the Hardware or Software, as applicable, which consent Lessor shall not unreasonably withhold. Notwithstanding the foregoing, in those situations where consent is otherwise required, Lessee may move the Hardware or Software to another location within Texas without notification to, or the consent of, Lessor; provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Hardware and Software at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Hardware and Software, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Hardware and Software.

13. <u>Taxes.</u>

Unless otherwise agreed by the parties on the applicable Schedule, Lessor will pay any Imposition or file any forms or returns with respect thereto. Lessee shall, when billed, and with copy of Imposition invoice(s) with respect to Assets specified on the Schedule, reimburse Lessor for such payment. For purposes of this paragraph "Impositions" means all taxes, including personal property taxes and fees, without pro-ration as described in the Financial Disclosure Summary Work Sheet (Attachment 1) hereafter imposed, assessed or payable during the term of the relevant Schedule including any extension thereof. Because the reimbursement date for an Imposition may occur after the expiration or termination of the term of the relevant Schedule, it is understood and agreed that Lessee's liability to reimburse for such Impositions shall survive the expiration or termination of the term of the relevant Schedule.

14. Ownership.

The Hardware and Software shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties' rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Hardware except a leasehold interest as provided for herein. Lessee agrees that the Hardware shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of Lessor. Upon Lessor's request, Lessee will enter into agreements necessary to ensure that the Hardware remains the personal property of Lessor.

15. Option to Extend; Surrender of Hardware and Software Assets.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term, Lessor shall notify Lessee in writing of options to extend the Schedule for continued use of the Hardware or Software specified in that Schedule. If Lessee desires to exercise any of the options offered by Lessor (and provided that, with respect to Hardware, any extension does not exceed seventy five percent (75%) of its economic life), Lessee shall give Lessor irrevocable written notice of the option Lessee intends to exercise at least forty-five (45) days before the expiration of such Schedule Term. In the event the Lease is extended for some but not all of the Hardware and Software specified on a Schedule, the Schedule shall be updated to reflect those changes. At the end of the Schedule Term (as well as with respect to any Hardware and Software not extended as described immediately above), Lessee will surrender and return the Hardware and Software to Lessor in compliance with Section 15(b) below.
- (b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Schedule, Lessee, at its cost and expense, shall promptly return the Hardware, freight

prepaid, to Lessor in good repair and working order, with reasonably unblemished physical appearance and with no defects which affect the operation or performance of the Hardware ("Return Condition"), reasonable wear and tear excepted. If the Hardware is not in Return Condition, Lessee shall, at its option, either restore the Hardware (at Lessee's cost) to Return Condition or pay for the Hardware at its Stipulated Loss Value if the Hardware is not reasonably repairable. Lessee shall arrange and pay for the de-installation and packing of the Hardware in suitable packaging, and return the Hardware to Lessor at the location specified by Lessor; provided, however, that such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. At its option and expense, Lessor shall have the right to supervise and direct the preparation of the Hardware for return. If, upon termination or expiration of the Schedule for any reason, Lessee fails or refuses to return to Lessor a Hardware unit or Software program specified in that Schedule or to pay Lessor the Stipulated Loss Value for a Hardware unit, Lessee shall remain liable for Rent Payments for that unit or program up to the date on which the unit or program is returned to the address specified by Lessor (or on which Lessee has paid Lessor the Stipulated Loss Value). In such event and specifically with respect to the Hardware, Lessor shall also have the right to enter Lessee's premises or any other premises where the Hardware may be found upon reasonable written notice to the Lessee and during normal business hours, and subject to Lessees reasonable safety and security requirements to take possession of and to remove the Hardware, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Hardware. However, as an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession except as provided by Paragraph b. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the Constitution and laws of the State of Texas, Lessee's obligation to return Hardware may, at Lessor's option, be specifically enforced by Lessor.

16. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Assets as long as an Event of Default (as hereinafter defined in Section 23 ("Default") of the MOLA) has not occurred.

17. Warranties regarding the Assets.

Lessor acknowledges that warranties made by the manufacturer or licensor of the Assets, if any, inure to the benefit of Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer or licensor of the Assets and shall not pursue any such claim against Lessor.

18. No Warranties by Lessor regarding the Assets.

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the

extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessee specifically waives all right to make claim against Lessor for breach of any warranty of any kind whatsoever; and with respect to Lessor, Lessee leases the Hardware and Software "as is". Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature caused directly or indirectly by any Hardware or Software leased hereunder, or by the use or maintenance thereof, or by the repairs, service or adjustment thereto or any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused. Lessor agrees to assign to Lessee, upon Lessee's request therefor, any warranty of a manufacturer or licensor or seller relating to the Hardware and Software that may have been given to Lessor.

19. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to the Hardware specified on the Schedule, whether partial or complete, from any cause whatsoever. Lessee shall promptly notify Lessor regarding any Event of Loss. Upon any Event of Loss, Lessee shall, at its option: (a) immediately repair the affected Hardware so that it is in good condition and working order, (b) replace the affected Hardware with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value for such affected Hardware unit, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Hardware for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of a Hardware unit for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of Lessee with respect to such Hardware unit (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA and each Schedule between Lessor and Lessee:

(a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a), Texas Government Code) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, this MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any Schedule between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MOLA or any Schedule between Lessor and Lessee;
- (f) The use of the Assets is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MOLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided Lessee or Lessor with any legal or management advice regarding the MOLA or any Schedule executed pursuant thereto;
- (b) This MOLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MOLA;

- (d) The entering into and performance of the MOLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Hardware or Software pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MOLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract; and
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law.

22. Representations and Warranties of Lessor.

Lessor represents and warrants for the benefit of DIR and each Lessee:

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MOLA and each Schedule executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or any Schedule;
- (d) The entering into and performance of the MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and Schedules thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MOLA or any Schedule;
- (f) Lessor acknowledges that DIR and any Lessee that is a state agency, as government agencies, are subject to the Texas Public Information Act, and that DIR and Lessees that are state agencies will comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (b) Lessee's material breach of this MOLA, any Schedule, or any applicable software license agreement, which is not cured within thirty (30) days after written notice thereof from Lessor; (c) Lessee's filing of any proceedings commencing bankruptcy or the taking of other similar action by Lessee under any state insolvency or similar law, (d) the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (e) subjection of a substantial part of Lessee's property or any part of the Hardware to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (f) any representation or warranty made by Lessee in this MOLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Assets being or becoming untrue in any material respect.

24. Remedies.

- (a) Lessor's Remedies.
 - i. Upon the occurrence of an "Event of Default," Lessor may, in its sole discretion, do any one or more of the following:
 - A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate any or all Schedules executed by Lessor and the defaulting Lessee;
 - B. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule;
 - C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Schedule is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 ("Option to Extend; Surrender of Hardware and Software Assets") hereof;
 - D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of:
 - I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the

- Stipulated Loss Value of the Hardware at the end of the Schedule Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;
- II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and
- III. interest on (I) from the date of default at 1½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (II) from the date Lessor incurs such fees, costs or expenses.
- ii. Upon return or repossession of the Hardware, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Hardware, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Hardware, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Hardware shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Hardware shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Hardware, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
- iii. No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default by Lessee shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- iv. Neither DIR nor non-defaulting Lessees shall be deemed in default under the MOLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.
- (b) Lessee's Remedies. Anything herein to the contrary notwithstanding, Lessee shall have all rights provided under Tex. Bus. & Comm. Code § 2A.508 through § 2A.522, including without limitation, the right to cancel a Schedule and recover damages from Lessor in the event of nonperformance of or other default by Lessor hereunder.

(c) Each party agrees that any delay or failure by the other party to enforce that party's rights under this MOLA or a Schedule does not prevent that party from enforcing its rights at a later time.

25. Notices and Waivers.

- (a) All notices relating to this MOLA shall be delivered to DIR or Lessor as specified in Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MOLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.
- (b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and each Schedule, Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MOLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MOLA, any Schedule and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under any Schedule; and DIR and each Lessee leasing Hardware under the MOLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MOLA. Each Lessee leasing Assets through Schedules under this MOLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Lessor shall remain liable for performance under the MOLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) Lessee will not sell, assign, sublet, pledge or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except otherwise permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance (if Acceptance has taken place); (b) Opinion of Counsel; (c) Financial Statements; (d) incumbency certificate; and (e) other documents specified in the applicable Schedule as being reasonably required by Lessor.

28. Miscellaneous.

- (a) Prior to delivery of any Assets, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control. In such event, the obligation of Lessee to commence Rents for such Assets shall also be suspended.
- (b) Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Assets, other than as set forth in this MOLA, including the Contract, and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MOLA, including the Contract, and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee, order acknowledgement and other forms issued by Lessor, and the like. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MOLA and the Contract and that both contain the entire agreement between them. The terms and conditions of this MOLA may be amended only by written instrument executed by Lessor and DIR. The terms of a Schedule may only be amended in a writing signed by both Lessee and Lessor.

Attachment 1 to the Master Operating Lease Agreement Financial Disclosure Summary

Lease Rate Factor(s):	Response	Notes
Equipment Type A		
Equipment Type B		
Equipment Type C		
How is Daily Rental calculated?		
Is Daily Rental invoiced separately or rolled into monthly rental?	☐ Yes ☐ No ☐ N/A	
Is this a Step Lease?	☐ Yes ☐ No	
Does this lease include software?	☐ Yes ☐ No	
If yes, who owns the software?	☐ Agency ☐ Lessor	
Personal Property Tax	Response	Notes
Estimated PPT		
PPT Payment made by	☐ Agency ☐ Lessor on Agency behalf	
PPT calculation method	 □ Agency pays direct □ Lessor pays and passes invoice through □ Lessor estimates and includes □ Lessor sets PPT at disclosed rate 	
If PPT rate changes, how are charge backs or short falls handled?	 □ N/A - Agency pays direct □ N/A - Lessor pays/passes invoice through □ Lessor is responsible □ Lessee is invoiced for short fall 	
Equipment Schedule Details	Response	Notes
Can Agency make decisions at asset level (extend, purchase, return)?	☐ Asset level ☐ All and not less than all	
Does this ES auto extend?	☐ Yes ☐ No	
If Yes, how long?		
What is the cost of the Auto extension?		
What is the notice period?		

Are negotiated extensions FMV	□ Yes	
based?	□ No	
On FMV, can Agency select own	☐ Yes	
evaluator?	□ No	
Is asset and lease information	☐ Yes	
available online?	□ No	
End of Lease Details	Response	Notes
Where are the assets returned to?		
What is the return freight cost?		
Who pays the return freight cost?	☐ Agency ☐ Lessor	
	□ Yes	
Do I need to return original	□No	
packaging?	If yes, what is the cost if not	
F0-0-	returned?	
	☐ Yes	
Do I need to return original manuals and documentation?	□No	
	If yes, what is the cost if not	
	returned?	
Do I need to return software?	☐ Yes	
	□No	
	If yes, what is the cost if not	
	returned?	
	□ Yes	
Is there an FMV purchase cost	□ No	
cap?	If yes, what is the cost cap	
	percentage?	
What is the cost for a lost asset?		
What is the cost for missing		
equipment?		
What is the cost for data		
sanitization on assets with		
memory?		
What is the cost for data		
sanitization?		
What is the cost for on-site data		
destruction?		

Bid Package 10

MASTER LEASE AGREEMENT

1. Scope.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Supplementary Schedule ("Schedule"), which is a separate agreement executed from time to time by Lessor and Lessee and makes specific reference to this Master Lease Agreement ("MLA"). The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA and made subject to such terms and conditions as if a separate MLA were executed for each Schedule by the Lessee. Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within a Rider to the MLA or the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term "Equipment" shall refer to the Products and any related Services as allowed within said Contract number DIR-TSO-XXX, as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Equipment for its own use, DIR is not a party to any Schedule executed under this MLA and is not responsible for Rents, payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or the Lessor or both of them arising from the use of this MLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 of this MLA.

Any reference to "MLA" shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by DIR and Lessor.

As to conditions precedent to Lessor's obligation to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as the Schedule, the Acceptance Certificate, Opinion of Counsel, and any other documentation as may be required by the Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee's financial condition except as provided for within Section 7 of this MLA.

2. Term of MLA.

The term of this MLA shall commence on the last date of approval by DIR and Lessor of Amendment Number XXX (XX) and shall continue until (i) the obligations of Lessee under every Schedule are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises their termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

The term for each Schedule, executed in conjunction to this MLA, shall commence on the date of execution of an Acceptance Certificate by the Lessee or twenty (20) days after the delivery of the last piece of Equipment to the Lessee ("Commencement Date"), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 of this MLA.

4. Administration of MLA.

- (a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.
- (b) All leasing activities in conjunction to this MLA shall be treated as a "purchase sale" in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the Contract.
- (c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR- TSO-XXX on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.
- (d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

5. Rent Payments.

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MLA and any Schedule. All Rent Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to the Lessor. Any sum received by the Lessor later than ten (10) business days after its due date will bear interest from such due date at the rate of one-percent (1%) per month (or the maximum rate allowable by law, if less) until paid. Late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assignees, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal

property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

(a) This paragraph applies only to Lessees designated as state agencies defined in Section 2054.003, Texas Government Code, including institutions of higher education as defined in Texas Education Code, Section 61.003 and those state agencies utilizing a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be so terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

(b) This paragraph applies only to Lessees designated as local government entities.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds

are not appropriated for Lessee to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of the Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, the Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period first in effect at the commencement of the Schedule Term will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term.

8. Selection of Equipment.

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor agrees, to the extent they are assignable, to assign the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term. Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

9. Inspection and Acceptance.

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate, or (ii) written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of the tenth (10th) business day. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

10. Installation and Delivery; Use of Equipment; Repair and Maintenance.

- (a) All transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by the Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.
- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment.

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within Texas without notification to, or the consent of, Lessor. Provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

12. Ownership.

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

13. Purchase and Renewal Options; Location and Surrender of Equipment.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together will all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN. THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.
- (b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location,

unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs required to restore the Equipment to Return Condition. Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians, approved by Lessor and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. IF, UPON TERMINATION OR EXPIRATION OF THE SCHEDULE FOR ANY REASON, LESSEE FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR. Notwithstanding the foregoing, Lessor shall have the right, without notice or demand, to enter Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Equipment. As an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Texas, Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

14. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 23 of the MLA) has not occurred.

15. Warranties.

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer of the Equipment and shall not pursue any such claim against Lessor. Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

16. No Warranties.

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED

DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEROF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATESOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

17. Indemnification.

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee shall indemnify, protect, save and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.
- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR individually and collectively assume all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR agree to indemnify, save and hold harmless Lessor from any and all such claims and all expenses incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.
- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment. Lessee further agrees that it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment.

18. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected Equipment, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

19. Insurance.

At its expense, Lessee shall keep the Equipment insured against all risks of loss and damage with companies acceptable to Lessor for an amount equal to the original cost of the Equipment, with Lessor or its assign(s) named as a loss payee. Lessee shall also maintain comprehensive general liability insurance, with Lessor or its assign(s) named as an additional insured. Lessee shall be liable for any loss not covered by insurance. All said insurance shall be in form and amount satisfactory to Lessor. Lessee shall pay the premiums therefor and deliver to Lessor or its assign(s) the certificates of insurance or duplicates thereof or other evidence satisfactory to Lessor or its assign(s) of such insurance coverage. Evidence of such insurance coverage shall be furnished no later than the Schedule Commencement Date of each Schedule and from time to time as Lessor or its assign(s) may request. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any said insurance policy. Lessee may self-insure with respect to the required coverage.

Further, Lessees that are defined as state agencies in accordance with Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, may self-insure their obligations in this section.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MLA or any Schedule between Lessor and Lessee;
- (f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided the Lessee or the Lessor with any legal or management advice regarding the MLA or any Schedule executed pursuant thereto;
- (b) This MLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding Agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MLA;
- (d) The entering into and performance of the MLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Equipment pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract;
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law; and
- (h) DIR is a government agency subject to the Texas Public Information Act. Lessor acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney Generals' office concerning this Act.

22. Representations and Warranties of Lessor.

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MLA and each Schedule executed in conjunction to this MLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;

- (d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound; and
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA or any Schedule.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (c) failure by Lessee to perform or observe any other term, covenant or condition of this MLA, any Schedule, or any applicable software license agreement, which is not cured within ten (10) days after notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any representation or warranty made by Lessee in this MLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being or becoming untrue in any material respect.

24. Remedies.

(a) Upon the occurrence of an "Event of Default" and at any time thereafter Lessor may, in its sole discretion, do any one or more of the following: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate any or all Schedules executed by Lessor and the defaulting Lessee; (ii) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages, including all of Lessor's economic loss for the breach thereof; (iii) whether or not the Schedule is terminated, upon notice to Lessee, take possession of the Equipment wherever located, without demand, liability, court order or other process of law, and for such purposes Lessee, to the extent authorized by Texas law, hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Equipment is located or cause Lessee, and Lessee hereby agrees, to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Equipment is not returned to or repossessed by Lessor, the present value of the estimated in-place fair market value of the Equipment at the end of the Schedule Term as determined by Lessor, each discounted at a rate equal to the rate used by Lessor for business

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opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

- (b) Upon return or repossession of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Equipment shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at the Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
- (c) No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- (d) Neither DIR nor non-defaulting Lessees shall be deemed in default under the MLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

25. Notices and Waivers.

All notices relating to this MLA shall be delivered to DIR or the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original

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signature document for all purposes. This MLA and those Schedules in conjunction hereof are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Default shall not be a waiver of any other or subsequent Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor. No failure on the part of Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and DIR and each Lessee leasing Equipment under the MLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MLA. Each Lessee leasing Equipment through Schedules under this MLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Each Lessee leasing Equipment through Schedules under this MLA and DIR acknowledge that the assigns do not assume Lessor's obligations hereunder and agree to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which DIR or the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE'S CONSENT. LESSEES THAT ARE STATE AGENCIES, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AGREE THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR'S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER. Without the prior written consent of Lessor,

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DIR shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance; (b) Opinion of Counsel; (c) proof of self-insurance acceptable to Lessor; (d) Financial Statements; (e) Incumbency Certificate; and (f) Other documents as reasonably required by Lessor.

28. Lessee's Waivers.

To the extent permitted by applicable law, Lessee hereby waives the following rights and remedies conferred upon Lessee by the Uniform Commercial Code: to (i) cancel any Schedule under the MLA; (ii) repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time.

29. Security Interest and UCC Filings.

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code ("UCC"). Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

30. Miscellaneous.

(a) Applicable Law and Venue. The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. In the event of a dispute between the parties, exclusive venue for any legal action shall be in the state court where

Lessee has its principal office or where the Equipment is located, with the following exception: if a Lessee is designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, then exclusive venue shall be in the state district court of Travis County, Texas.

- (b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an "Original" for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a "Copy". NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY "COPY" OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE "ORIGINAL" COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.
- (c) Suspension of Obligations of Lessor. Prior to delivery of any Equipment, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control.
- (d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and Contract Number DIR-TSO-XXX and that both contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.
- (f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.
- (g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.
- (h) Lessor Certifications. Lessor certifies that:
 - (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this MLA and/or any Schedules executed hereunder;

- it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision making authority,
- (vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;
- (vii) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;
- (viii) Lessor and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration;
- (ix) as of the effective date of the MLA, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- to the extent applicable to this scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xi) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (xii) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All

- Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xiii) Lessor agrees that any payments due under this MLA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiv) Lessor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; if Section 669.003 applies, Vendor will complete the following information: Name of Former Executive; Name of State Agency; Position with Vendor and Date of Employment with Vendor.
- (xv) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (xvi) Lessor represents and warrants that the Lessee's payment to Lessor and Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
- (xvii)Under Section 2155.006, Government Code, Lessor certifies that the individual or business entity in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate. In addition, Lessor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the MLA; and (xviii) Lessor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

During the term of the MLA, Lessor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Lessor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties

- (i) Dispute Resolution. The following paragraph applies only to Lessees designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
 - Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and rules promulgated

there under shall be used by the Lessee and Lessor to attempt to resolve any claim for breach of agreement made by Lessor.

(j) Sovereign Immunity. Nothing herein shall be construed to waive the State's sovereign immunity.

(k) 31. Amendments.

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and DIR.

Data Storage, Data Communications & Networking Equipment and Related Services Request for Offer DIR-TSO-TMP-422

Vendor Pre-Bid Conference March 26, 2018 2:00 PM(CT)



Appendix 68 – Vendor Pre-bid Conference Presentation v. Dec. 2017

Introduction



Delia Arellano, DIR

Contract Manager

Chief Procurement Office

Lynn Sanchez, DIR

HUB Coordinator

Chief Procurement Office

Phyllis Benitez, DIR

Contract Manager

Chief Procurement Office

Kelly Parker, DIR

Director, Cooperative Contracts

Chief Procurement Office

Jeff Kline, DIR

Program Director

Statewide EIR Accessibility

Beth Perry, DIR

Manager

IT Application Development

Agenda



- **General Information**
- BidStamp Vendor Information System Portal (VIS) Overview
- Request for Offer (RFO)
 RFO Overview

 - RFO Scope RFO Schedule
 - **RFO Contents**
 - Mandatory Submissions Evaluation Criteria
- HUB Information Lynn Sanchez
- Electronic and Information Resources (EIR) Jeff Kline
- Break
- Questions
- Conference Closing

General Information



- Reference the RFO page number and Section number when submitting questions.
- Webinar participants may submit questions electronically at anytime during the webinar, please use the question tab.
- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Check the ESBD often for updates
- All questions regarding this RFO must be submitted in writing through the BidStamp Vendor Information System Portal (VIS) by 2:00 P.M. (CT), April 4, 2018.

General Information (continued)



Disqualification of Offers

- Failure to sign Vendor Information Form (Exhibit A)
- Failure to complete Financial Information (DUNS Number)
- Failure to complete a Historically Underutilized Business (HUB) Subcontracting Plan (HSP)
- Failure to submit on or before due date and time
- Contact with DIR employees regarding this RFO other than designated contacts

Delivery of Offers

 Any Vendor responding to this RFO must submit their response through the BidStamp VIS.

General Information (continued)



Vendors and all vendor representatives shall not attempt to discuss the contents of this RFO with any employees or representatives of DIR other than designated contacts. Failure to observe this restriction may result in disqualification of any related Response.

General Information (continued)



Contacts for inquiries regarding this RFO

Carrie Cooper – <u>carrie.cooper@dir.texas.gov</u>

Contacts for the following related topics:

Vendor Information Systems (VIS) Portal - BidStamp: Kelly Parker - <u>kelly.parker@dir.texas.gov</u> or Joan Scott - <u>joan.scott@dir.texas.gov</u>

HUB Subcontracting Plan: Lynn Sanchez — <u>dir.hub@dir.texas.gov</u>

Statewide Electronic and Information Resources (EIR) Accessibility: Jeff Kline – <u>jeff.kline@dir.texas.gov</u>

DIR Cooperative Contracts



- DIR combines the buying power of DIR Customers to obtain volume-discounted pricing for IT products and services.
- Customer purchases through the Cooperative Contracts Program resulted approximately \$6 billion for fiscal years FY2015 – FY2017. See Bid Package 1, Section 1.2.5, Historical Sales.
- The volume of Data Storage, Data Communications & Networking Equipment and Related Services sold through the contracts for Fiscal Year 2014 to Fiscal Year 2017 was approximately \$293,178,430. See Bide Package 1, Section 1.2.6 Current Contracts

Threshold and SOW Requirements



Beginning September 1, 2017, the Threshold Requirements for IT Commodities (Hardware, Software and Services) are as follows:

Contract Value	Number of DIR Vendors
\$50,000 or less	May award directly to DIR Vendor of choice
More than \$50,000 but not more than \$1 million	Three (or all DIR Vendors in a category with less than three vendors)
More than \$1 million but less than \$5 million	Six (or all DIR Vendors in a category with less than six vendors)
More than \$5,000,000	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts

State agencies procuring more than \$50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

Bid Submittal



- Any Vendor responding to this RFO must submit their response through the BidStamp Vendor Information System (VIS)
- Before users can access any of the BidStamp VIS portal functionality, they
 will be required to provide login credentials to access a new or existing
 account. Vendors will access the BidStamp VIS Portal via
 http://dircommunity.force.com/BidStamp and enter in their access
 credentials.
- If a Vendor does not yet have login credentials, Vendor must request one by clicking on "Are you a vendor and need to request an account?" button that is located on the login page.

BidStamp Vendor L	.ogin
Username	
Password	
	Login
Are you a vendor and need to request Forgot your password?	an account?

Bid Submittal

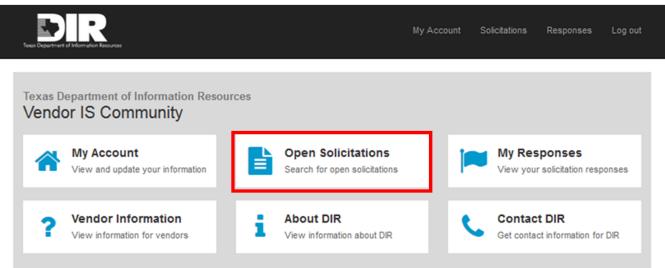


 Persons with disabilities who seek accommodation, under the Americans with Disabilities Act (ADA), in responding to this solicitation may contact DIR at the point of contact in section 4.1 of this solicitation. Please allow at least five business days for response.

Responding to a Solicitation



After Vendor account is enabled, Vendor will submit and manage RFO responses from the BidStamp VIS portal.



The Vendor BidStamp Guide and the presentation are posted on DIR's website on the Information For Vendors page.

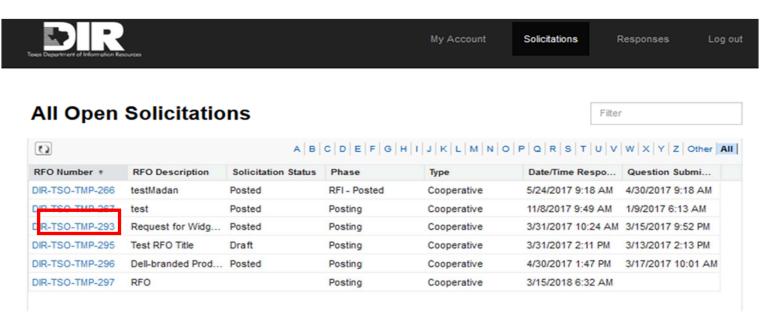
http://dir.texas.gov/View-Information-For-Vendors/Landing.aspx

Creating a New Response



To create a new response:

- 1. Log in to the VIS portal and select the "Open Solicitations" tile
- 2. Click on the "RFO Number" (DIR-TSO-TMP-422) of the solicitation you want to respond to
- 3. You will be navigated to the "RFO Number" detail page



Creating a New Response, cont.



Tessa Department of Information Resources			Му Ассо	unt Solicitations	Responses	Log out
RFO Number DIR-TSO-TMP-473	3				1	
RFO Number Detail		Respond To Solicitation Ask A Questio	Subscribe to Solicitation	View Solicitation Documents		
Actual Start Date Posting	5/15/2017		Vendor Conference Date	5/25/2017 2:00 PM		
Question Submission Deadline Date	5/31/2017 2:00 PM		RFO Answers to Questions Deadline Date	6/7/2017 5:00 PM		
Date/Time Responses Due	6/15/2018 2:00 PM		Actual Start Date Evaluation	6/16/2017		
New Fields						
Solicitation Status	Posted		Туре	Cooperative		
RFO Questions						
No records to display						

This page will display important deadlines for the solicitation and list any questions Vendor has submitted.

Buttons discussed on the next slide.

Creating a New Response, cont.

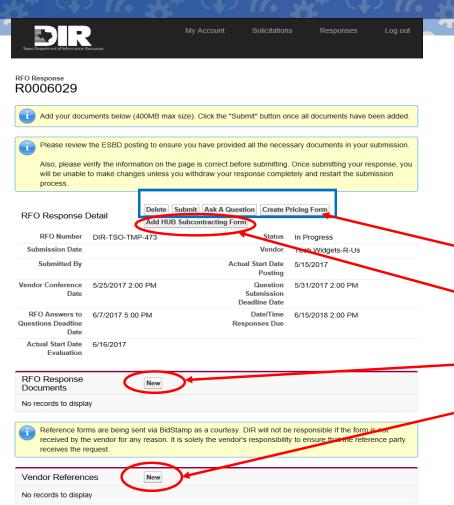


RFO Number Detail Button Description:

- Respond to a Solicitation (or View Response): Create a new response or view a response that is in-progress. If a response has already been created or started, this button will read as "View Response" and allow you to resume your progress on an existing RFO response.
- Ask A Question: Submit a question to be reviewed by a DIR resource. Questions can be submitted up until the "Question Submission Deadline date" indicated in the RFO document and on the detail page.
- **Subscribe to Solicitation:** Subscribe to a solicitation if you would like to receive addendum notifications. To subscribe to the solicitation, you must select the "Subscribe to Solicitation" button AND have enabled your contact to <u>"Receive Notifications"</u>.
- View Solicitation Documents: Navigate to the ESBD posting for a solicitation and view the solicitation's documents.

Respond to a Solicitation





"RFO Response Page" buttons and what it does:

- **Delete:** Delete all information that has been uploaded and the response record before the response has been submitted. **Note:** Once the response is submitted, Vendor must use the **Withdraw** button that will appear upon solicitation submission.
- **Submit:** Submits the response record and all associated information. *(reference Vendor Guide Section 5.7)*
- **Ask A Question:** Questions can be submitted up until the "Question Submission Deadline date" indicated in the RFO document and on the detail page. (reference Vendor Guide Section 5.6)
- **Create Pricing Form:** Create a pricing form to submit pricing information for your response (reference Vendor Guide Section 5.5)
- Add (or Edit) HUB Subcontracting Form: Complete an automated version of the HSP form. Note: Vendors must also print, sign, and upload the signed HSP. (reference Vendor Guide Section 5.4)
- New (RFO Response Documents): Upload required files indicated in the RFO posted on the ESBD (reference Vendor Guide Section 5.2)
- **New (Vendor References):** Submit a new reference's email address and opt to send the vendor a reference (reference Vendor Guide Section 5.3)

RFO Overview



- The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide Data Storage, Data Communications & Networking Equipment and Related Services to the State of Texas, acting by and through the Department of Information Resources (DIR).
- DIR may make multiple awards from this RFO.

RFO Contents



- Bid Package 1 RFO DIR-TSO-422 (contains Exhibits A, B, C, & D)
- Bid Package 2 Pricing List and Submittal Instructions
- Bid Package 3 DIR Sample Contract for Products and Services
- Bid Package 4 Standard Terms and Conditions for Product Contracts
- Bid Package 5 Voluntary Product Accessibility Template (VPAT)
- Bid Package 6 Policy Driven Adoption Assessment (PDAA)
- Bid Package 7 Vendor References
- Bid Package 8 Sample Engagements and Vendor Qualification

Bid Package 1



- Bid Package 1 RFO DIR-TSO-422
 - Introduction (Section 1)
 - Vendor Information System (VIS) Portal BidStamp (Section 2)
 - Scope (Section 3)
 - General Information (Section 4)
 - Submission requirements, etc. (Section 4.6)
 - Evaluation, Negotiations, and Award (Section 5)
 - Exhibit A, Vendor Information Form
 - Exhibit B, Vendor History and Experience
 - Exhibit C, Contract Marketing and Support Plan
 - Exhibit D Historically Underutilized Business (HUB) Subcontracting Plan (The HUB Subcontracting Plan Form is provided in the BidStamp VIS portal.)

RFO Scope



Section 3. Scope

DIR intends to contract with qualified Vendors to provide enter Data Storage, Data Communications & Networking Equipment and Related Services, including but not limited to:

Routers	Cabling
CSU/DSU	Firewalls
PBX's	Patch panels
Headsets	Wiring block
Phones	Patch cords
Remote access components	Network cable tools
Multiplexers	Fiber optic accessories; and
Transceivers	Telecommunication parts and supplies

RFO Scope, cont.



Data Storage Product may include but not limited to:

- Online data storage via the internet;
- Portable storage;
- Traditional local storage;
- Colocation Services; and
- Cloud Services as applicable to Data Storage only.

RFO Scope, cont.



- Cloud Services is excluded as a standalone service; however, <u>Cloud Services may be proposed as part of an overall data storage, or networking solution</u>. Customer's data must remain within the continental United states. Customer and Vendor may agree to an exception to this requirement. Cloud Services as applicable to Data Storage or Networking may include but not limited to:
 - Cloud Infrastructure as a Service (laaS). The capability to provide a consumer (DIR Customer) processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
 - Cloud Broker(age). A cloud broker is an entity that manages the use, performance and delivery of cloud services, and negotiates relationships between cloud providers and cloud consumers. A cloud broker acts as the intermediary between consumer and provider and will help consumers through the complexity of cloud service offerings and may also create value-added cloud services.

RFO Scope, cont.



Vendor Qualifications:

- Vendors are encouraged to bid any or all or any combination of the products or product categories listed above in their proposals.
- Any vendor responding to this solicitation must have a signed letter of authorization from Manufacturer/Publisher's products.

Term of Contract



Section 3.6.2 Contract Term and Automatic Renewal

The term of any Contract awarded from this RFO shall be **two (2) years** commencing on the last date of approval by DIR and Vendor.

NEW!

The contract will **renew automatically in one-year increments for three (3) additional years** under the same Terms and Conditions, unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

RFO Schedule



• Section 4.3.1 Anticipated Schedule:

Date/Time	Activity
	Publish RFO on Electronic State Business Daily
3/20/2018	
03/26/2018 2:00 PM (CT)	Optional Vendor Conference Webinar Only
04/04/2018 02:00 PM (CT)	Deadline for submitting questions
04/13/2018 5:00 PM (CT)	Estimated deadline for posting answers to questions on the ESBD
05/04/2018 2:00 PM (CT)	Deadline for DIR to receive Vendor references
05/04/2018 2:00 PM (CT)	Deadline for submitting Responses to RFO
05/08/2018 - until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

Bid Package 1 - Exhibits A, B, &C



Exhibit A, Vendor Information

• This form must be **filled out in its entirety** and **signed by an officer or agent empowered to contractually bind the Respondent.** Complete cancelled contract references if applicable.

Exhibit B, Vendor History and Experience

 Respondent must provide a detailed response to each question detailing the Vendor's history and experience in providing the products and services proposed.

Exhibit C, Contract Marketing and Support Plan

 Respondent must provide a plan that describes the Respondent/Vendor's ability and strategy for promoting and supporting the contract, if awarded.

Exhibit D - HUB Subcontracting Plan (Bid Package 1)

*The HSP form is automated in BidStamp Vendor Information System (VIS). Vendors will complete the form in BidStamp, print, sign, and upload the signed HSP in the VIS portal.



Bid Package 1, Exhibit D - HUB Subcontracting Plan



Exhibit D - HUB Subcontracting Plan (Bid Package 1)

- DIR encourages all respondents to seek Historically Underutilized Business (HUB) subcontractors and maximize HUB participation in their bids.
- Responses submitted without a current HUB Subcontracting Plan (HSP) provided in the RFO, will be disqualified per TAC Rule §20.285
- All respondents, HUBs and Non-HUBs, are required to submit a completed HSP
- The HSP form includes specific instructions for meeting the Good Faith Effort requirements
- Vendors must complete a new HUB Plan and a good faith effort for this procurement

Bid Package 1, Exhibit D - HUB Subcontracting Plan



The HUB Goal for this RFO is 21.1%

- METHOD A (Attachment A) If you are subcontracting and you are meeting or exceeding the HUB Goal for this RFO, you will complete Method A.
- Include all VID numbers for each vendor, all estimated dollar amounts and percentages for each vendor.

Bid Package 1, Exhibit D - HUB Subcontracting Plan



METHOD B (Attachment B) - If you are subcontracting, and are not going to meet the HUB Goal of 21.1% you will complete Method B.

- Provide written notification of subcontracting opportunity listed to at least three State of Texas certified HUBs
- **Provide written notification** of subcontracting opportunity to at least (2) minority or women's trade organization or development center
- Allow no less than seven (7) working days from their receipt of notice for HUBs to respond (keep delivery receipt emails).
- Note: Attach supporting documentation (letters, fax transmittals, email, etc.)
 demonstrating evidence of the good faith effort performed with RFO submittal

Bid Package 1, Exhibit D - HUB Subcontracting Plan



If not subcontracting, your response must contain a detailed explanation demonstrating HOW your company will fulfill the entire contract with its own resources

 Self-Performance Justification must be provided in the space provided in SECTION 3, do not reference sections in the RFO

Bid Package 1 – HUB Subcontracting Plan



You may contact DIR's HUB Department for assistance in completing your HUB Subcontracting Plan (HSP) up to **seven (7) working days** before the RFO submittal.

Lynn Sanchez or Theresa Williamson 512-463-9813 or 512-475-4638

Email: <u>lynn.Sanchez@dir.texas.gov</u> theresa.williamson@dir.texas.gov dir.hub@dir.texas.gov

Bid Package 2 - Pricing



- Vendors must submit pricing on DIR's Automated Pricing Form in the BidStamp VIS for products and related services.
- Bid Stamp Vendors will need to enter the following items:
 - Brand/Service
 - Product/Service Category or Subcategory
 - Product/Service Description
 - Service Category
 - DIR Customer Discount % off MSRP
 - Service Zone
 - Unit of Measure
- Vendors will complete Appendix 2 Spreadsheet and attached it to Bidstamp.

BID Package 2 Pricing



- Will be completed in accordance with RFO Bid Package 1, Section 3.3.1 Pricing Item 1 Discount Sheet and entered in BidStamp.
- Pricing Package 2 Price Spreadsheet Content.
 - TAB 1 Instructions
 - TAB 2 BidStamp pricing
 - TAB 3 Products Pricing
 - TAB 4 Volume Pricing
- Package 2 Price Sheet will be submitted in EXCEL spreadsheet format and will be attached to BidStamp.

Bid Package 2 Pricing



TAB 2 - BRAND BIDSTAMP PRICING

If Vendor is proposing multiple discounts for the same brand, the branded products must be listed separately with the associated discount or grouped with an associated discount. Vendor will calculate the average discount per brand in this Bid Package 2. The brand average will be entered in BidStamp per instructions in Bid Package 1 Section 3.1.1. For example: Brand ABC:

- ABC Product Software or Hardware, Site Licenses Customer Discount 15%
- ABC Product Software or Hardware, Volume Licenses-Customer Discount 25%
- Product Software or Hardware, All other products Customer Discount -10% (Average Discount 16.67% will be entered in BidStamp)

Brand product detail will be entered in Brand Product Detail tab and submitted in BidStamp VIS in EXCEL spreadsheet format

Discount range (e.g., 0% - 99%) is not allowed.

Bid Package 2 Pricing



TAB 3 - PRODUCTS DISCOUNT (Pricing sheet detail)

- The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP)
- Vendor will provide a MSRP price list of products being proposed
- Vendor shall provide a link to Manufacturer Suggested Retail Published Pricing List
- Product detail list Pricing information is not entered in the BidStamp VIS.

Discount range (e.g., 0% - 99%) is not allowed

For all Tabs above - Price to DIR Customer shall include all shipping and handling fees.

DO NOT CREATE TABS BY BRAND ALL ENTRIES WILL BE COMPLETED ON THE TABS PROVIDED IN THIS BID PACKAGE 2.

Bid Package 2 Pricing – Volume Pricing



- Volume Discounts: DIR encourages Vendors to offer VOLUME pricing for specific Products and/or Services.
- Aggregate Sales: If Vendor is proposing increased discounts based on total statewide aggregate contract sales, Vendor must list total contract dollar amount threshold, specific product and/or service or ALL, and discount percentage increase.
- Vendors offering Volume Discounts should use the Bid Package 2 excel spreadsheet format for all volume discounts.

Bid Package 2 Pricing - Volume Pricing



TAB 4 - VOLUME DISCOUNT SHEET- The discount being offered shall be based upon the Manufacturer's Suggested Retail Price (MSRP).

Volume Pricing information is not entered in the BidStamp VIS.

If Vendor is proposing Volume Discounts, the product must be listed on the Volume Discount Tab with the associated type or grouped with an associated discount. For example:

ABC Product, 1-5 Units - 10.00% - two decimals

ABC Product, 6-10 Units - 20.00% - two decimals

ABC Product, 10+ Units - 30.00% - two decimals

Bid Package 2 Pricing – Volume Pricing



TAB 4 - VOLUME DISCOUNT SHEET-Cont.

All Volume Discounts will be listed on the Volume Discount Tab and will be submitted in the EXCEL spreadsheet format. Which will be attached to BidStamp.

NOTES:

For all Tabs above - Price to DIR Customer shall include all shipping and handling fees.

DO NOT CREATE TABS BY BRAND ALL ENTRIES WILL BE COMPLETED ON THE TABS PROVIDED IN THIS BID PACKAGE 2.

Bid Packages 3 and 4



- Bid Package 3 Sample Contract for Products and Services
- Bid Package 4 Standard Terms and Conditions for Products and Related Services Contracts
- No exceptions may be taken to certain terms as indicated on the Standard Terms and Conditions
- Any exception must be listed in Bid Package, Exhibit A, Question 11.

Electronic and Information Resources (EIR) Accessibility Forms



Texas state agencies and institutions of higher education are required to procure, develop, and use EIR that is inclusive and accessible to people with disabilities.

This RFO includes the following accessibility related forms:

- 1. Voluntary Product Accessibility Templates (VPATs)
 - If response includes Commercial Off the Shelf (COTS) offerings
- 2. Vendor Accessibility Policy Assessment Form (PDAA)
 - Required for all vendors

Bid Package 5 - Voluntary Product Accessibility Templates (VPATs)



VPATs are

- Formal statements for commercial off the shelf (COTS) products and services documenting accessibility compliance to US Section 508 technical standards
 - utilize ITIC VPAT template form.
 - manufacturer-generated and <u>product / product family specific</u>
- Completed by individuals with relevant knowledge of the product accessibility.
- Based on accessibility testing results and supported by documentation (on request).
- Accurate; inaccurate claims of compliance could generate end user complaints under the Americans with Disabilities Act.

Bid Package 6 - Vendor Accessibility Policy AssessmentForm (PDAA)



Why is DIR requesting information on vendor accessibility policy?

- Texas agencies and institutions of higher education are required to procure or develop accessible
 offerings. Gaps in vendor internal governance systems and leadership commitment inhibit the
 ability to meet these standards for their products / services.
- Accessibility policy maturity provides insight into vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings
 - Results mapped to the Policy Driven Adoption for Accessibility (PDAA) Maturity Model
- Vendors can use the results as a roadmap for implementing their organization-wide IT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.

Note: Form (excel file) should be completed and returned in its original format

Bid Package 7 – Vendor Reference Questionnaire



Bid Package 7 - References

- The vendor must provide the vendor reference questionnaire directly to companies/government agencies as specified in Section 4.7.2 of the RFO.
- Instructions are included in Bid Package 7.
- DIR is not responsible for undeliverable e-mails or for non-responsive references.
- References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation.
- The Vendor may NOT submit the reference form to DIR.
- Forms submitted directly by the vendor to DIR will receive a score of zero.

Additional Information regarding EIR Accessibility and VPAT Forms



EIR Accessibility Website
 http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=36

PDAA Maturity Model

http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/PDAA%20Maturity% 20Matrix.pptx

Additional Information

http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39#Procurement

Jeff Kline
Program Director
Statewide Electronic and Information Resources (EIR)
Accessibility

Email: jeff.kline@dir.texas.gov

Bid Package 7 – Vendor Reference Questionnaire



VENDOR REFERENCES

Google Branded Products and Services
Request for Offer DIR-TSO-TMP-411

REFERENCE DEADLINE TO DIR: No later than 12/28/2017 02:00 PM (DIR) ence for this Texas De ment of In on Res din Vendor r sista in p has beer RF providir Request (RFO) t Su The ' spon cument for you to fil t and returr tly to follo ess: gusianded D@dir.te gov This port endor iforn on **Vendor Name** Google Branded Product/Services Category Prime Contractor Subcontractor(s) Dates of Performance: Starting Date **Ending Date**

Fatal Ect Cantract Dallar Amaun

Mandatory Submissions



RFO Section 4.7.1 – Mandatory Response Contents

RESPONDENT MUST PROVIDE THE ITEMS LISTED BELOW OR THE RESPONSE WILL BE REJECTED.

- Exhibit A Vendor Information (SIGNED)
- Exhibit A Canceled Contracts Attachments 1 and 2 (if applicable)
- Exhibit B Vendor History and Experience
- Exhibit C Contract Marketing and Support Plan
- Exhibit D HUB Subcontracting Plan (SIGNED)
- Pricing Bid Package 2 (Automated Pricing Form in BidStamp VIS)
- Policy Driven Adoption Assessment (PDAA) Bid Package 6
- Vendor's service or licensing agreement, etc.(if any)
- Sample Engagements and Vendor Qualifications (if proposing Cloud services) Bid Package 8
- Any addendum requirements check the ESBD for these; Vendors do not receive notice

Evaluation Criteria



RFO Section 5.1 – Evaluation of Responses

- Incomplete response package will be rejected
- The financial review and **HSP** review are on a pass/fail basis.
 - > Failure to provide a DUNs number will result in your response being disqualified.
- Only responses that receive the passing grade will proceed to the next evaluation phase.

RFO Section 5.2 – Evaluation Criteria

- Pricing 45%
- Vendor History and Experience and Vendor References 30%
- Vendor's Contract Marketing and Support Plan 25%

Questions



- Break (10 minutes)
- Reference the Section Number and page number with your submitted question.
- Questions answered today are unofficial until posted on the ESBD.
- Submit additional questions through BidStamp VIS.

BREAK 10 MINUTES



Reminder



- Questions answered today are unofficial until posted on the ESBD in the form of an Addendum.
- Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-422 on the Electronic State Business Daily, http://esbd.cpa.state.tx.us/
- It is the responsibility of Vendors to monitor the EBSD web site for addenda.

RFO Schedule



• Section 4.3.1 Anticipated Schedule:

Date/Time	Activity
	Publish RFO on Electronic State Business Daily
03/19/2018	
03/26/2018 2:00 PM (CT)	Optional Vendor Conference Webinar Only
04/04/2018 2:00 PM (CT)	Deadline for submitting questions
04/13/2018 5:00 PM (CT)	Estimated deadline for posting answers to questions on the ESBD
05/04/2018 2:00 PM (CT)	Deadline for DIR to receive Vendor references
05/04/2018 PM (CT)	Deadline for submitting Responses to RFO
05/08/2018 - until completed	Evaluation of responses, oral presentations (if requested) negotiation and contract execution

Conference Closing



• All questions, inquiries must be directed to <u>Carrie Cooper</u>

Carrie Cooper

Phone: 512-936-2353

Fax: 512-936-6896

Email: carrie.cooper@dir.texas.gov

Thank you for attending today's webinar!

Data Storage, Data Communications & Networking Equipment and Related Services Vendor Conference Sign-in Sheet March 26, 2018 / 2:00 P.M. (CT)

REPRESENTATIVE	COMPANY NAME	E-MAIL ADDRESS	HUB STATUS
Tom Grandberry	Hitachi Vantara	Tom.grandberry@hds.com	No
Chuck Davenport	Forerunner	Chuck.davenport@frtinc.com	N
Lane Coffey	Vion Corp	Lane.coffey@vion.com	
Ron Roberts	Hitachi Vantara	Ronald.roberts@hitachvantara.com	No
Brian Ballinger	Hitachi Vantara	Brian.ballinger@hitachivantara.com	No
Mark Crain	CSI Leasing	Mark.crain@csileasing.com	No
Jayson Leblanc	Austin Structured Cabling	jleblanc@austinstructuredcabling.com	N
AJ Horst	Vion Corp	ahorst@vion.com	
James Riley	Vion Corp.	James.riley@vion.com	
Craig Wall	Layer 3 Communications	cwall@layer2com.com	
Webinar Dominic Agostino	Red River Technology	dominic.agostino@redriver.com	No
Webinar Tommy Beckham	Frontier Communications	george.beckham@ftr.com	No

Data Storage, Data Communications & Networking Equipment and Related Services Vendor Conference Sign-in Sheet March 26, 2018 / 2:00 P.M. (CT)

REPRESENTATIVE	COMPANY NAME	E-MAIL ADDRESS	HUB STATUS	
Webinar Roxanne Bieniek	Juniper Networks (US), Inc.	rbieniek@juniper.net	No	
Webinar Brenda Booth	Champion ONE	Bbooth@championone.com	No	
Webinar Rick Butcher	Sunrise IT Solutions Group	rbutcher@sunriseitsg.com	No	
Webinar Dan Contreras	TX One Source	dan.contreras@txonesource.com	No	
Webinar Marcus Fedeli	Red River	marcus.fedeli@redriver.com	No	
Webinar Neil Ferguson	DataVox	neil@datavox.net	No	
Webinar Kyle Fuller	JTS	kyle.fuller@jts.net	No	
Webinar ANDY GILLIAM	Juniper Networks	AGILLIAM@JUNIPER.NET	No	
Webinar Linda Garza	VTX1 Companies	linda.garza@vtx1.net	No	
Webinar Wendy Goodman	NetApp, Inc.	wendy.goodman@netapp.com	No	
Webinar Lainey Gordon	NEC Corporation of America	lainey.gordon@necam.com	No	
Webinar Zachary Gordon	Carahsoft Technology Corporation	zachary.gordon@carahsoft.com	No	

Data Storage, Data Communications & Networking Equipment and Related Services Vendor Conference Sign-in Sheet March 26, 2018 / 2:00 P.M. (CT)

REPRESENTATIVE	COMPANY NAME	E-MAIL ADDRESS	HUB STATUS
Webinar	Black Box		
Jeff Kelley		jeff.kelley@blackbox.com	No
Webinar	NEC Corporation of America		
Barb Kiernan		barb.kiernan@necam.com	No
Webinar	BBNS		
Christy Kollar		christy.kollar@blackbox.com	No
Webinar	Red River		
John Loughlin		john.loughlin@redriver.com	No
Webinar	ESEI		
Robert Martinez		ramartinez@esei.com	Yes
Webinar	Red River		
Shane Meyer		shane.meyer@redriver.com	No
Webinar	ViON Corporation		
Frank Murray		fmurray@vion.com	Not Sure
Webinar	SHI Government Solutions		
Victoria Pubylski		Victoria_Pubylski@shi.com	Yes
Webinar	Western Towers		
Tony Ramon		tony.ramon@westerntowers.com	No
Webinar	Long View Systems	mark.remington@lvs1.com	
Mark Remington			No
Webinar	ESEI	jarico@esei.com	
J. Antonio Rico			Yes
Webinar	NetApp	tom.rigamonti@netapp.com	
Tom Rigamonti			No

Data Storage, Data Communications & Networking Equipment and Related Services Vendor Conference Sign-in Sheet March 26, 2018 / 2:00 P.M. (CT)

REPRESENTATIVE	COMPANY NAME	E-MAIL ADDRESS	HUB STATUS
Webinar	Mark III Systems	edgar.romero@markiiisys.com	
Edgar Romero			No
Webinar	Sirius Computer Solutions	jeff.rusk@siriuscom.com	
Jeff Rusk			No
Webinar	Red River Computer Co., Inc.	noelle.rzasa@redriver.com	
Noelle Rzasa			No
Webinar	NEC Corporation of America	John.Shroeder@necam.com	
John Shroeder			No
Webinar	DLT Solutions	mitchell.soni@dlt.com	
Mitchell Soni			No
Webinar	DataVox Inc.	marau@datavox.net	
Mara Umpierre			No
Webinar	NetApp	billwhelpley@yahoo.com	
WILLIAM WHELPLEY			No
Webinar	NEC Corporation of America	jim.watson@necam.com	
Jim Watson			No
Webinar	Logicalis, Inc.	john.czapko@us.logicalis.com	
John Czapko			No
Webinar	Forerunner Technologies	chuck.davenport@frtinc.com	
Chuck Davenport			No
Webinar	ViON	ahorst@vion.com	
Albert Horst			Not Sure

Vendor

Additional Terms and Conditions under Texas DIR-TSO-4299

between

Waypoint Business Solutions, LLC ("Vendor") 118 Vintage Park Blvd, W414 Houston, Texas 77070 and New Braunfels Utilities ("Customer" or "NBU") 263 Main Plaza

New Braunfels, Texas 78130

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Vendor and Customer agree as follows. Effective as of the date of the last signature below (the "Effective Date"), this Texas Department of Information Resources ("DIR") Contract DIR-TSO-4299 ("DIR Contract") for cooperative purchases for specific services from Waypoint Business Solutions, LLC., is incorporated by reference into and made part of these Additional Terms and Conditions (the "Agreement"). The Agreement will govern the purchases and orders and each statement of work (SOW) that are provided to NBU from Vendor that are made during the term of DIR Contract with Vendor for the purchase of a quantity of four (4) VxRail Servers and a quantity of one (1) Controller DD6400. The Customer is an eligible purchaser of the offerings under the DIR Contract, which is publicly available on the DIR website at:

https://dir.texas.gov/contracts/dir-tso-4299

This Agreement shall become effective on the Effective Date and shall remain in effect for a term of one (1) year. The Vendor shall be paid in accordance with the rates set forth in the attached Quote #AAQ17629 dated October 13, 2023, a lump-sum amount of \$334,861.00 and Quote #AAQ17631 dated August 28, 2023, a lump-sum amount of \$257,679.00 for the contract term. Cumulative purchases under this Contract shall not exceed \$592,540.00.

Per the DIR Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the DIR Contract. Within 5 business days of the execution of this Agreement and upon future request from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

In the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a cybersecurity event or breach, the Vendor shall notify NBU immediately. Before NBU will allow Vendor access to the NBU network after a cybersecurity event or breach, Vendor shall provide NBU with: (1) an audit of the systems compromised to be completed by an independent firm unaffiliated with Vendor and (2) evidence that the Vendor's system is no longer a threat to the NBU network.

This Agreement and all of the rights and obligations of the parties shall be governed by and enforced under the laws of the State of Texas without regard to its conflict of laws principles and the United States, as applicable. The exclusive venue for litigation arising from or relating to this Agreement shall be in a court of competent jurisdiction in Comal County, Texas. The parties agree to communicate and cooperate to resolve any concerns prior to filing litigation. Any mediation will be conducted by a mediator selected by

both parties, and mediation shall be located in New Braunfels, Texas.

NBU and Vendor agree to reference the applicable current DIR Contract for quotations, purchase orders, and SOWs that are for offerings available from Vendor under the DIR Contract. The parties also agree to cooperate to resolve any administrative issues for proper processing of orders and billing related to this Agreement. This Agreement is entered into on behalf of the parties by their below authorized representatives:

Vendor: Waypoint Business Solutions, LLC
Signature:
Name: Paul Neyman
Position: President
Date: November 7th, 2023

Customer: New Braunfels Utilities	
Signature:	
Name: Ryan Kelso	
Position: Interim CEO	
Date:	

QUO Item 22.

Number AAAQ17629

Date Oct 13, 2023

118 Vintage Park Blvd, W414, Houston, TX 77070 Phone: 832-479-8540

Bill To

USA

New Braunfels Utilities

Bill Ryan 263 Main Plaza New Braunfels, TX 78130

Phone 830-629-8400

Email billryan@nbutexas.com

Account Manager



Becky Reinis 469-964-6283 breinis@waypointsolutions.com

Ship To

New Braunfels Utilities

Bill Ryan 263 Main Plaza New Braunfels, TX 78130 USA

Phone 830-629-8400

Email billryan@nbutexas.com

Contract

DIR-Dell EMC DIR-TSO-4299

Notes:

Line	Qty	Description	Unit Price	Ext. Price
1	4	VxRail P670F nodes 2.5 Chassis with up to 24 HDDs (SAS/SATA/NVMe) VXRAIL 2U BEZEL V2	\$83,715.25	\$334,861.00
		Intel Xeon Gold 6348 2.6G, 28C/56T, 11.2GT/s, 42M Cache, Turbo, HT (235W) DDR4-3200		
		Intel Xeon Gold 6348 2.6G, 28C/56T, 11.2GT/s, 42M Cache, Turbo, HT (235W) DDR4-3200		
		Additional Processor Selected 64GB RDIMM 3200MT/S DUAL RANK 16GB - QTY. 16/ea.		
		800GB SSD SAS ISE WRITE INTENSIVE 12GBPS 512E 2.5IN AG - QTY. 3/ea.		
		3.84TB SSD SAS RI 24Gbps 512e 2.5in Hot-Plug 1DWPD , AG Drive - QTY. 12/ea.		
		BROADCOM 57414 DUAL PORT 10/25GBE SFP28 OCP NIC 3 BROADCOM 57414 2PORT 10/25GBE SFP28 ADAP PCIE LOW PROFILE V2		
		TRUSTED PLATFORM MODULE 2.0 V3 READYRAILS SLIDING RAILS		
		CABLE MANAGEMENT ARM 2U DUAL HOT-PLUG REDUNDANT PWR UPL 1+1 1100W MIXED MODE		
		TITANIUM C13 TO C14 PDU STYLE 12 AMP 6.5 FEET 2M POWER CORD NORTH		
		AMERICA - QTY. 2/ea. DELL NETCABLE SFP28 TO SFP28 25GBE PASSIVE COPPER TWINAX		
		DAC 3M - QTY. 4/ea. VxRail VMware, vSAN Enterprise, 5 Years - QTY. 2/ea.		
		VxRail HCI System Software, E - QTY. 2/ea. VxRail HCI System Software, Capacity Drive, 3.84TB - QTY. 12/ea.		
		VXRAIL HCI SYSTEM SW MEM 64GB - QTY. 16/ea. 4x2.5 Rear Storage		

PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - WE SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR WITH REGARD TO ANY LICENSED PRODUCTS. WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS, NOR FOR INCIDENTIAL OR CONSEQUENTIAL MERCHANTABILITY OR FITNESS OF PURPOSE, DAMAGES RELATED TO THIS AGREEEMENT. MINIMUM 15% RESTOCKING FEE WITH ORIGINAL PACKAGING.

1075

ProSupport Mission Critical 4-Hour 7X24 Onsite Service with Emergency Dispatch 3 Years
ProSupport Mission Critical 7x24 Technical Support and Assistance 3 Years
ProSupport Mission Critical, vSAN, Enterprise, 1 Processor, 3 Years - QTY. 2/ea.
VxRail P670F, Riser Config 5, 2A+4B, 2x8FH, 2x16LP
VxRail P670F Branding

Heatsink for 2 CPU configuration (CPU greater than or equal to 165W) C43, No RAID
DELL HBA355I CTLR FRONT
Front PERC Mechanical Parts, for 2.5 x24 SAS/SATA Chassis"
BOSS-S2 CTLR CARD + W/ 2 M.2 480GB RAID 1
BOSS Cables and Bracket for R750 (4x2.5 Rear)"
IDRAC9 ENT 15G
iDRAC Group Manager, Disabled
iDRAC,Legacy Password
DHCP with Zero Touch Configuration

R750 Motherboard with Broadcom 5720 Dual Port 1Gb On-Board LOM

 SubTotal
 \$334,861.00

 Tax
 \$0.00

 Shipping
 \$0.00

 Total
 \$334,861.00

Please contact me if I can be of further assistance.

VERY HIGH PERFORMANCE FAN X6

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2 of 2

1076



Item 22.

Number AAAQ17631

Date Aug 28, 2023

Bill To

New Braunfels Utilities

Bill Ryan

263 Main Plaza

Phone: 832-479-8540

New Braunfels, TX 78130

USA

Phone 830-629-8400

Email billryan@nbutexas.com

Account Manager



Becky Reinis 469-964-6283 breinis@waypointsolutions.com Ship To

New Braunfels Utilities

Bill Ryan

263 Main Plaza

New Braunfels, TX 78130

USA

Phone 830-629-8400

Email billryan@nbutexas.com

Contract

DIR-Dell EMC

DIR-TSO-4299

Notes:

Line **Description Unit Price** Ext. Price Qty 1 CONTROLLER DD6400 NFS CIFS \$257,679.00 \$257,679.00 1 SYSTEM DD6400 PSNT **Dell Hardware Limited Warranty** ProSupport Next Business Day Onsite Service After Problem Diagnosis 3 Years ProSupport 7x24 Technical Support and Assistance 3 Years DD OS 7.7X=IA DD 10GBASE-T IO MODULE 4PORT NDC INTEL DD6400 1.92TB Internal Cache SSD DD6400 Field Install Kit LICENSE BASE DD OE=IA 3 Years ProSupport Next Business Day Operating Env Sftwr Spt-Maint DD6400 Capacity License Bundle 1TBu=CC - QTY. 128/ea. 3 Years ProSupport Next Business Day Capacity Bundle 1TB Raw Sftwr Spt-Maint- QTY. 128/ea. 3 Years ProSupport Next Business Day Capacity Bundle 1TB Raw Sftwr Spt-Contract DD6400 Cloud Tier 1TB =CC- QTY. 344/ea 3 Years ProSupport Next Business Day DD Cloud Tier Sftwr Spt-Maint-

> Prodeploy Plus for PowerProtect Data Domain 6XXX 9XXX Deployment Verification ProDeploy Additional Deployment Time: 4 Hour Remote Data Protection

ProDeploy Plus No Charge Training 500

Technical Resource

QTY. 344/ea

Spt-Contract

ProDeploy Plus Add On PowerProtect App Direct Microsoft Deploy Requires ProDeploy Plus

3 Years ProSupport Next Business Day DD Cloud Tier Sftwr

Prodeploy Plus for PowerProtect Data Domain 6XXX 9XXX

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1077

Line Qty Description Unit Price Ext.

ProDeploy Plus No Charge Training 100
ProDeploy Plus Dell EMC Data Domain Cloud Tier

ProDeploy Plus No Charge Training 100
ProDeploy Plus Dell EMC Data Domain Cloud Tier
ProDeploy Plus Dell EMC Data Domain Cloud Tier Deployment
Verification

ES40 SHELF 12G 15X8TB SAS FIELD DD6400 - QTY 4

Dell Hardware Limited Warranty- QTY 4

ProSupport Next Business Day Onsite Service After Problem Diagnosis

3 Years- QTY 4

ProSupport 7X24 Technical Support and Assistance 3 Years- QTY 4

DD 3M SAS HD FLEX- QTY 4

Prodeploy Plus for FSXX ESXX- QTY 4

Prodeploy Plus for FSXX ESXX Deployment Verification- QTY 4

Dell EMC PowerProtect Data Manager Essentials

Dell EMC PowerProtect Data Manager Essentials=IA - QTY. 49

3 Years ProSupport Next Business Day PowerProtect Data Mgr

Essentials per Socket Sftwr Spt-Maint - QTY. 49

3 Years ProSupport NextBusinessDay PowerProtect Data Mgr Essentials

per Socket SftwrSpt-Contract

PowerProtect Storage Direct DD vD=IA

PowerProtect Cyber Recovery=IC

vRealize=IA

Data Protection Advisor=CA - QTY. 49

Data Protection Central=CA - QTY. 49

PowerProtect Oracle RMAN Agent=CA - QTY. 49

PowerProtect Microsoft Agent=CA - QTY. 49

PowerProtect Database Agent=CA - QTY. 49

EMC Granular Recovery Microsoft=CA - QTY. 49

PowerProtect Storage Direct for PMAX=CA - QTY. 49

vProtect=CA - QTY. 49

PowerProtect Storage Direct for XIO=CA - QTY. 49

Cloud Disaster Recovery=CC - QTY. 49

PowerProtect Storage Direct for VMAX=CA - QTY. 49

RecoverPoint for VMs=IA - QTY. 49

Cloud Snapshot Manager SaaS=IB - QTY. 490

PowerProtect DD Virtual Edition=CA - QTY. 49

Dell EMC Cloud Tier=CA - QTY. 49

ProDeploy Plus No Charge Training 600

PRODEPLOY PLUS FOR POWERPROTECT DATA MANAGER ESSENTIALS

ProDeploy Additional Deployment Time: 4 Hour Remote Data Protection

Technical Resource

ProDeploy Plus No Charge Training 100

ProDeploy Plus Dell EMC Data Domain Cloud Tier

ProDeploy Plus Dell EMC Data Domain Cloud Tier Deployment

Verification

 SubTotal
 \$257,679.00

 Tax
 \$0.00

 Shipping
 \$0.00

 Total
 \$257,679.00

Please contact me if I can be of further assistance.

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Meeting Date: December 14, 2023 Agenda Type: Consent Items for Action

From: Jeffrey Jones Reviewed by: Greg Brown

Information Technology

Manager

Submitted by: Greg Brown **Approved by:** Ryan Kelso

Chief Technology Officer Interim Chief Executive Officer

RECOMMENDED ACTION: Authorize Interim CEO or His Designee to Negotiate and Execute a

Cooperative Contract with SHI International Corp. for the Renewal of Microsoft EA Licensing to Maintain Critical Software Usage for

Chief Technology Officer

NBU Staff

BACKGROUND

New Braunfels Utilities ("NBU") is currently under contract with SHI International Corp. ("SHI") for a Microsoft EA licensing ("the Software"). The contract enables NBU to utilize the Microsoft Office suite on all desktops, laptops, and servers. The software is critical in nature for daily taskings, tracking, and communication spreading across the entire company. The current contract, in place since June 2020, was for one (1) year with two (2) automatic renewals. The contract needs to be renewed for continued use of new operating systems, which will aid evolvement in technology and security standards. The DIR TSO-4092 with SHI will continue to provide NBU with software, licensing, and support with Microsoft.

NBU's selection of SHI to enter into this contract through the Texas Department of Information Resources DIR TSO-4092 satisfies the bidding requirements under Texas law.

NBU staff request that the Board of Trustees approve the contract renewal with SHI for continued software Microsoft Office utilization.

This item is being presented to the Board because the total amount of the contract exceeds \$250,000.

FINANCIAL IMPACT

The total amount of the contract renewal is \$598,842.36 over a three (3) year period. Each year NBU will pay \$199,614.12 to satisfy the terms of the Contract. This item is budgeted under our FY24 Operation and Maintenance Budget.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Financial Excellence

EXHIBITS

- 1. DIR-TSO-4092 SHI Contract
- 2. DIR-TSO-4092 RFO
- 3. Microsoft Agreement Detail
- 4. SHI Quote

Vendor	Contract No.
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STATE OF TEXAS DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

SHI Government Solutions, Inc.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and SHI Government Solutions, Inc. (hereinafter "Vendor"), with its principal place of business at 1301 South MoPac ExpresswaySte. 375 Austin, TX 78746.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-404, on 6/08/2017, for Value Added Software Resellers. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-404 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-404, including all addenda; and Exhibit 2, DIR-TSO-TMP-404, including all addenda; Exhibit 3, Eligible Customer Exceptions; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 3, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, the contract will renew automatically in two year increments for two additional years, for a total of six years (6), under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

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3. Product and Service Offerings

A. Products

Products available under this Contract are limited to *Microsoft Products* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to *Software services*, plus related technical *services* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

- **A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00
- **B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701

Phone: (512) 475-1647 Facsimile: (512) 475-4759

Email: kelly.parker@dir.texas.gov

Vendor	Contract No.	
vendor	Contract No.	

If sent to the Vendor:
Victoria Pubylski
SHI Government Solutions, Inc.
1301 South Mo-Pac Expressway, Suite 375

Austin, Texas 78746 Phone: (512) 582-6724 Fax: (512) 732-0232

Email: Victoria Pubylski@shi.com

7. Software License Agreements

A. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

B. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Vendor Shrink/Click Wrap License Agreements, Vendor Service Agreements or linked or supplemental Vendor documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor Contract No.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer. The foregoing requirements do not apply to contracts between Customer and a software publisher.

8. Eligible Customers

Vendor is authorized to sell awarded products and related services to all eligible DIR customers, excluding Texas state agencies. Exceptions to this provision are noted in Exhibit 3, Eligible Customer Exceptions. Appendix A, Standard Terms and Conditions for Product and Related Services Contracts, Section 3, Definitions Customer is hereby restated in its entirety and replaced as follows:

- A. Customer any unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:
 - 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
 - 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
 - 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
 - 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
 - 5) A local workforce development board created under Section 2308.253;
 - 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;

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- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

9. Change of Channel Partner

For all agreements, enrollments and tenant enrollments associated with DIR's Data Center Services (DCS) program, and any other Texas state agency, the authorized Reseller and Channel Partner transition to a new value-added reseller will be effective on the date stated in the Change of Channel Partner and Change of Direct and Large Account Reseller amendments executed by all Parties. Vendor agrees to sign and return the Change of Channel Partner amendments within 5 days of receipt.

10. Authorized Exceptions

- 1. Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.
- **B.** Contract, Section 3, Definitions, B) Compliance Check is hereby restated in its entirety as follows:
 - B) Compliance Check an audit of Vendor's, to the extent reasonably necessary, to verify performance hereunder. Vendor's audit may be performed by, but not limited to, a third-party auditor, DIR Internal Audit department, DIR contract management staff or their designees.
- C. Contract, Section 5, Intellectual Property Matters, Section A Definitions, Item 1, Work Product is hereby restated in its entirety as follows:

1)" Work Product" means any and all tangible and intangible output of Vendor's Services produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed for Customer, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, flow charts, notes, writings, data, information, multimedia files, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) any copies, and similar or derivative works to any of the foregoing, (iii) documentation and materials, and (iv) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is

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completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

D. Contract, Section 5, Intellectual Property Matters, A Definitions, Item 2) "Intellectual Property Rights" is hereby restated in its entirety as follows:

2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any compilations, diagrams, layouts, mask works, idea, design, concept, personality right, method, process, formula, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and knowhow, show-how, research and development; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any software (including routines and sub routines, trademark, service mark, logo, Confidential Information, pre-existing and independently developed materials, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

E. Contract, Section 5, Intellectual Property Matters, A Definitions, Item 5) "Vendor IP" is hereby restated in its entirety as follows:

5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things do not include (i) any Confidential Information of Customer; or (ii) any ideas, concepts, know-how, skills, methodologies, or techniques which (A) are developed solely by Customer, or (B) are unique to Customer or its applications and are developed for inclusion in the Work Product.

F. Contract, Section 5, Intellectual Property Matters, B Ownership is hereby restated in its entirety as follows:

Vendor owns all right, title, and interest the Vendor IP. As between Vendor and Customer, and upon payment by Customer, of any undisputed invoice of vendor directly related to a specific element of work product, that absent of the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. Subject to Vendor's confidentiality obligations to customer; Nothing in this Contract precludes Vendor from providing services similar to those described in this Contract or any Statement of Work to any other customers. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a

Vendor Contract No.	
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joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all necessary and relevant Vendor materials, premises and computer files containing the Work Product Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third-Party IP, except as may be incorporated in the Work Product by Vendor.

G. Contract, Section 5, Intellectual Property Matters, G) Return of Materials Pertaining to Work Product is hereby restated in its entirety as follows:

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things necessary to the understanding and operation of the work product and all things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Contract, Section 5, Intellectual Property Matters, K) License to Customer is hereby restated in its entirety as follows:

If Vendor includes any Vendor IP, then Vendor grants to Customer, a limited, perpetual, irrevocable, royalty free, non-exclusive license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP, solely to the extent such Vendor IP is necessary to use the Work Product, embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

I. Contract, Section 5, Intellectual Property Matters, L) Vendor Development Rights is hereby restated in its entirety as follows:

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such. Customer shall not and shall not permit any affiliates or third party to translate, reverse engineer, decompile, recompile, update, or modify any Vendor IP. If Customer provides any input, comments or suggestions regarding the Services, Vendor IP, or Vendor's business or technology

Vendor	Contract No.	
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plans, including comments or suggestions regarding the possible creation, development, modification, correction, improvement or enhancement of the Services or Vendor IP (collectively "Feedback"), then Customer shall grant and hereby grants Vendor a perpetual, nonexclusive, world-wide, royalty free, license to use such Feedback without restriction.

J. Contract, Section 10, Vendors Responsibility, A Indemnification, Item 3 Infringements is hereby restated in its entirety as follows:

- a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR EMPLOYEES. AGENTS. REPRESENTATIVES. THEIR CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any direct damages arising from all third party claims that the Work Product involve infringement of any United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, (v) Customer's combination or use of the Work Product or Service with software, services, or products developed by Customer or third parties or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing, or (iii) replace the Work Product or Services at no cost to Customer with non-infringing substitutes provided that the substitutes do not entail a material diminution in function in Customer's reasonable estimation.

(Remainder of page intentionally left blank)

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venuor	Contract No.	

This Contract is executed to be effective as of the date of last signature. SHI Government Solutions, Inc. Authorized By: Signature on File Name: Natalie Castagno Title: <u>Director of Response Team</u> Date: <u>2/20/2018</u> The State of Texas, acting by and through the Department of Information Resources **Authorized By: Signature on File** Name: Hershel Becker Title: Chief Procurement Officer Date: 2/21/2018

Office of General Counsel: <u>David Brown</u> Signature on File 2/21/2018

Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

3. Definitions

- A. Customer any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:
 - 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
 - 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
 - 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
 - 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
 - 5) A local workforce development board created under Section 2308.253;
 - 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
 - 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
 - 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
 - 9) A nonprofit organization that provides affordable housing.
- **B.** Compliance Check an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract

- management staff or their designees.
- **C.** Contract the document executed between DIR and Vendor into which this Appendix A is incorporated.
- **D. CPA** refers to the Texas Comptroller of Public Accounts.
- **E. Day** shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- **F.** Order Fulfiller the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- **G. Purchase Order** the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- **H.** State refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
- 2) If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other

parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

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

H. Proof of Financial Stability

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

5. Intellectual Property Matters

A. Definitions

1)" Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations,

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manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

- 2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.
- **4)** "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.
- 5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon

creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

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F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and

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prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

- 1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

- 1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).
- 2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all

necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

- a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
- **b)** DIR reserves the right to require the Vendor to rescind any such Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.
- **d)** Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.
- e) Vendor shall not prohibit Order Fulfiller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiller List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 7.B.1.a above.

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall

only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the products and services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;
- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- l) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Webpage Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's webpage will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this webpage is compliant with the pricing as stated in the Contract.

4) Webpage Changes

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Vendor and Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

If DIR receives Vendor's or Order Fulfiller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller' trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include reporting requirements. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

J. Performance Review Meetings

DIR may require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract, at DIR's discretion. The meetings may be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1

1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.
- 3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for

the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (http://www.window.state.tx.us/procurement/prog/stmp/). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller.

Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Invoices shall be submitted by the Vendor or Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Vendor or Order Fulfiller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.
- 2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.
- 3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

9. Contract Administration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute

resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

- a) Vendor shall be responsible for reporting all products and services purchased through Vendor and Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.
- **b)** DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

- a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- **b)** Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

- a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.
- b) DIR may change the amount of the administrative fee upon thirty (30) calendar days

written notice to Vendor without the need for a formal contract amendment.

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

- a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- **b)** Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract..

C. Records and Audit

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)

- 1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- 2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books,

documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

- 1) Prior to execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.
- 2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts E-Mail Box information.

10. Vendor Responsibilities

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W

A. Indemnification

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or

performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

- a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- **b)** Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to

- receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of

- appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and
- (xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and
- (xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

D. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

E. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of

its obligations under the Contract.

G. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

H. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- **2)** Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

K. Limitation of Liability

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

For any claims or cause of action arising under or related to the Contract: i) to the extend permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

L. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

M. Prohibited Conduct

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

O. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other resources of the Customer or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

P. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

• all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and

• all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

No public disclosures or news releases pertaining to this contract shall be made by Vendor without prior written approval of DIR.

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Substitutions are not permitted without the written permission of DIR or Customer.

S. Secure Erasure of Hard Disk Products and/or Services

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

- 1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- 2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.
- 3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas

Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

7) Vendor or Order Fulfiller Rights Under Termination Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office Department of Information Resources Attn: Public Information Officer 300 W. 15th Street, Suite 1300 Austin, Texas 78701 (512) 475-4759, facsimile

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

Value Added Software Resellers and Related Services

Rev. 10/16



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

>	If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
	Section 2 c Yes
	Section 4 - Affirmation
	GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
	and Non-HUB vendors.
	Section 2 c No
	Section 2 d Yes
	Section 4 - Affirmation
	GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
	Section 2 c No
	Section 2 d No
	Section 4 - Affirmation
	GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
	Section 1 - Respondent and Requisition Information
	Section 2 a No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
	Section 3 - Self Performing Justification
	Section 4 - Affirmation

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.





HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency

specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent <u>does not</u> have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.			

EC	TION 1: RESPO	ONDENT AND REQUISITION INFORMATION		_		
a.	Respondent (Co	mpany) Name: SHI Government Solutions	State of To	exas VID #	_{‡:} 1223695478	500
	Point of Contact:	Meghan Flisarkowski	Phone #:	51251	74088	
	E-mail Address:	meghan_flisakowski@shi.com	Fax #:	512-73	32-0232	
b.	Is your company	a State of Texas certified HUB? ☑ - Yes ☐ - No				
c.	Requisition #:	DIR-TSO-TMP-404	Bid Open	Date:	7/12/2017	_
	·				(mm/dd/naad)	

Enter your company's name here: SHI Government Solutions Requisition #: DIR-TSO-TMP Item 2	Enter your company's name here	SHI Government Solutions	Requisition #:	DIR-TSO-TMP	Item 2
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SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
 - Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
 - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If No, continue to SECTION 3 and SECTION 4.)
- **b.** List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		HU	Bs	Non-HUBs
Item #	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php).

C.	Check the appropriate box (Yes or No) that indicates whether you will be using \underline{only} Texas certified HUBs to perform \underline{all} of the subcontracting opportunities you listed in SECTION 2, Item b.
	□ - Yes (If Yes , continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed.) □ - No (If No , continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract* in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

⁻ No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

Enter your company's name here: SHI Government Solutions Requisition #: DIR-TSO-TMP

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		HL	Non-HUBs	
Item #	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

				Rev. 10/16	_
Enter your company's name here:	SHI Government Solutions	Requisition #:	DIR-TSO-TMP	Item 23	ł.
, ,					-

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SHI will be performing all the related services with our staff and resources.		

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, <u>if awarded any portion of the requisition</u>:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report PAR) to the contracting agency, verifying its
 compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at
 https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

NA - - la - - - - - - - la - - - - - la -

Signature on File	iviegnan Filsakowski	Program Manager	777/2017	
Signature	Printed Name	Title	Date (mm/dd/yyyy)	

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

Item 23.

Enter your company's name here:	SHI Government Solutions	Requisition #:	DIR-TSO-TMP-404

IMPORTANT: If you responded "**Yes**" to **SECTION 2, Items c** or **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf

SECTION A-1: SUBCONTRACTING OPPORTUNITY Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment. Item Number: _____ Description: _____

SECTION A-2: Subcontractor Selection

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas cert		Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐- Yes	□- No	·	\$	%
	☐ - Yes	□- No		\$	%
	□- Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	- Yes	□- No		\$	%
	- Yes	□- No		\$	%
	- Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to <u>all</u> the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days</u> after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

	'	,	item 23.
Enter your company's name here: SHI Government Solutions	Requisition #:	DIR-TSO-TMP	-404
IMPORTANT: If you responded " No " to SECTION 2 , Items c and d of the completed Method B (Attachment B)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2 page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-stream.	, Item b of the completed HSP		
SECTION B-1: SUBCONTRACTING OPPORTUNITY Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, completing the attachment.	Item b, of the completed HSP for	rm for which you are	
Item Number: Description:			
SECTION B-2: MENTOR PROTÉGÉ PROGRAM			
If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting subcontractor to perform the subcontracting opportunity listed in SECTION B-1 , constitutes a good specific portion of work.	3 \ 3		,
Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion	of work you listed in SECTION B-	-1 to your Protégé.	
☐ - Yes (If Yes, continue to SECTION B-4.)			
☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4	.)		
SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY When completing this section you MUST comply with items a, b, c and d, thereby demonstrating	your Good Faith Effort of having r	notified Texas certified	HUBs and

trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent	Did the HUB Respond?	
			☐ - Yes	☐ - No
			- Yes	☐ - No
			Yes	□ - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php.
- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Item 23.

Enter your company's name here: SHI Government Solutions			Requisition #	DIR-TSO-TM	P-404
SECTION B-4: SUBCONTRACTOR SELECTION Enter the item number and description of the subcontracting opportunity you liste the attachment.	ed in SECTI	ON 2, Ite	m b, of the completed HSF	o form for which you	are completing
a. Enter the item number and description of the subcontracting opportunity for Item Number: Description:	r which you a	ire comple	ting this Attachment B conti	nuation page.	
b. List the subcontractor(s) you selected to perform the subcontracting oppor HUB and their Texas Vendor Identification (VID) Number or federal Em subcontracted, and the expected percentage of work to be subcontracted. you use the State of Texas' Centralized Master Bidders List (CN http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp . HUB status code "A	iplioyer Ident . When seard MBL) - Hist	ification No ching for Te corically U	umber (EIN), the approximexas certified HUBs and ve Inderutilized Business (H	ate dollar value of rifying their HUB sta UB) Directory Sea	the work to be atus, ensure tha
Company Name	Texas certi	fied HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	🗆 - Yes	□ - No		\$	%
	🗆 - Yes	□ - No		\$	%
	🗆 - Yes	□ - No		\$	%
	🗆 - Yes	☐ - No		\$	%
	☐ - Yes	☐ - No		\$	%
	- Yes	□ - No		\$	%
	🗆 - Yes	□ - No		\$	%
	☐ - Yes	□ - No		\$	%
	□- Yes	□ - No		\$	%
	□- Yes	□ - No		\$	%
c. If any of the subcontractors you have selected to perform the subcontracting justification for your selection process (attach additional page if necessary)		y you listed	d in SECTION B-1 is not a	Texas certified HUI	3, provide <u>writte</u>

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to <u>all</u> the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days</u> after the contract is awarded.



HUB Subcontracting Opportunity Notification Forl

Item 23.

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least https://exas.certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least https://exas.certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least https://exas.certified HUBs at least <a href="https://exas.

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C**, **Item 2**, reply no later than the date and time identified in **Section C**, **Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

identified in Section 6, item	1. Submit your response to the point-or-contact reference	tu ili Section A.			
Point-of-Contact: Meghan Flisakowski Phone			Phone #:	1223695478500 5125174088 512-732-0232	
SECTION B: CONTRA	ACTING STATE AGENCY AND REQUISITION II	NFORMATION			
Agency Name:	Department of Information Resources				
• •	Carrie Cooper			Phone #:	512-936-2353
	DIR-TSO-TMP-404			Bid Open Date:	7/12/2017
Requisition #.	DIK-130-1WF-404			Did Open Date.	(mm/dd/yyyy)
Potential Subcontra If you w	ITRACTING OPPORTUNITY RESPONSE DUE I ctor's Bid Response Due Date: ould like for our company to consider your company		tracting opportuni		ED INFORMATION
V	re must receive your bid response no later than	Central Time	On Date (mm/	· ·	
In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C). (A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.) 2. Subcontracting Opportunity Scope of Work:					
3. Required Qualificati	ons:				Not Applicable
4. Bonding/Insurance	Requirements:				- Not Applicable
5. Location to review p	lans/specifications:				Not Applicable

	DIR-TSO-4092					
	SHI Government Solutions					
APP	ENDIX C PRICING INDEX					
Publisher Category	Publisher Discount Level	(from Publisher Discount Level)				
Enterprise Agreement (comprised o	of subcategories as listed below)					
Office Professional/Standard						
Windows Pro Desktop Operating System	Level D less 7.5%					
Core CAL/Enterprise CAL Suite (to include stand alone components)	Level D less 6%	18.75%				
All other or additional EA licensing	Level D					
Enterprise Subscription Agreement	Level D less 2%	18.75%				
Select Plus Government	Level D	18.75%				
Select Plus Academic	Level D	18.75%				
This Contract covers the ent products and Related Services and education volume licensi progra	plus any and all government ng MSRP special Discount	18.75% Depending on the Type of Software License negotiated				
Software Polated Services, such as installa	tion Configuration training at a will be pro-	ovided upon request based				
Software Related Services, such as installa	on the following unit cost.	ovided upon request based				
Description	UNIT COST	COST				
Technical Review Level I	Hourly	\$165.00				
Technical Solutions Level I	Hourly	\$220.00				
Technical Solutions Level II	Hourly	\$250.00				
rechnical Solutions Level II		•				
Project Management	Hourly	\$119.00				

Page 1 of 1



Department of Information Resources

Request for Offer

Value Added Software Reseller Products and Related Services

Issued: June 8, 2017

Initial Responses Due: July 11, 2017

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- **Exhibit A Vendor Information Form**
- **Exhibit B Vendor History and Experience**
- **Exhibit C Contract Marketing and Support Plan**
- Exhibit D Historically Underutilized Business (HUB) Subcontracting Plan

1. Introduction

1.1. Purpose

The purpose of this Request for Offer (RFO) is to solicit responses from potential Vendors to provide Value Added Software and Related Services as an authorized reseller for software publishers that DIR has established publisher agreements with for volume license programs to the State of Texas, acting by and through the Department of Information Resources (DIR).

As a result of this RFO, DIR expects to receive and evaluate responses and select one or more qualified Vendors with whom to enter into negotiations. Section 4 of this RFO contains more information regarding the response evaluation and Vendor selection process. DIR reserves the right to award more than one contract from this RFO. All contracts awarded shall be indefinite quantity contracts with no minimum guarantees of any purchases.

As a result of this RFO, DIR expects to create a contract vehicle that satisfies statewide procurement requirements and improves the efficiency of the procurement process by shortening the time required to procure Software requirements.

As part of DIR's initiatives to identify strategic sourcing opportunities, DIR reserves the right to make a single award or multiple awards as determined by DIR to achieve the highest overall value to the state.

1.2. Background

1.2.1 Information Technology Acquisition

Through its Cooperative Contracts Program, DIR assists state agencies and local governments (Customers) with cost-effective acquisition of their information resources by negotiating, managing, and administering contracts with information technology providers. Customers include any Texas state agency, unit of local government, or institution of higher education as defined in Texas Government Code, Section 2054.003; the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code; those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Texas Government Code, Chapter 771: any local government as authorized through Texas Government Code, Chapter 791; the Interlocal Cooperation Act; the state agencies and political subdivisions of other states as authorized by Texas Government Code, Section 2054.0565; and for non-telecommunications IT Commodity products and services, "assistance organizations" defined in Texas Government Code, Section 2175.001.

DIR combines the buying power of authorized Customers to obtain volumediscounted pricing for selected technology products and services. In addition to

offering volume-discounted pricing, DIR created the Cooperative Contracts (Co-op Contracts) Program to make it easier for Customers to acquire these products and services. Customers place orders with and issue payments directly to the Vendors participating in the Co-op Contracts Program. Subject to DIR rights set forth in Sections 3.8 and 3.9 of this RFO, DIR will award and negotiate base contract documents with Vendors as a result of this RFO. Customers contact the Vendor for product and/or services and pricing information, negotiate their own service level agreements and additional terms and conditions, if any, and send their purchase orders (with the DIR contract number) and payments directly to the participating awarded Vendor, not to DIR. Information regarding the Co-op Contracts Program is located on DIR's Web site at http://dir.texas.gov/View-About-DIR/Pages/Content.aspx?id=41.

1.2.2 <u>Texas Government Code</u>, <u>Section 2157.068</u>

Texas Government Code, Section 2157.068, effective September 1, 2005, requires State agencies to buy commodity items, as detailed below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is a commercially available program that operates hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements and may include Software provided as a service. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staff augmentation, training, maintenance and subscription services. Seat management is a service through which a state agency transfers its responsibilities to a Vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

Technology services do not include telecommunications services. Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001 is excluded. The following services were awarded under the TEX-AN Next Generation Procurement: Long Distance Services, Internet Services (including SOHO), Voice over Internet Protocol (VoIP), Local Voice Service, Wireless Service, Fixed Satellite and Access and Transport.

Institutions of higher education, K-12, and local governments are not required to purchase IT commodities from DIR, but may do so voluntarily. Information regarding Texas Government Code §2157.068, including processes and guidelines, is located on DIR's Web site at: http://dir.texas.gov/View-Contracts-

AndServices/Pages/Content.aspx?id=25.

1.2.3 Cost Avoidance Performance Measures

As part of its performance measures reported to state leadership, DIR must show the cost avoidance realized by the State for the products and services obtained under DIR contracts. Cost avoidance is the difference between the negotiated DIR contract price and the prevailing market price.

1.2.4 Cost Recovery

DIR recovers the costs of negotiating, executing, and administering the Co-op Contracts through an administrative fee. DIR is authorized to charge a reasonable administrative fee to all customers per Section 2157.068(d) of the Texas Government Code. The administrative fee must be included in the Vendor's price to the customer and paid to DIR by the Vendor. The fee has been set at a not-to-exceed level of 2.00% by the current appropriations act of the State Legislature. For the purposes of responding to this RFO, the administrative fee of 0.75% shall be used in calculating the pricing specified in Bid Package 2. DIR may change the administrative fee at any time during a contract term. DIR will notify Vendors of any change in the administrative fee.

1.2.5 <u>Historical Sales</u>

Contracts negotiated and managed through the Cooperative Contracts Program resulted in over \$5 billion in Customer purchases for the past three (3) fiscal years combined. Information contained within the table below shows the total purchases for the past three (3) fiscal years by Customer segment. These purchases represent contracts that are hardware, software, and services related. The State's fiscal year runs September 1st through August 31st.

Segment	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016
State Agency	\$553,788,672.80	\$543,288,393.08	\$517,306,688.54
Local Government	\$437,786,573.74	\$431,371,234.33	\$461,084,970.28
Higher Education	\$355,586,888.66	\$399,967,445.25	\$348,688,707.56
K-12	\$702,583,186.28	\$677,626,189.55	\$628,637,425.00
Assistance Org	\$5,479,813.56	\$5,176,343.64	\$5,237,895.30
Out of State	\$1,369,739.79	\$10,944,441.03	\$8,767,492.85
Total FY	\$2,056,594,874.83	\$2,068,374,046.88	\$1,969,723,179.53

1.2.6 Current Contracts

DIR currently has two contracts with Software Resellers. These contracts expire in August 2017; the volume of products and related services sold through these contracts for fiscal years 2014 through 2017 was approximately \$437,145,434.

SPECIAL NOTE: ALTHOUGH DIR DOES NOT GUARNATEE SALES, IT IS EXPECTED THAT VENDORS WILL PROVIDE THE BEST POSSIBLE DISCOUNTS ON AWARDED CONTRACTS. IN ADDITION TO ABOVE HISTORICAL SALES, IT IS ANTICIPATED THAT OVER 100,000 LICENSES WILL BE TRANSFERRED TO THE RESULTING CONTRACT(S) FROM ANOTHER DIR PROGRAM CHANGING PRODUCT OFFERINGS BY FALL 2018 FOR A MICROSOFT PRODUCT.

2. Scope

2.1. Products

DIR enters into Master License Agreements (MLA) with the software publishers named in this RFO to establish statewide pricing level/band or discount levels for software that is available through each of the software publisher's volume license program. DIR intends to contract with an authorized reseller or authorized resellers for these software publishers with which DIR has existing publisher agreements. The authorized Resellers will provide the software and related services **for Adobe, Microsoft, and Novell ONLY**. DIR reserves the right to make a single award for all the software publishers or multiple awards for each software publisher.

Related services are any value-added service that Vendor may perform as related to the products proposed here. Related services include but are not limited to product installation, maintenance and support, managed services and product training. Any Vendor offering product-related services must submit a description of those services and the related pricing in the Excel spreadsheet attached as "Bid Package 2".

In addition to the related services directly associated with the sales of software, such as related maintenance and support agreements for new and previously purchased software, the authorized Resellers would provide, at no additional cost, reseller management services to include, but not be limited to, providing price quotes, tracking licenses (new and existing), management of licenses, monitoring volume levels and opportunities for cost savings, training, installation/de-installation/implementation support, and software advisement to DIR and/or DIR Customers. The authorized Resellers would be expected to provide, at no additional cost, assistive and support services regarding the software that is representative of the State's interest and best value.

For the purpose of this RFO, Vendors MUST RESPOND as follows to the "Bid Package 2" spreadsheet. Failure to respond as instructed may result in Offer being disqualified from further evaluation.

- Discount Sheet: the publisher's software licensing products will be categorized as provided on the spreadsheet titled "Discount Sheet". Vendors must offer only one discount for each Publisher Category listed. The discount for each publisher category will be applied to all products within the publisher category to determine the net DIR Customer price. The price to the DIR Customer shall include all shipping and handling fees.
- Pricing Sheet: a representative sample of software license products for each

software publisher has also been included on the spreadsheet titled "Pricing Sheet". Vendors must offer only one price for each Publisher Product listed. The price to the DIR Customer shall include all shipping and handling fees. This is a representative sample only. All products of the software publishers named in this RFO may be made available through a Contract.

- Complete Catalog: vendors must submit the software publishers complete catalog of products for the software publishers named in this RFO in the format outlined on the spreadsheet titled "Complete Catalog". Vendors should add additional rows to provide ALL publisher product and pricing that is being offered applicable to their response. Vendor may add additional columns but must have all of the columns listed in the format provided.

Prices and discounts offered shall be firm for the entire period of the contract. Price escalation or discount reductions will NOT be allowed. Price decreases or discount increases are permitted at any time.

Volume Pricing

- 1) Volume Pricing: DIR encourages Vendors to offer VOLUME pricing for specific Products and/or Services on the spreadsheet tabs of Bid Package 2, Pricing Index.
- 2) In addition to VOLUME pricing for specific Products and/or Services, DIR encourages Vendors to propose increased discount based on total statewide aggregate contract sales for Products and Services. See Instruction tab in Bid Package 2, Pricing Index for volume pricing instructions.

In addition to purchases, DIR and any Vendor awarded a Contract as a result of this RFO may agree to provisions that allow leasing of the products offered under the resulting Contract.

DIR is not soliciting products and related services for the agency. DIR establishes statewide master contracts for use by DIR eligible customers. DIR competitively bids for information technology products and services.

Customers must identify their own needs, then contact an awarded DIR Vendor and obtain a price quote for products/services. Customers may submit a statement of work or purchase order to the Vendor when obtaining a quote based on their needs. The Customer makes the best value determination and issues a purchase order directly to the Vendor.

This RFO is <u>not</u> a solicitation for professional or consulting services as defined in Chapter 2254 of the Texas Government Code.

2.2. Requirements

The authorized Resellers must be able to provide the full catalog of products that are available to DIR customers through the publisher's volume license programs.

The authorized Resellers must supply a letter from the publisher applicable to their response certifying that Vendor is an authorized volume licensing reseller of publisher's products to the agencies and political subdivisions of the State of Texas as described in Section 3.5.1. of this RFO. Failure to supply the letter may result in elimination of the related proposal from the solicitation process.

The authorized Resellers must be able to provide a comprehensive system for license tracking and inventory management of license product purchases, including but not limited to, accurate record keeping for product purchases, tracking maintenance renewals/due dates, etc.

The authorized Resellers must be able to provide reporting, including but not limited to, standard and online reports for individual customers, custom or ad-hoc reports as requested by individual customers, etc.

The authorized Resellers shall meet customer service expectations, including but not limited to dedicated representation and timely response, problem escalation, providing service level performance standards, etc.

The authorized Resellers shall be a liaison with the software Publisher and work in the best interest of the state and its customers to leverage volume or enterprise license agreements and maximize cost savings through better pricing, publisher's promotions or other savings opportunities.

THE AUTHORIZED RESELLERS MUST HONOR EXISTING/CURRENT CUSTOMER AGREEMENTS A DIR CUSTOMER MAY HAVE THAT CONTAIN REMAINING PAYMENT TERMS AT EQUAL TO OR BETTER PRICING. PRICE ESCALATION FOR EXISTING CUSTOMER AGREEMENTS WILL NOT BE ALLOWED. IF MORE ADVANTAGEOUS PRICING IS PROVIDED DURING THE EXISITING TERM OF A CUSTOMER AGREEMENT, THE AUTHORIZED RESELLER SHALL EXTEND THE REDUCED PRICING TO ALL DIR CUSTOMERS.

Microsoft Premiere Support and Technical Services are excluded from this procurement.

2.3. Emerging Technologies

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of training services for emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of DIR-TSO-TMP-404. Vendor may propose such training services throughout the term of the contract. Pricing and terms will be negotiated upon DIR agreement. Any determination will be at DIR's sole discretion and any decision will be final.

2.4. Threshold and SOW Requirements

State Agency Customers (not including institutions of higher education), must adhere to the requirements of Senate Bill 20 (84R) relating to DIR Cooperative Contracts. Senate Bill 20 (SB20) requires state agencies to adhere to the following purchasing thresholds:

Threshold Requirements for IT Commodities (Hardware, Software and Services)

Contract Value	Number of DIR Vendors
\$50,000 or less	May award directly to DIR Vendor of choice
\$50,000.01 to \$150,000	Three (or all DIR Vendors in a category with
	less than three vendors)
\$150,000.01 to \$1 million	Six (or all DIR Vendors in a category with less
	than six vendors)
More than \$1,000,000.01	Agencies must conduct an independent
	procurement and cannot use DIR
	Cooperative Contracts

In addition, state agencies procuring more than \$50,000 worth of services from DIR Contracts must submit their draft and final Statements of Work to DIR for review and approval prior to making payment to a Vendor.

Threshold and SOW review and signature processes do not apply to Institutions of higher education, K-12, local governments, assistance organizations, or out-of-state customers.

2.5. Electronic and Information Resources (EIR) Accessibility

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes <u>1 TAC 206</u>, <u>1 TAC 213</u>, and <u>WCAG 2.0 AA</u> as applicable, and when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Accordingly, all Vendors must submit completed VPAT form (Bid Package 6) or links to completed VPATs located on manufacturer websites for each proposed product or product family prior to an award for the proposed product or product family. Instructions on how to complete a VPAT® can be found on DIR's website.

Vendors claiming that a proposed product or family of products is exempt from accessibility requirements must use the VPAT form to: (1) specify each exempt product or product family and indicate "Not Applicable" in the "Supporting Features" column of the Summary Table; (2) provide an explanation in the "Remarks" column of Summary Table.

 For Consumer Off the Shelf (COTS) products, including Software as a Service (SAAS), a completed, <u>accurate</u> Voluntary Product Accessibility Template (VPAT) for each product or service included in the submitted pricelist.

Vendors who do not already have accessibility documentation should complete the form located here: http://www.itic.org/public-policy/accessibility. Vendors that claim their products are exempt from accessibility requirements must present that position to DIR as a question during the question and answer period of the solicitation.

For non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) Vendors should complete a Vendor Accessibility Development Services Questionnaire (Bid Package 8) which documents Vendor's capability or ability to produce accessible electronic and information resources.

In addition to the VPAT requirement, vendors <u>must</u> complete the Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment (Bid Package 7).

2.6. Form of Contract

2.6.1 Sample Contract and Terms Negotiation

Negotiation: The final terms and conditions of any contract awarded as a result of this RFO shall be agreed upon during negotiation. However, the minimum standard terms and conditions that shall be included in any awarded contract are contained in the sample Contract for Products and Related Services attached as "Bid Package 3" and the Standard Terms and Conditions for Products and Related Services Contracts attached as "Bid Package 4" to the posting for this RFO, requisition number DIR-TSO-TMP-404, on the Electronic State Business Daily, http://esbd.cpa.state.tx.us/.

2.6.2 Proposed Changes and Exceptions

Caution: Vendors' Responses may be disqualified if their exceptions are excessive, or if they except to non-negotiable terms, as described below. Item 10 of Exhibit A contains the format for Vendor to note any exception to any provision, term, or condition specified in the Contract for Products and Related Services and Standard Terms and Conditions for Products and Related Services Contracts. Vendor should provide any proposed changes to contract language in redline in the "Proposed Language (redline)" column of the chart in Item 10 of Exhibit A. Vendors may request exceptions to standard contract terms and conditions; however, (1) where noted, exceptions to certain terms and conditions will not be allowed. If Vendor is unable to comply with these provisions, the Vendor's response may be subject to disqualification from further consideration for this solicitation; (2) DIR in its discretion may or may not accept the Vendor's requested exceptions; and (3) material deviations (including excessive, additional, inconsistent, conflicting or alternative terms) may render the Offer non-responsive and may result in rejection of the bid. An explanation as to why the Vendor cannot comply with the provision, term, or condition and proposed alternative language must be included in the response. If Vendor fails to note any exception, Vendor will not be allowed to request an exception upon award or at some later date.

DIR anticipates a contract term of two (2) years initially with two (2) optional two-year term extensions to be exercised by DIR at its discretion. In the event of prolonged contract negotiations due to the number and/or significance of exceptions taken, lack of Vendor responsiveness or other failure to close contract negotiations that are not due to a failure on the part of DIR, DIR may at its discretion offer Vendor a shorter contract term.

DIR reserves the right to make changes to the Contract for Products and Related Services or the Standard Terms and Conditions for Products and Related Services Contracts if it is in the best interest of the State to do so. Should this occur prior to the award of any

contracts as a result of this RFO, any Vendors selected for negotiations will be notified.

3. General Information

3.1. Point of Contact

All communications regarding this RFO must be addressed in writing to:

Carrie Cooper
Department of Information Resources
300 W. 15th Street, Suite 1300

Austin, Texas 78701 Phone: 512-936-2353 Fax: 512-936-6896

Internet: carrie.cooper@dir.texas.gov

3.2. Contact with DIR Staff

Upon issuance of this RFO, employees and representatives of DIR other than the Point of Contact identified in Section 3.1 will not discuss the contents of this RFO with any Vendor or their representatives. Failure of a Vendor and any of its representatives to observe this restriction may result in disqualification of any related response. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

3.3. Anticipated Schedule

3.3.1 RFO Schedule

It is DIR's intention to comply with the following schedule for this RFO. These dates represent a tentative schedule of events. DIR reserves the right to modify these dates at any time. Prospective Vendors will be notified of modifications to the schedule via the Electronic State Business Daily (ESBD) web site.

Date/Time	Activity
June 8, 2017	Publish RFO on Electronic State Business Daily
June 20, 2017, 1:30 pm (CT)	Vendor Conference (optional)
June 22, 2017, 2:00 pm (CT)	Deadline for submitting questions
June 29, 2017, 5:00 pm (CT)	Estimated date for answering questions
July 11, 2017, 2:00 pm (CT)	Deadline for DIR to receive Vendor references
July 11, 2017, 2:00 pm (CT)	Deadline for submitting Responses to RFO
July 12, 2017 – until completed	Evaluation of responses, negotiation and contract execution

3.3.2 Vendor Conference

An optional Vendor Conference will be held on June 20, 2017, 1:30 pm Central Time (CT) at the location listed below. Please bring a copy of the RFO to the Vendor Conference, as DIR will only supply a limited amount of copies.

William P. Clements, Jr. Building 300 W. 15th Street Room 103 Austin, Texas 78701

Webinar Information

A webinar will be held on the date and time specified in RFO Section 3.3.1 above.

To reserve a webinar seat, register at: https://attendee.gotowebinar.com/register/7692891816601279745

After registering, you will receive a confirmation email containing information about joining the Webinar.

DIR will provide conference and webinar attendees with an opportunity to submit written questions at the conference. All questions submitted at the conference must reference the appropriate RFO page and section number. Although DIR may provide tentative verbal responses to questions at the conference, responses are not official until they are posted as an addendum to this RFO on the Electronic State Business Daily, http://esbd.cpa.state.tx.us/. DIR reserves the right to amend answers prior to the offer submission deadline.

Any addenda and/or amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. Respondent's failure to periodically check the ESBD will in no way release the selected Vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

3.3.3 Written Questions and Official Answers

Vendors shall submit all questions regarding this RFO by fax, e-mail, or in writing to the Point of Contact listed in Section 3.1. **Questions regarding this RFO will be accepted until the date and time specified above in Section 3.3.1, RFO Schedule.** Note: Texas observes Daylight Savings Time. Official answers will be posted as an addendum to this RFO, RFO number DIR-SDD-TMP-404, on the Electronic State Business Daily (ESBD), http://esbd.cpa.state.tx.us/. DIR reserves the right to amend answers prior to the offer submission deadline.

3.4. Historically Underutilized Businesses

The purpose of the Historically Underutilized Business (HUB) Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency must

make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

- 1. 11.2% for heavy construction other than building contracts;
- 2. 21.1% for all building construction, including general contractors and operative builders' contracts;
- 3. 32.9% for all special trade construction contracts;
- 4. 23.7% for professional services contracts;
- 5. 26.0% for all other services contracts;
- 6. 21.1% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

HUBs are strongly urged to respond to this RFO. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. Vendors who meet the qualifications are strongly encouraged to apply for certification as HUBs.

3.4.1 HUB Subcontracting Plan

DIR has determined that subcontracting is probable under any contract awarded as a result of this RFO. The HUB Goal for this RFO is 26%. ALL VENDORS RESPONDING TO THIS RFO, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A **HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S** POLICY ON UTILIZATION OF HUBs. THE HSP MUST BE INCLUDED AS PART OF THE RESPONSE TO THIS RFO. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION. The State's Policy on Utilization of Historically Underutilized Businesses and HSP forms are attached to this RFO as Exhibit D. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that Vendors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the Vendor for more than five years. If the Vendor does not plan to subcontract, Vendor must state that fact in their plan. An original, signed paper copy of the HSP must be submitted in an envelope that is separate from the rest of the proposal. The completed plan shall become a part of the contract that may be awarded as a result of this RFO.

3.4.2 **HUB Continuing Performance**

Any contracts awarded as a result of this RFO shall include reporting responsibilities related to HUB subcontracting. Awarded Vendors may not change any subcontractor without submitting a revised HUB Subcontracting Plan (HSP). Any change to a subcontractor and revised HSP must be approved in writing by DIR prior to implementation.

3.4.3 HUB Resources Available

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Website at: https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. For additional information, contact the CPA's HUB program office at StatewideHUBProgram@cpa.texas.gov. If Vendors know of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

3.5. Vendor Qualifications

3.5.1 Authorized Vendors

Vendors who respond to this RFO must be an authorized Value-Added Reseller (VAR) and/or Large Account Reseller (LAR) who will sell directly to Customers through a Co-op Contract.

- a. Vendors responding to this RFO must supply a letter from the Manufacturer/Publisher on a manufacturer/publisher letterhead document certifying that Vendor is an authorized volume licensing reseller of Manufacturer's/Publisher's products to the agencies and political subdivisions of the State of Texas, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. Failure to supply the letter may result in elimination of the related proposal from the solicitation process.
- **b.** If a Vendor responds to the Adobe portion of this RFO, they must be qualified by Adobe Systems Incorporated as an Authorized Adobe Education Reseller and/or Adobe Licensing Center for Government.
- **c.** If a Vendor responds to the Microsoft portion of this RFO, they must be qualified by Microsoft Corporation as a Large Account Reseller (LAR) to resell licenses under the Enterprise Agreement, Subscription Agreement, Government Select, and Academic Select Plus programs.
- **d.** If a Vendor responds to the Novell portion of this RFO, they must be qualified by Novell, Inc. as a Novell Fulfillment Agent for the specific products being offered.
- **e.** If a Vendor responds to the Google portion of this RFO, they must be qualified by Google, Inc. as a Google Fulfillment Agent for the specific products being offered.

3.5.2 Federal Requirements

1) State agencies are prohibited from doing business with terrorists and terrorist organizations. Any Vendor listed in the prohibited Vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control (Terrorism List) shall not be awarded a Contract as a result of this RFO. Any Vendor awarded a Contract as a result of this RFO must agree that if at any time during the term of the contract the Vendor is listed on the Terrorism List, the Vendor shall promptly notify DIR. As part of DIR's contract management, periodic checks will be performed to ensure any Vendor

awarded a contract as a result of the RFO remains in compliance with these Federal Requirements. DIR shall have the absolute right to terminate the contract without recourse in the event Vendor becomes listed on the Terrorism List.

- 2) Should any Vendor or its principals awarded a Contract as a result of this RFO become suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration, the Vendor's contract will be terminated without recourse.
- 3) Vendor shall comply with the requirements of the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract.

3.5.3 <u>Vendor Performance and Debarment</u>

In accordance with 34 TAC, Chapter 20, Subchapter C, any Vendor that is debarred from doing business with the State of Texas will not be awarded a contract under this solicitation. The list of debarred Vendors is located on the CPA Web site at:

http://comptroller.texas.gov/procurement/prog/vendor_performance/debarred/

3.5.4 Required Vendor and Subcontractor Current and Former State Employee Disclosures

Vendor shall disclose, for itself and on behalf of all of its Subcontractors, in its response to Section 11 of Exhibit A to the RFO, all of the following:

- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of DIR within the past five (5) years;
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of DIR. Disclosure of former state employees may be limited to the last five (5) years; and
- 3) Vendor will certify that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.

3.6. Response Deadline and Submission Requirements

Vendors are invited to submit responses in accordance with the requirements outlined in this document. Responses must be received by DIR on or before 2:00 pm (CT) on July 11, 2017. No late responses will be reviewed. Responses must be hand-delivered or mailed to the submittal address listed in Section 3.7.1. No facsimile or e-mail responses

shall be accepted.

3.6.1 Official Timepiece

The clock in the DIR Purchasing Office at 300 W. 15th Street, 13th Floor, Room 1335, is the official timepiece for determining compliance with the deadline. All responses will be date and time stamped when received by the Purchasing Office on the 13th floor.

3.6.2 Hand Delivery of Responses

All Vendors and courier delivery service personnel will be required to check in at the security desk on the 1st floor at 300 W. 15th Street. Therefore, it is advised that Vendors allow extra time for building security check-in if hand-delivering responses or using a courier delivery service. DIR will not be responsible for delays associated with building security compliance.

3.6.3 United States Postal Service Delivery of Responses

Delivery of responses via United States Postal Service is acceptable. However, responses must be received, not post-marked, by the response deadline and, due to the State's mail processing procedures, this method may cause a delay in delivery to the DIR Purchasing Office. DIR will not be responsible for any delays associated with this method of delivery.

3.7. Response Format and Contents

3.7.1 Submittal Address and External Packaging of Response

Responses should be addressed to:

Department of Information Resources 300 W. 15th Street, Suite 1300 Austin, Texas 78701 Attn: Carrie Cooper

The external packaging of the response must reference "RFO DIR-TSO-TMP-404" and must include the name and address of the Vendor submitting the response.

3.7.2 Number of Copies

Each Vendor must submit the complete response as follows:

- One (1) signed original (clearly marked) of the complete response, including one (1) signed original of the HUB Subcontracting Plan;
- 2. One (1) signed original of the HUB Subcontracting Plan in a separate envelope;
- 3. Two (2) USB Flash drives (**clearly marked with Vendor name**) containing the following;
 - a) One (1) USB Flash drives containing an electronic folder labeled "Complete Vendor Response" that shall contain the entire Vendor's response.

- b) One (1) USB Flash drive containing a labeled electronic folder with any and all response materials, which Vendor asserts are confidential or proprietary*; and a labeled electronic folder containing all non-proprietary/confidential and non-copyrighted materials in the Vendor's response* (redacted copy for public release).
- * If Vendor's response does not contain such materials, then USB Flash drive for these items are not required. DIR will release the non-proprietary/confidential and non-copyrighted version if DIR receives a Public Information Request. Unless Vendor specifically identifies proprietary, confidential or copyrighted material as required, DIR will assume all information is available for public disclosure.

Paper responses must be bound in a 3-ring binder and the cover of the binders must reference "DIR-TSO-TMP-404" and include the name and address of the responding Vendor.

Each USB Flash drive must be clearly marked as to its contents. The response materials on each USB Flash drive must be compatible with Microsoft Office. All materials must be submitted in an editable format (e.g., Microsoft Word, Microsoft Excel). Do not submit electronic materials in PDF format. If there are any disparities between the contents of the printed response and any of the response materials on USB Flash drives, the contents of the signed original printed response will take precedence.

NOTE: USB Flash drive(s) must be securely fastened to the 3-ring binder.

3.7.3 Mandatory Response Contents

VENDOR MUST PROVIDE THE ITEMS LISTED BELOW OR THE RESPONSE WILL BE REJECTED.

1) Vendor Information – Exhibit A of this RFO

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor. Vendors Response should offer information to support its capability to provide the services requested in this RFO. Attachments 1 and 2 must be completed and submitted with the response if applicable per Item 21, Canceled Contracts.

- 2) Vendor History and Experience Exhibit B of this RFO
- 3) Contract Marketing and Support Plan Exhibit C of this RFO

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded.

4) HUB Subcontracting Plan Forms – Exhibit D of this RFO

All Vendors, INCLUDING THOSE WITH HUB DESIGNATION AND THOSE

THAT DO NOT PLAN TO USE SUBCONTRACTORS, must submit a HUB Subcontracting Plan. HUB Subcontracting Plan Forms are provided in Exhibit D. Refer to Section 3.4 for more information regarding HUB subcontracting. Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors. The paper copy of the HSP must be submitted in a separate envelope.

5) Product Pricing - Bid Package 2

Vendor shall provide a detailed description and the specific pricing for any products and related services that Vendor is proposing to offer in response to this RFO in Excel format. Products and related services should be listed in the Excel spreadsheet that is attached as "Bid Package 2" to the posting for this RFO, requisition number DIR-TSO-TMP-404 on the Electronic State Business Daily, http://esbd.cpa.state.tx.us. Vendor shall provide specific pricing for the products and related services applicable to their response.

6) Signed letter(s) from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products

7) Software License Agreements and/or Service Agreements

Vendor shall provide any Software License Agreements and/or Service Agreements that are applicable to the services Vendor is proposing. These Agreements must, at a minimum, allow and provide for inclusion of the terms and conditions of the *Contract for Products and Related Services* (Bid Package 3) and the *Standard Terms and Conditions for Products and Related Services Contracts* (Bid Package 4).

8) Policy-Driven Adoption for Accessibility – Bid Package 7

Vendors must provide the PDAA form (Bid Package 7) as requested in Section 2.5, Electronic and Information Resources (EIR) Accessibility, of this RFO.

3.7.4 References

Vendor must send the Vendor Reference Questionnaire (See Bid Package 5) to three (3) companies or government agencies. Instructions are included in Bid Package 5. DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. Should this occur, the reference will be scored with a zero (0).

3.7.5 Accessibility of Electronic Response Documents

Vendor response documents should be submitted in a format that is accessible to people with disabilities. This can include, but is not limited to accessible Office, Adobe PDF, or other productivity document suite. **Vendor should not**

submit scanned documents.

3.8. Rejection of Responses

DIR has sole discretionary authority and reserves the right to reject any and all responses received as a result of this RFO. Responses that do not comply with the mandatory submission requirements shall be rejected. In addition, DIR reserves the right to accept or reject, in whole or in part, any responses submitted, and to waive minor technicalities when in the best interest of the State.

3.9. Right to Amend or Withdraw RFO

DIR reserves the right to alter, amend or modify any provision of this RFO, or to withdraw this RFO, in whole or in part, at any time prior to the award of a contract if to do so is in the best interest of the State. DIR reserves the right to re-solicit for like or similar products and services whenever it determines re-solicitation to be in the best interest of the State.

Any changes or additional information regarding this RFO will be posted as an addendum to requisition number DIR-TSO-TMP-404 on the Electronic State Business Daily, http://esbd.cpa.state.tx.us/. It is the responsibility of Vendors to monitor the web site for addenda. Vendor's failure to periodically check the ESBD will in no way release the vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

3.10. Pre-agreement Costs

DIR shall not be responsible or liable for any cost incurred by any Vendor in the preparation and submission of its response to this RFO or for other costs incurred by participating in this procurement process.

3.11. Ownership of Responses

All responses become the property of DIR. DIR reserves the right to use any and all information or materials presented in response to this RFO. Disqualification of a Vendor's response does not eliminate this right.

3.12. Public Information

DIR is a government agency subject to the Texas Public Information Act. Responses submitted to DIR as a result of this RFO are subject to release as public information after contracts are executed or if the procurement is terminated. Vendor may not mark its complete proposal "copyrighted" or mark every page as proprietary or confidential but if a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the Vendor must specify which exception(s) are applicable and provide detailed reasons substantiating the exception(s).

The Office of the Attorney General (OAG) has the sole authority to determine whether

information is confidential and not subject to disclosure under the Public Information Act DIR shall comply with all decisions of the OAG.

DIR assumes no responsibility for asserting legal arguments on behalf of any Vendor. Vendors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

4. Evaluation, Negotiations, and Award

4.1. Evaluation of Responses

DIR will review proposals to determine responsiveness to this RFO. All determinations about responsiveness to this RFO are final. All proposals determined to be responsive will go through a financial review overseen by the Chief Financial Officer's (CFO's) office. The financial review is a pass/fail determination that is final. Only proposals that receive a passing grade will proceed to the Evaluation Committee. DIR will establish an Evaluation Committee to review all responses that have not been rejected. At any time during the evaluation process, DIR may ask any or all Vendors to elaborate on or clarify specific points or portions of their response. DIR's request and Vendor's response shall be in writing. Once initial evaluation of responses has been completed, the Evaluation Committee shall turnover the tabulated scores to the DIR purchasing office and shall conclude their duties.

4.2. Evaluation Criteria

4.2.1 Pass/Fail Criteria

In addition to the weighted criteria listed below DIR also reviews additional Pass/Fail criteria as follows:

- DUNS Number and report is a Pass/Fail review conducted by the Finance Group (Exhibit A, Item 12)
- 2. Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:
 - a. A score of less than 90% in the Vendor Performance System;
 - b. Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports,
 - c. Having purchase orders that have been cancelled in the previous 12 months for non-performance (including but not limited to late delivery, etc.).
- Completion of HUB Subcontract Plan (Exhibit D).

4.2.2 Weighted Evaluation Criteria

The criteria and weight to be used in determining the best value for the State are as follows:

- 45% Pricing
- 30% Vendor History and Experience in providing the products and services requested – Exhibit B
- 25% Vendor's plan for supporting the Contract Exhibit C

Vendors will be evaluated on performance under existing and prior contracts for similar products or services and the evaluation may include consideration of Vendor performance as recorded in the CPA Vendor Performance Tracking System as described in the Texas Administrative Code, 34 TAC 20.108(b).

4.3. Oral Presentations, Best and Final Offer

DIR in its discretion shall make the determination whether to request oral presentations and/or engage in the Best and Final Offer process. Both oral presentations and the he Best and Final Offer process, if held, will also be scored.

DIR reserves the right to continue to evaluate responses until such point as the best value, as defined by Texas Government Code, Section 2157.003, is obtained for the State.

4.4. Negotiations

At the conclusion of the evaluation, as described within Sections 4.1 through 4.3 above, DIR staff shall determine the number of Vendors with which it will start contract negotiations. In its discretion, DIR shall terminate contract negotiations when DIR determines that the best value for the State has been obtained. Then the staff will recommend award of one or more contracts to DIR Executive Management.

4.5. Award of Contract

DIR Executive Management shall make the decision to award any contracts, if in the best interest of DIR and the State to do so. The decision of Executive Management on any award is final. Any award for this RFO shall be posted under requisition number DIR-TSO-TMP-404 on the Electronic State Business Daily, http://esbd.cpa.state.tx.us/, upon execution of a contract with one or more Vendors. All responses and working papers pursuant to this RFO are not subject to disclosure under the Public Information Act until all contracts resulting from this RFO have been executed.

Any Contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

4.6. Vendor Protest Procedures

Any Vendor who is aggrieved in connection with this RFO, evaluation, or award of a contract may formally protest to DIR in accordance with the Vendor protest procedures posted on the DIR Web site at: http://dir.texas.gov/View-Information-For-Vendors/Pages/Content.aspx?id=21.

END OF RFO

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Department of Information Resources Value Added Software Reseller Products and Related Services Request for Offer DIR-TSO-TMP-404

Exhibit A Vendor Information

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.

1)	Company Name:
2)	Comptroller of Public Accounts Vendor Identification Number:
3)	Principal place of business Address: City: State: Zip Code:
4)	Facility responsible for servicing the contract Address: City: State: Zip Code:
5)	Contact Person regarding Vendor's response to the RFO Name: Address: City, State, Zip: Phone Number: Fax: Email:
6)	Contact Person responsible for contract negotiation Name: Address: City, State, Zip: Phone Number: Fax: Email:
7)	Indicate whether or not your company is a certified Historically Underutilized Business (HUB) with the State of Texas by the CPA.
8)	Provide the year in which your company was created/incorporated.

Department of Information Resources Value Added Software Reseller Products and Related Services Request for Offer DIR-TSO-TMP-404

- 9) Vendor must send the Vendor Reference Questionnaire (See Bid Package 5) to three (3) companies or government agencies. Instructions are included in Bid Package 5 DIR is not responsible for undeliverable e-mails or for non-responsive references. If DIR does not receive a vendor reference, Vendor will receive a score of "0" for that reference. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR. Should this occur, the reference will be scored with a zero (0).
- List below by subsection all exceptions to the Contract for Services and Standard Terms and Conditions for Services Contracts in redline form. You must include the basis of your exceptions and provide proposed alternate language. If Vendor fails to list exceptions in its response, Vendor shall not be permitted to submit exceptions to the same section during the negotiation process or thereafter. Vendor shall not redline the contract or Exhibit A. All exceptions must be listed in the chart below.

Section	Section Title	Explanation of Exception	Proposed Language (redline)

11) Vendor and Subcontractor Conflict of Interest Disclosure

List below all current or former employees of Vendor and/or proposed Vendor personnel with conflict of interests as follows:

- 1) Any current or former employees of Vendor who will spend 20% or more of their time on a contract resulting from this RFO and are current or former employees of the State of Texas within the past five (5) years; and
- 2) Any proposed Vendor personnel assigned to work directly on any Contract to arise from this RFO 20% or more of their time who are related within two degrees of consanguinity of any current or former employees of the State of Texas. Disclosure of former state employees may be limited to the last five (5) years.

Vendor Personnel:

Vendor Personnel related to State of
Texas Employees (see Note 2 above)

Subcontractor personnel:

Current or Former Employees of Subcontractor(s) who are current or former State employees (see Note 1 above)	Subcontractor Personnel related to State of Texas Employees (see Note 2 above)

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- 3) Vendor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the response to be evaluated: Name of Former Executive, Name of State Agency, Date of Separation for State Agency, Position with Vendor, and Date of Employment with Vendor.
- 12) Proof of Financial Stability.

All Vendors responding to this RFO and all Vendors that will enter into a contract with DIR must be and remain current in payment of all taxes, including Sales and Franchise Taxes. In general, the Comptroller of Public Accounts must identify the Vendor to be "in good standing" and a Vendor with which the state is authorized to do business.

Vendors must provide a Dun and Bradstreet D-U-N-S number. The D-U-N-S number MUST be included in the Vendor's response. Failure to include the D-U-N-S number listed for the company shall cause automatic rejection of the response.

- 13) Electronic Product Environment Assessment Tool (EPEAT). To the extent Customers use products provided by Vendor in the delivery of Services offered under this RFO, indicate whether the products provided are EPEAT certified and identify the applicable EPEAT rating (bronze, silver or gold) for certified products. If products provided are not EPEAT certified, describe Vendor's efforts to obtain EPEAT certified products.
- 14) Officer or Agent empowered to contractually bind the Vendor: Name: Title: Address: Phone Number: Fax: Email: For each manufacturer Vendor is proposing in the RFO, indicate whether or not the manufacturer has a program to recycle the manufacturer's computer equipment and if they recycle computers from other manufacturers. If you are a reseller, you must indicate whether your company has a recycling program or will use the manufacturer's recycling program for the products listed in this RFO. Manufacturer Name Recycles their own computers? No Recycles other manufacturer's computers? No If Reseller, check one that applies: Will use Manufacturer's program Will use Respondent's own program Provide documentation or citation (URL) where the recycling program resides to enable DIR to verify compliance with this requirement.

Department of Information Resources Value Added Software Reseller Products and Related Services Request for Offer DIR-TSO-TMP-404

16) Statement of Compliance

A. Checklist for the RFO

The following checklist is provided for the convenience of Vendors in their response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFO. Vendors must ensure that all mandatory requirements for this RFO are met, even if they are not included in this checklist. The mandatory documentation must be submitted with the original and each copy of the response.

A completed checklist shall not be binding on DIR's administrative review for compliance with the mandatory response contents specified in this RFO. As step one of the evaluation process, DIR will review all responses to ensure compliance with the mandatory response contents as specified in Section 3.7.3. of the RFO and reject any response that does not comply.

All responses must be received by DIR on or before the date and time specified in Section 3.3.1 of this RFO. No late responses will be reviewed.

Item	Check
Response addressed to:	
Department of Information Resources	
300 W. 15th Street, Suite 1300	
Austin, Texas 78701	
Attn: Carrie Cooper	
External packaging references "RFO DIR-TSO-TMP-404"	
Package contains one (1) signed original (clearly marked) of the complete	
response with one (1) signed original HUB Subcontracting Plan	
Package contains one (1) additional signed original HUB Subcontracting Plan	
in a separate envelope	
Package contains two (2) clearly marked additional USB Flash drive copies of	
the complete response	
Package contains one (1) USB Flash drive containing a labeled electronic	
folder with any and all response materials, which Vendor asserts are	
confidential or proprietary*; and a labeled electronic folder containing all non-	
proprietary/confidential and non-copyrighted materials in the Vendor's	
response* (This should include a redacted copy for public release).	
(*if required)	
Paper responses are bound and the cover of the binder references "DIR-TSO-	
TMP-404" and include the name and address of the responding Vendor	
Mandatory Response Contents	
Vendor Information – Exhibit A	
Vendor History and Experience – Exhibit B	
Contract Support Plan – Exhibit C	
Manufacturer Letters, Section 3.5.1	
HUB Subcontracting Plan Forms – Exhibit D – in a separate envelope	
Product Pricing – Bid Package 2 in EXCEL Format	
Accessibility Documentation (PDAA), Section 2.5 RFO Requirement	
Service Agreement(s) (if applicable)	

Department of Information Resources Value Added Software Reseller Products and Related Services Request for Offer DIR-TSO-TMP-404

B. Certification Statement

The undersigned hereby certifies on behalf of <u>insert company name here</u> that RFO DIR-TSO-TMP-404 has been read and understood. In submitting its response <u>insert company name here</u> represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- iv) as of the date of signature below, Vendor is not listed in the prohibited Vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- v) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- vi) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; (vii) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;
- (viii) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;
- (ix) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);
- (x) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (xi) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award; .Enter the name and Social Security Numbers for each person below (alternatively, if this section applies, Vendor may make a note here and include Names and Social Security Numbers on a separate page and include it in the electronic folder labeled "Confidential and Proprietary."

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- xii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;
- (xiv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;

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- (xv) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xvi) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety;
- (xvii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Exhibit A, Vendor Information Form, Vendor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;
- (xviii) Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements); and
- (xix) Vendor agrees that these representations will be incorporated into any subsequent agreement(s) between Vendor and Customer that result from this RFO.
- (xx) Respondent certifies that there have been \square **yes** / \square **no** <u>canceled contracts</u> in the past five (5) years. Note: If yes is checked, Respondent must complete Exhibit A, Attachment 1 & 2 and submit with the response.

Signature of Officer or Agent empowered to contractually bind the	Vendor
Date	

Department of Information Resources Value Added Software Reseller Products and Related Services Request for Offer DIR-TSO-TMP-404

Exhibit A Attachment 1 List of Vendor's Cancelled Contracts

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR ANY IDENTIFIED CONTRACT CANCELLED WITHIN THE PAST FOUR YEARS REFERENCE AND SUBMITTED WITH THE RESPONDENT'S REQUIREMENTS SUBMISSION

RESPONDENT NAME:					
COMPANY NAME					
COMPANY ADDRESS (Street, City, State, Zip Code)					
*CONTACT NAME / PHONE					
*E-MAIL					
CONTRACT A DATE:	AWARD	OPERATIONS DATE:	START	CONTRACT DATE:	CANCELLATION
DESCRIPTION O	F SERVICE:				
REASON FOR CA	ANCELLATION:				
COMPANY NAME					
COMPANY ADDRESS (Street, City, State, Zip Code)					
*CONTACT NAME / PHONE					
*E-MAIL					
CONTRACT A	AWARD	OPERATIONS DATE:	START	CONTRACT DATE:	CANCELLATION
DESCRIPTION O	F SERVICE:				
REASON FOR CA	ANCELLATION:				

^{*} Note: Do NOT complete these fields if DIR is the Cancelled Contract Reference

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Department of Information Resources Value Added Software Reseller **Products and Related Services** Request for Offer DIR-TSO-TMP-404

Exhibit A Attachment 2 RESPONDENT RELEASE OF LIABILITY (TO REFERENCE)

THIS FORM MUST BE COMPLETED/SIGNED BY RESPONDENT FOR EACH IDENTIFIED REFERENCE (GENERAL REFERENCES AND CANCELLED CONTRACT REFERENCES) AND SUBMITTED WITH THE **RESPONDENTS REQUIREMENTS SUBMISSION**

Enter name of company (Respondent) or key staff person's name

Enter name of company providing the reference here

You are hereby requested to provide a business reference for:

To company providing the reference:

	needing a	reference					
to the: Texas Department of Information Resources Solicitation Evaluation Team							
Please disclose any and all information that you deem relevant relating to the above-named parties' business relationship. By signing this document, the entity and, if applicable, individual key staff person signing below releases the above-named company providing a reference, its agents, employees, and all persons, natural or corporate, in privity with above-named company providing a reference from any and all liability, claims or causes of action arising from their disclosure of information pursuant to this request for a business reference.							
Signe	d the	day of	, 2	0			
	-		` .	nt Signature)			
		((Respondent	Printed Name))		
	-		(Respond	dent Title)			
Signe	d the	day of	, 2	0			
	-	(Key Sta	•	or "N/A" if Resp elease)	oondent-		
	-		(Key Staff P	rinted Name)			

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Department of Information Resources Value Added Software Reseller Products and Related Services Request for Offer DIR-TSO-TMP-404

Exhibit B Vendor History and Experience

1)	Provide a detailed history of your company.
2)	Provide the number of years your company has sold the products/services requested in this RFO.
3)	Provide the number of years your company has sold the products/services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.
4)	Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the products/services listed in this RFO from your company within the last 12 months.
	If yes, provide the entity names, total sales, quantity sold, and discount % off list price.
5)	Indicate whether or not your company holds a contract for use by public entities (state agencies, local governments, independent school districts, public universities) in any other states for the same products/services requested in this RFO. Yes No
	If yes, provide the entity names, total sales, quantity sold, and discount % off list price.
6)	Indicate whether or not your company holds a contract with any entity or consortium authorized by Texas law to sell the products and services requested in this RFO to Texas state agencies, local governments, independent school districts, and institutions of higher education.
	If yes, provide the entity names, total sales, quantity sold, and discount % off list price.

END OF EXHIBIT B

Department of Information Resources Value Added Software Reseller Products and Related Services Request for Offer DIR-TSO-TMP-404 Exhibit C Contract Marketing and Support Plan

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contract, if awarded. The plan must include the information listed below.

- Describe your company's strategy for marketing and selling the services listed in this RFO to eligible DIR Customers. A Contract Marketing Plan, as an example, would list the Marketing elements Vendor would use like publishing on DIR website, email signature tag, Trade Publication Advertisements etc.
- 2) Describe your company's strategy for providing sales, order processing, and support of eligible DIR Customers throughout the State of Texas.
- 3) Provide the projected total sales of the services listed in this RFO that your company anticipates making to eligible DIR Customers within the next 12 months. If available, show the projected sales breakdown between the following segments: State and Local Governments, Higher Education, and K-12.
- 4) Do you have other existing DIR Contracts? If yes, list those existing DIR contracts, and explain how this contract will impact the marketing and support of your other contracts? How will your other contracts impact the marketing of this contract, should you receive an award?
- 5) Provide an overview of the management and customer relationship team that will be responsible for managing the State's relationship in the event of being awarded a contract. Address the following:
 - a. Describe the geographical reach of the Vendor, teaming partners and subcontractors (if any), to include, at a minimum, locations of corporate and branch offices as well as locations where work is currently taking place. Explain how these locations and any proposed new locations will be used in the performance of this contract.
 - b. Provide names, titles, prior account management experience for accounts of the State's size and type.
 - c. Provide an organization chart identifying the chain of command for managing this contract, including resource sourcing responsibility, and organization components that support this contract. In a narrative, describe how the Vendor will manage the contract to ensure uninterrupted, high quality performance and overall contract effectiveness.

END OF EXHIBIT C

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Exhibit D

Historically Underutilized Business (HUB) Subcontracting Plan

Value Added Software Resellers and Related Services

Rev. 10/16



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

\triangleright	If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
	☐ Section 1 - Respondent and Requisition Information
	☐ Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
	☐ Section 2 c Yes
	Section 4 - Affirmation
	GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
	and Non-HUB vendors.
	Section 2 c No
	Section 2 d Yes
	Section 4 - Affirmation
	GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
	☐ Section 1 - Respondent and Requisition Information
	☐ Section 2 a Yes, I will be subcontracting portions of the contract.
	Section 2 b List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
	Section 2 c No
	Section 2 d No
	Section 4 - Affirmation
	GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
>	If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
	☐ Section 1 - Respondent and Requisition Information
	Section 2 a No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
	Section 3 - Self Performing Justification
	Section 4 - Affirmation

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.





E-mail Address:

b. Is your company a State of Texas certified HUB? ☐ - Yes

c. Requisition #: DIR-TSO-TMP-398

HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- · 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC \$20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its

Point of Contact:	Phone #:
a. Respondent (Company) Name:	State of Texas VID #:
SECTION 1: RESPONDENT AND REQUISITION INFORMATION	
specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate gwill subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement subcontracted to HUBs with which the respondent does not have a continuous contract* in goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Te	good faith effort, the respondent must identify the HUBs with which it ent, only the aggregate percentage of the contracts expected to be place for <u>more than five (5) years</u> shall qualify for meeting the HUB
subcontracting opportunities if the total value of the respondent's subcontracts with Texas cert	ified HUBs meets or exceeds the statewide HUB goal or the agency

Fax #:

Bid Open Date:

Enter your company's name here:	Requisition #:	DIR-TSO-TMP	Item 23.
Enter your company 3 name here.	- ποquisition π.		

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing**, **goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
 - ☐ Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
 - □ **No**, I will not be subcontracting <u>any</u> portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)
- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		ни	Non-HUBs	
Item #	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%		%
4		%		%
5		%	%	
6		% %		%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php).

C.	Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities
	you listed in SECTION 2, Item b.

□ - Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed.)

 \square - \emph{No} (If \emph{No} , continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract* in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

П	- Yes	(If Yes, continue to	o SECTION 4 and com	plete an "HSP	Good Faith Effort	 Method A (. 	Attachment A)	" for each	of the subcontracting	opportunities v	ou listed.

- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here:

Requisition #: DIR-TSO-TMF

Item 23.

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

	, , ,	н	JBs	Non-HUBs
Item #	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here:	Requisition #:	DIR-TSO-TMP	Item 23.
SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must responded "No" to SECTION 2, Item a, in the space provided below explain how your company will performaterials and/or equipment.			
SECTION 4: AFFIRMATION As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in			
 The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) contract. The notice must specify at a minimum the contracting agency's name and its point of cont subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontract that the subcontracting opportunity represents. A copy of the notice required by this see point of contact for the contract no later than ten (10) working days after the contract is awarded.) of their selection as tact for the contract, contracting opportunity	a subcontractor for the the contract award now and the expected pe	umber, the rcentage of
• The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Recompliance with the HSP, including the use of and expenditures made to its subcontractors https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls).			
 The respondent must seek approval from the contracting agency prior to making any modifications to subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is m respondent may be subject to any and all enforcement remedies available under the contract or otherwise state contracting. 	nodified without the co	ontracting agency's price	or approval,
 The respondent must, upon request, allow the contracting agency to perform on-site reviews of the compare being performed and must provide documentation regarding staffing and other resources. 	oany's headquarters a	and/or work-site where	services

Reminder:

Signature

If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.

Printed Name

If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

Date (mm/dd/yyyy)

Rev. 10/16

Title

HSP Good Faith Effort - Method A (Attachment A)

Item 23.

Enter your company's name here:	Requisition #:	DIR-TSO-TMP-398
IMPORTANT: If you responded " Yes " to SECTION 2, Items c or d of the completed HSP form, you Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe	the completed HSP	
SECTION A-1: SUBCONTRACTING OPPORTUNITY		
Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the attachment.	e completed HSP for	rm for which you are completing
Item Number: Description:		
SECTION A-2: SUBCONTRACTOR SELECTION		

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.isp. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certif	fied HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	□- Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	🗆 - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%
	☐ - Yes	□- No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

	1		Item 23.
Enter your company's name here:	Requisition #:	DIR-TSO-TMP	-398
IMPORTANT: If you responded " No " to SECTION 2 , Items c and d of the completed HSP for Method B (Attachment B)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2 , Item page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-p	b of the completed HSP		
SECTION B-1: SUBCONTRACTING OPPORTUNITY Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item becompleting the attachment.	o, of the completed HSP for	m for which you are	
Item Number: Description:			
SECTION B-2: MENTOR PROTÉGÉ PROGRAM			
If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Prosubcontractor to perform the subcontracting opportunity listed in SECTION B-1 , constitutes a good faith a <u>specific</u> portion of work.			
Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of wor	k you listed in SECTION B-	1 to your Protégé.	
☐ - Yes (If Yes, continue to SECTION B-4.)			
☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)			
SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your G	ood Faith Effort of having r	otified Texas certified	HUBs and
with completing the decient year with the many and the second sec			obs <u>ana</u>

trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent	Did the HUB I	Respond?
			☐ - Yes	☐ - No
			- Yes	☐ - No
			Yes	□ - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php.
- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Item 23.

the attachment. a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page. Item Number: Description: b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search locate http://mycpa.cpa.state.tx.us/tpasscmbisearchlindex.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Company Name Texas certified HUB Texas certified HUB Texas viiD or federal EIN on detert Social Security Numbers. If you do not know their VID EIN find Bask. Pyes No \$ Yes No	SECTION B-4: SUBCONTRACTOR SELECTION Chief the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are complet the attachment. a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page. Item Number: Description: b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to subcontracted. When searching for Texas certified HUBs and verifying their HUB status, sure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underrullized Business (HUB) Directory Search located http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Company Name Texas certified HUB Texas certified HUB Texas vibro refearal EIN Approximate Dollar Amount Do	SECTION B-4: SUBCONTRACTOR SELECTION There the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are complete attachment. a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page. Item Number: Description: b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to subcontracted. When searching for Texas certified HUBs and verifying their HUB status, sure you use the State of Texas? Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located http://mycpa.cpa.state.tx.us/tpasscmbisearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Company Name Texas certified HUB Texas certified HUB Texas vertified HUB, ver						
Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are complete attachment. a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page. Item Number: Description:	Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are complete the attachment. a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page. Item Number: Description: b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Emplioyer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Undertuitized Business (HUB) Directory Search located http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Company Name Texas certified HUB Texas VID or federal EIN Company Numbers: Approximate Dollar Amount Percentage Contract - Yes	Inter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are complete the attachment. a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page. Item Number: Description: Description: b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Emplioyer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Company Name Texas certified HUB Texas VID or federal EIN bond to lock when VID (EIN fleet blank) - Yes - No	Enter your company's name here:			Requisition #	: DIR-TSO-TMI	2-398
b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Emplicyer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search locate http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB Company Name Texas certified HUB Texas VID or federal EIN bo not ener Social Security Numbers in India Approximate Dollar Amount Percentage Contract India Approximate Dollar Amount India Approximate D	b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Emplioyer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located http://mycpa.cpa.state.tx.us/lpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Company Name Texas certified HUB Texas vitin of federal EIN Donatemer Social Security Numbers. If you do not know their VID / EIN field blank. Pyes No \$ Yes No \$ Ye	b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Emplioyer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located http://mycpa.cpa.state.tx.us/lpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Texas certified HUB	Inter the item number and description of the subcontracting opportunity you listente attachment. a. Enter the item number and description of the subcontracting opportunity for				•	are completing
HUB and their Texas Vendor Identification (VID) Number or federal Emplioyer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search locate http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Company Name	HUB and their Texas Vendor Identification (VID) Number or federal Emplioyer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located http://mycpa.cpa.state.tx.us/fpasscmblsearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Texas VID or federal EIN	HUB and their Texas Vendor Identification (VID) Number or federal Emplioyer Identification Number (EIN), the approximate dollar value of the work to subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located http://mycpa.cpa.state.tx.us/tpasscmbisearch/index.jsp. HUB status code "A" signifies that the company is a Texas certified HUB. Texas VID or federal EIN	·					
Texas certified HUB Do not enter Social Security Numbers, If you do not know their VID / EIN if you do not know their VID / EIN if you do not know their VID	Company Name Texas certified HUB On ont enter Social Security Numbers Foliar Amount	Company Name Texas certified HUB Do not enter Social Security Numbers Fly you do not know their VID / EIN, Related blank. - Yes - No \$ Percentage Contract - Yes - No \$ - Yes - No - Yes - Yes - No - Yes	HUB and their Texas Vendor Identification (VID) Number or federal Emusubcontracted, and the expected percentage of work to be subcontracted. you use the State of Texas' Centralized Master Bidders List (CN)	plioyer Ident When seard MBL) - Hist	ification No ching for Te torically U	lumber (EIN), the approxim exas certified HUBs and ver Inderutilized Business (HU	ate dollar value of rifying their HUB sta UB) Directory Sea	the work to batus, ensure th
- Yes	- Yes	- Yes	Company Name	Texas certi	fied HUB	Do not enter Social Security Numbers. If you do not know their VID / EIN,		Expected Percentage of Contract
- Yes - No \$ - Yes - Yes - No \$ - Yes - Ye	- Yes	- Yes		- Yes	□ - No		\$	%
- Yes - No \$ - Yes - Yes - No \$ - Yes - Yes - No \$ - Yes -	- Yes - No \$ C C. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide with the subcontractors you have selected to perform the subcontractors you have selected you have you	- Yes - No \$ - Yes - Yes - No \$ - Yes - No \$ - Yes - Yes - No \$ - Yes		□ - Yes	☐ - No		\$	%
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□-Yes □-No \$ □-Yes □-No □-Yes □-Yes □-No □-Yes □-No □-Yes □-Yes □-No □-Yes	□- Yes □- No \$ □- Yes □- No □- Yes □- Yes □- Yes □- Yes □- Yes □- Yes □- No □- Yes □-	□- Yes □- No \$ □- Yes □- No □- Yes □- Yes □- No □- Yes □-		☐ - Yes	☐ - No		\$	9/
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				□- Yes	□ - No		\$	9,
					/ you listed	d in SECTION B-1 is not a	Texas certified HUE	3, provide <u>wr</u>

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to <u>all</u> the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract <u>no later than ten (10) working days</u> after the contract is awarded.



HUB Subcontracting Opportunity Notification Forl

Item 23.

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least https://exas.certified-HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to https://exas.certified-HUBs (who work within the respondent submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to https://exas.certified-HUBs (who work within the respondent submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to https://exas.certified-HUBs (who work within the respondent submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to https://exas.certified-HUBs (who work within the respondent submitting its bid response to the contracting opportunities to https://exas.certified-HUBs (who work within the respondent submitting its bid response to the contracting opportunities to https://exas.certified-HUBs (who work within the respondent submitting its bid response to the contracting opportunities to https://exas.certified-HUBs (who work within the respondent submitting its bid response to the contract

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C**, **Item 2**, reply no later than the date and time identified in **Section C**, **Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

identified in Section C, item 1.	Submit your response to the point-or-contact refere	enced in Section A .			
Company Name:	ONTRACTOR'S INFORMATION			Texas VID #: Phone #:	
E-mail Address:				Fax #:	
	TING STATE AGENCY AND REQUISITION			_	
Agency Name:					
Point-of-Contact:				Phone #:	
Requisition #:	DIR-TSO-TMP-398		Bid	Open Date:	
· <u>-</u>					(mm/dd/yyyy)
Potential Subcontractor If you would be a second or secon	RACTING OPPORTUNITY RESPONSE Di or's Bid Response Due Date: Id like for our company to consider your comp	pany's bid for the subcor	ntracting opportunity identi		
we r	must receive your bid response no later than	Central Time	Date (mm/dd/yyyy)	<u> </u>	
seven (7) working days to submitting our bid respons or development centers (i Service Disabled Veteran, (A working day is conside by its executive officer. Th	© §20.14, each notice of subcontracting opportunities provided to the notice prior to submitting our bid asset to the contracting agency, we must provide an Texas) that serves members of groups (i.e., a) identified in Texas Administrative Code, §20.1 and a normal business day of a state agency, me initial day the subcontracting opportunity not ero" and does not count as one of the seven (7 tunity Scope of Work:	response to the contracting time to the contracting the contraction of our subsection of our subsection of the contraction of t	ng agency. In addition, at lea contracting opportunities to Black American, Hispanic A federal or state holidays, or	ast seven (7) work two (2) or more merican, Native days the agency	ing days prior to us trade organizations American, Woman, is declared closed
3. Required Qualification	s:				Not Applicable
4. Bonding/Insurance Re	quirements:				- Not Applicable
5. Location to review plan	ns/specifications:				- Not Applicable

Department of Information Resources Value Added Software Reseller Products and Related Services Request for Offer DIR-TSO-TMP-404

BID PACKAGE 2 DISCOUNT SHEET

Instructions:

For the purposes of this RFO, the publisher's software licensing products are categorized in the table below. Vendors must offer ONLY one (1) discount for each Publisher Category listed. The discount for each publisher category will be applied to all products within the publisher category to determine the net DIR Customer price. The price to all DIR Customers shall include all shipping and handling fees.

Publisher Category	Publisher Discount Level	DIR Customer Discount (from Publisher Discount Level)
rubiisiiei Category	Publisher Discount Level	Fubilisher Discount Level)
Adobe:		
Cumulative Licensing Program (CLP)	Level 3 Points	
Education Membership		
Cumulative Licensing Program (CLP)		
Government Membership	target: 300,000+ points	
Microsoft:		
Enterprise Agreement (comprised of		
subcategories as listed below)		
Office Professional/Standard	Level D less 7.5%	
Windows Pro Desktop Operating System		
Core CAL/Enterprise CAL Suite (to include		
stand alone components)		
All other or additional EA licensing	Level D	
Enterprise Subscription Agreement	Level D less 2%	
Select Plus Government	Level D	
Select Plus Academic	Level D	
Novell Master License Agreement:		
Education License and Value Added Service	MLA Level 5	
Government License and Value Added		
Service	MLA Level 5	

PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The administrative fee = .75% x Customer Price

DIR-TSO-TMP-404 BID PACKAGE 2 PRICING SHEET

Instructions:

A representative sample of software license products for each software publisher is provided in the tables below. Vendors must offer ONLY one (1) price for each Publisher Product listed. The price to the DIR Customer shall include all shipping and handling fees. This is a representative sample only for the purposes of this RFO and evaluation process.

PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The administrative fee = .75% x Customer Price

ADOBE ACADEMIC

ABOBE AGABEINIG			List Price (Per	
Product Description	Product Type	Product Number	Level Discount)	DIR Customer Price
Acrobat Professional v.10	MAC Full License	65083690AB03A00		
Acrobat Professional v.10	WIN Full License	65083691AB03A00		
Acrobat Professional v.10	MAC Concurrent License	65083801AB03A00		
Acrobat Professional v.10	WIN Concurrent License	65083800AB03A00		
Acrobat Suite v.1	WIN Full License	65086502AB03A00		
After Effects CS5.5 v10.5	Full License	65110619AB03A00		
Audtion CS5.5 v.4	Full License	65106839AB03A00		
Captivate v5.5	Full License	65125060AB03A00		
Coldfusion Builder v.2	Full License	65123381AB03A00		
ColdFusion Ent v.9	Full License	65047411AB03A00		
ColdFusion Standard v.9	Full License	65047455AB03A00		
Contribute CS5 v.6	MAC Full License	65070168AB03A00		
Contribute CS5 v.6	WIN Full License	65070186AB03A00		
CS5.5 Design Premium 5.5 K12SITE<250	Full License	65112996AB03A00		
CS5.5 Design Premium 5.5 K12SITE>250	Full License	65113214AB03A00		
CS5.5 Design Std 5.5 K12SITE<250	Full License	65122118AB03A00		
CS5.5 Design Std 5.5 K12SITE>250	Full License	65122252AB03A00		
Dreamweaver CS5.5 v11.5	Full License	65105384AB03A00		
eLearning Suite v.2.5	Full License	65126518AB03A00		
Flash Pro CS5.5 v11.5	Full License	65109234AB03A00		
Photoshop Elements v10	Full License	65137861AB03A00		

ADOBE GOVERNMENT

ABOBE GOVERNMENT			List Price (Per	
Product Description	Product Type	Product Number	Level Discount)	DIR Customer Price
Acrobat v10	WIN Full License	65086303AC02A00		
Acrobat Professional v10	MAC Full License	65083690AC02A00		
Acrobat Professional v10	WIN Full License	65083691AC02A00		
Acrobat Suite v1	WIN Full License	65086502AC02A00		
After Effects CS5.5 v10.5	Full License	65110619AC02A00		
Audition CS5.5 v4	Full License	65106839AC02A00		
Captivate v5.5	Full License	65125060AC02A00		
Coldfusion Builder v2	Full License	65123381AC02A00		
ColdFusion Ent v8	Full License	54025221AC02A00		
ColdFusion Standard v9	Full License	65047455AC02A00		
Contribute CS5 v6	MAC Full License	65070168AC02A00		
Contribute CS5 v6	WIN Full License	65070186AC02A00		
CS5.5 Design Premium v5.5	Full License	65112138AC02A00		
CS5.5 Design Std v5.5	Full License	65121615AC02A00		
CS5.5 Master Collector v5.5	Full License	65117060AC02A00		
CS5.5 Production Premium v5.5	Full License	65114792AC02A00		
Dreamweaver CS5.5 v11.5	Full License	65105384AC02A00		
eLearning Suite v2.5	Full License	65126518AC02A00		
Flash Pro CS5.5 v11.5	Full License	65109234AC02A00		
Photoshop CS5 v12	MAC Full License	65048694AC02A00		
Photoshop CS5 v12	WIN Full License	65048695AC02A00		
Photoshop Elements v10	Full License	65137861AC02A00		

MICROSOFT ENTERPRISE AGREEMENT

			List Price (Per	
Product Description	Product Type	Product Number	Level Discount)	DIR Customer Price
ExchgEntCAL ALNG LicSAPk MVL DvcCAL wSrvcs	License/Software Assurance Pack	PGI-00267		
ExchgEntCAL ALNG LicSAPk MVL UsrCAL wSrvcs	License/Software Assurance Pack	PGI-00268		
ExchgStdCAL ALNG LicSAPk MVL DvcCAL	License/Software Assurance Pack	381-01587		
ExchgStdCAL ALNG LicSAPk MVL UsrCAL	License/Software Assurance Pack	394-00520		
LyncSVrEnCAL ALNG LicSAPk MVL DvcCAL	License/Software Assurance Pack	7AH-00281		
LyncSVrEnCAL ALNG LicSAPk MVL UsrCAL	License/Software Assurance Pack	7AH-00282		
LyncSvrStdCAL ALNG LicSAPk MVL DvcCAL	License/Software Assurance Pack	6ZH-00395		
LyncSvrStdCAL ALNG LicSAPk MVL UsrCAL	License/Software Assurance Pack	6ZH-00396		
OfficeStd ALNG LicSAPk MVL	License/Software Assurance Pack	021-05331		
OfficeStd ALNG LicSAPk MVL Pltfrm	License/Software Assurance Pack	021-08255		
SharePointEntCAL ALNG LicSAPk MVL DvcCAL	License/Software Assurance Pack	76N-02345		
SharePointEntCAL ALNG LicSAPk MVL UsrCAL	License/Software Assurance Pack	76N-02427		
SharePointStdCAL ALNG LicSAPk MVL DvcCAL	License/Software Assurance Pack	H05-00176		

		110= 00111	
SharePointStdCAL ALNG LicSAPk MVL UsrCAL	License/Software Assurance Pack	H05-00444	
WinSvrCAL ALNG LicSAPk MVL DvcCAL	License/Software Assurance Pack	R18-00095	
WinSvrCAL ALNG LicSAPk MVL UsrCAL	License/Software Assurance Pack	R18-00096	
CoreCAL ALNG LicSAPk MVL DvcCAL	License/Software Assurance Pack	W06-00022	
CoreCAL ALNG LicSAPk MVL Pltfrm DvcCAL	License/Software Assurance Pack	W06-01063	
CoreCAL ALNG LicSAPk MVL Pltfrm UsrCAL	License/Software Assurance Pack	W06-01066	
CoreCAL ALNG LicSAPk MVL UsrCAL	License/Software Assurance Pack	W06-00445	
CoreCAL ALNG SA MVL DvcCAL	Software Assurance	W06-00021	
CoreCAL ALNG SA MVL Pltfrm DvcCAL	Software Assurance	W06-01069	
CoreCAL ALNG SA MVL PItfrm UsrCAL	Software Assurance	W06-01072	
CoreCAL ALNG SA MVL UsrCAL	Software Assurance	W06-00446	
EntCAL ALNG LicSAPk MVL DvcCAL wSrvcs	License/Software Assurance Pack	76A-00025	
EntCAL ALNG LicSAPk MVL Pltfrm DvcCAL wSrvcs	License/Software Assurance Pack	76A-00007	
EntCAL ALNG LicSAPk MVL Pltfrm UsrCAL wSrvcs	License/Software Assurance Pack	76A-00010	
EntCAL ALNG LicSAPk MVL UsrCAL wSrvcs	License/Software Assurance Pack	76A-00028	
OfficeProPlus ALNG LicSAPk MVL Pltfrm	License/Software Assurance Pack	269-12445	
ProDsktpwMDOP ALNG LicSAPk MVL	License/Software Assurance Pack	M6D-00005	

MICROSOFT SELECT PLUS GOVERNMENT

			List Price (Per	
Product Description	Product Type	Product Number	Level Discount)	DIR Customer Price
Access 2013	License	077-06705		
Access LIC/SA	License/Software Assurance	077-02521		
Core Client Device Client License	License/Software Assurance	W06-00002		
Core Client User Client License	License/Software Assurance	W06-00426		
Excel 2013	License	065-08166		
Excel 2013	License/Software Assurance	065-03452		
Office 2013	License	79H-00467		
Office 2013	License/Software Assurance	79H-00042		
Office Pro Plus	License	79P-04712		
Office Pro Plus	License/Software Assurance	269-05557		
Office Std 2013	License	021-10293		
Office Std 2013	License/Software Assurance	021-05339		
Powerpoint 2013	License	079-06238		
Powerpoint 2013	License/Software Assurance	079-01662		
Project 2013	License	076-05292		
Project 2013	License/Software Assurance	076-01810		
Visio Pro 2013	License	D87-05994		
Visio Pro 2013	License/Software Assurance	D87-01099		
Visio Std 2013	License	D86-05323		
Visio Std 2013	License/Software Assurance	D86-01240		
Visual Studio Premium w/MSDN	License/Software Assurance	9ED-00071		
Visual Studio Pro 2012	License	C5E-00989		
Visual Studio Pro w/MSDN	License/Software Assurance	77D-00110		
Word 2013	License	059-08670		
Word 2013	License/Software Assurance	059-03715		

MICROSOFT SELECT PLUS ACADEMIC

			List Price (Per	
Product Description	Product Type	Product Number	Level Discount)	DIR Customer Price
Access 2013	License	077-06695		
Access 2013	License/Software Assurance	077-02570		
Excel 2013	License	065-08156		
Office MAC Std 2011	License	3YF-00294		
Office MAC Std 2011	License/Software Assurance	3YF-00292		
Office Pro Plus 2013	License	79P-04691		
Office Pro Plus 2013	License/Software Assurance	269-05623		
Office Std 2013	License	021-10282		
Office Std 2013	License/Software Assurance	021-05331		
Project 2013	License	076-05273		
Project 2013	License/Software Assurance	076-01776		
Project Pro 2013	License	H30-04027		
Project Pro 2013	License/Software Assurance	H30-00237		
Powerpoint 2013	License	079-06228		
Visio Pro 2013	License	D87-05984		
Visio Pro 2013	License/Software Assurance	D87-01057		
Visio Std 2013	License	D86-05324		
Visio Std 2013	License/Software Assurance	D86-01175		
Visual Studio Foundation Server Client Per Device	License/Software Assurance	126-00156		
Visual Studio Premium w/MSDN	License/Software Assurance	9ED-00071		
Visual Studio Premium w/MSDN	Software Assurance	9ED-00073		
Visual Studio Pro w/MSDN	License/Software Assurance	77D-00110		
Word 2013	License	059-08660		
Word MAC 2011	License	D48-01082		

NOVELL EDUCATION

		List Price (Per	
Product Description	Product Number	Level Discount)	DIR Customer Price
Sentinel Base Package 1-instance 1-Year Priority Maintenance	877-001862-EDU		
Sentinel Base Package 1-instance 3-Year Priority Maintenance	877-001863-EDU		
Novell Privileged user Mgr 2.3 1-Instance License + 1-Year Priority Maintenance	877-005821-EDU		
Novell Privileged User Manager 1-Instance 1-Year Priority Maintenance	877-005823-EDU		
Novell Privileged User Manager 1-Instance 3-Year Priority Maintenance	877-005824-EDU		
Novell Sentinel Log Manager 2500 EPS 1-Instance 1-Year Priority Maintenance	877-006391-EDU		
Novell Sentinel Log Manager 2500 EPS 1-Instance 3-Year Priority Maintenance	877-006392-EDU		
NetIQ Cloud Manager 1-Instance 1-Year Priority Maintenance	877-006963-EDU		
NetIQ Cloud Manager 1-Instance 3-Year Priority Maintenance	877-006964-EDU		
Self-service Password Reset 2.0 100-User 1-Year Priority Maintenance	877-007800-EDU		
Self-service Password Reset 2.0 100-User 3-Year Priority Maintenance	877-007801-EDU		
ZENworks Patch Management Patch Developer kit 6.4 Standard Edition License	873-009056-EDU		
ZENworks Patch Management Patch Developer kit 6.4 Premier Edition License	873-009057-EDU		
ZENworks Asset Management 1-Instance/User 3-Year Priority Maintenance	877-001605-EDU		
ZENworks Endpoint Security Management 1-Device 3-Year Priority Maintenance	877-001621-EDU		
SUSE Linux Enterprise Management Pack for System Center Operations Manager License + 1-Ye	877-006327-EDU		
SUSE Linux Enterprise Management Pack for System Center Operations Manager License 1-Yea	877-006329-EDU		
SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Standard Subscription	874-005050-EDU		
SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Priority Subscription	874-005051-EDU		
SUSE Linux Enterprise Desktop 1-Instance 1-Year Priority Subscription	874-005311-EDU		
SUSE Linux Enterprise Desktop 1-Instance 3-Year Priority Subscription	874-005312-EDU		
SUSE Linux Enterprise Server for IBM Power (per socket) Standard Subscription 3-Year	874-005551-EDU		
SUSE Linux Enterprise Server for IBM Power (per socket) Priority Subscription 3-Year	874-005577-EDU		
SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Standard Support, 1 Ph	874-006265-EDU		
SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Priority Support, 1 Phys	874-006266-EDU		

NOVELL GOVERNMENT

		List Price (Per	
Product Description	Product Number	Level Discount)	DIR Customer Price
Sentinel Base Package 1-instance 1-Year Priority Maintenance	877-001862		
Sentinel Base Package 1-instance 3-Year Priority Maintenance	877-001863		
Novell Privileged user Mgr 2.3 1-Instance License + 1-Year Priority Maintenance	877-005821		
Novell Privileged User Manager 1-Instance 1-Year Priority Maintenance	877-005823		
Novell Privileged User Manager 1-Instance 3-Year Priority Maintenance	877-005824		
Novell Sentinel Log Manager 2500 EPS 1-Instance 1-Year Priority Maintenance	877-006391		
Novell Sentinel Log Manager 2500 EPS 1-Instance 3-Year Priority Maintenance	877-006392		
NetIQ Cloud Manager 1-Instance 1-Year Priority Maintenance	877-006963		
NetIQ Cloud Manager 1-Instance 3-Year Priority Maintenance	877-006964		
Self-service Password Reset 2.0 100-User 1-Year Priority Maintenance	877-007800		
Self-service Password Reset 2.0 100-User 3-Year Priority Maintenance	877-007801		
ZENworks Patch Management Patch Developer kit 6.4 Standard Edition License	873-009056		
ZENworks Patch Management Patch Developer kit 6.4 Premier Edition License	873-009057		
ZENworks Asset Management 1-Instance/User 3-Year Priority Maintenance	877-001605		
ZENworks Endpoint Security Management 1-Device 3-Year Priority Maintenance	877-001621		
SUSE Linux Enterprise Management Pack for System Center Operations Manager License + 1-Ye	877-006327		
SUSE Linux Enterprise Management Pack for System Center Operations Manager License 1-Yea	877-006329		
SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Standard Subscription	874-005050		
SUSE Linux Enterprise Server for IBM zSeries (per engine) 1-Year Priority Subscription	874-005051		
SUSE Linux Enterprise Desktop 1-Instance 1-Year Priority Subscription	874-005311		
SUSE Linux Enterprise Desktop 1-Instance 3-Year Priority Subscription	874-005312		
SUSE Linux Enterprise Server for IBM Power (per socket) Standard Subscription 3-Year	874-005551		
SUSE Linux Enterprise Server for IBM Power (per socket) Priority Subscription 3-Year	874-005577		·
SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Standard Support, 1 Ph	874-006265		
SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (8 CPU Sockets, Priority Support, 1 Phys	874-006266		

DIR-TSO-TMP-404 BID PACKAGE 2

COMPLETE CATALOG

Instructions:

Vendors must submit the publishers complete catalog of products for the software publishers named in this RFO in the format outlined below. ALL publisher products pricing must be submitted; not a sample and not a summary of publisher products. Vendors should add additional rows to provide a complete catalog of publisher product and pricing that is being offered applicable to their response. Vendor may add additional columns but must have all of the columns listed in the format provided. Failure to provide a complete catalog of publisher products for the software publishers being offered by Vendor as instructed may result in Offer being disqualified from further evaluation.

				List Price	DID 0 /	
Publisher	Product Description	Product Type	Product Number	(Per Level	DIR Customer Discount	DIR Customer Price
Example: ADOBE EDUCATION	BUS TRANSFORMATION ED 9 ANNL SUPP RNWL	7	2r3-1318-9	\$45,959.99		\$41,367.00
Example: ADOBE EDUCATION	CLP ACAD CS5 DES PREM 5 RNW UPG 1Y 150P		65060083ab03a12		14.00%	\$57.93
Example: MICROSOFT SELECT PLUS ACA	ACCESS 2010 ALNG MVL	STANDARD SOFTWARE/LICENSE	077-06148	\$26.00	18.00%	\$21.32
Example: MICROSOFT SELECT PLUS ACA	ACCESS 2010 SNGL MVL	STANDARD LICENSE/SOFTWARE	077-06158	\$148.00	18.00%	\$121.36
Example: Novell						
		+		1		
		+				
]	

PLEASE NOTE: All prices quoted to Customers shall include the administrative fee. The administrative fee = .75% x Customer Price

DIR Contract No. DIR-TSO-XXXX Vendor Contract No.

STATE OF TEXAS DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

VENDOR NAME

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and *VENDOR NAME* (hereinafter "Vendor"), with its principal place of business at *VENDOR ADDRESS*.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-XXX, on POSTING DATE, for NAME OF RFO. DIR subsequently issued a BAFO opportunity on BAFO DATE. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-XXX shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-XXX, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-XXX, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-XXX, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-XXX, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In

DIR Contract No. DIR-TSO-XXXX Vendor Contract No.

the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then Appendix E or Appendix F, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to *insert product description here* as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to *insert SPECIFIC* services here as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is *insert number* percent (*insert number*%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$*insert dollars*.

DIR Contract No.	DIR-TSO-XXXX
Vendor Contract No.	

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647

Phone: (512) 475-1647 Facsimile: (512) 475-4759

Email: Kelly.parker@dir.texas.gov

If sent to the Vendor:

Vendor Representative
Company Name
Address
City, State Zip
Phone: () Facsimile: () -

Email:

7. Software License, Service and Leasing Agreements

A. Software License Agreement

- 1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. rder Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.
- 2) Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the

DIR Contract No. DIR-TSO-XXXX Vendor Contract No.

Software License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix E of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

DIR Contract No. DIR-TSO-XXXX Vendor Contract No.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

No exceptions have been agreed to by DIR and Vendor.

DIR Contract No. DIR-TSO-XXXX Vendor Contract No.

This C	Contract is executed to be effective as of the date	of last signature.
VEND	VDOR NAME	
Autho	norized By:	
Name:	ne:	
Title: _	::	
Date: _	::	
The St	State of Texas, acting by and through the Depa	rtment of Information Resources
Autho	norized By:	
Name:	ne: Hershel Becker	
Title: _	:Chief Procurement Officer	
Date <u>:</u>		
Office	ce of General Counsel:	

Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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Appendix A Standard Terms and Conditions For Product and Related Services Contracts

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The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

3. Definitions

- A. Customer any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:
 - 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
 - 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
 - 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
 - 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
 - 5) A local workforce development board created under Section 2308.253;
 - 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
 - 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
 - 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
 - 9) A nonprofit organization that provides affordable housing.
- **B.** Compliance Check an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.

- **C.** Contract the document executed between DIR and Vendor into which this Appendix A is incorporated.
- **D. CPA** refers to the Texas Comptroller of Public Accounts.
- **E. Day** shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- **F.** Order Fulfiller the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- **G.** Purchase Order the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- **H.** State refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
- 2) If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

F. Choice of Law

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

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

H. Proof of Financial Stability

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

5. Intellectual Property Matters

A. Definitions

1)" Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii)

trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

- 2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.
- **4)** "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.
- 5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in

the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a

court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

- 1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

- 1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).
- 2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.
- 3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

7. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

- a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
- **b)** DIR reserves the right to require the Vendor to rescind any such Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.
- **d)** Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.
- e) Vendor shall not prohibit Order Fulfiller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiller List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 7.B.1.a above.

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers

for like products.

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Webpage

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the products and services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;
- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- i) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- 1) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Webpage Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's webpage will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this webpage is compliant with the pricing as stated in the Contract.

4) Webpage Changes

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to

facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Vendor and Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

If DIR receives Vendor's or Order Fulfiller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller' trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

I. Orientation Meeting

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include reporting requirements. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for

attendance at the meeting.

J. Performance Review Meetings

DIR may require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract, at DIR's discretion. The meetings may be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

8. Pricing, Purchase Orders, Invoices, and Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Manufacturer's Suggested Retail Price (MSRP) or List Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

B. Customer Discount

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1

1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.
- 3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

D. Shipping and Handling Fees

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

E. Tax-Exempt

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

F. Travel Expense Reimbursement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under Travel the current State Management **Program** (http://www.window.state.tx.us/procurement/prog/stmp/). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

G. Changes to Prices

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

H. Purchase Orders

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

I. Invoices

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Invoices shall be submitted by the Vendor or Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Vendor or Order Fulfiller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.
- 2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.
- 3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

J. Payments

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

9. Contract Administration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D

A. Contract Managers

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

1) State Contract Manager

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

2) Vendor Contract Manager

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Vendor and Order Fulfillers under the Contract. Vendor shall file the monthly reports,

subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

- **a)** Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- **b)** Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

- a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.
- **b)** DIR may change the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment.
- c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is

unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract..

C. Records and Audit

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)

- 1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- 2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.
- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office

hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

- 1) Prior to execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.
- 2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts E-Mail Box information.

10. Vendor Responsibilities

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W

A. Indemnification

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR REPRESENTATIVES, OFFICERS. AGENTS, EMPLOYEES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) INFRINGEMENTS

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving

infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

C. Vendor Certifications

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control;

- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

D. Ability to Conduct Business in Texas

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

E. Equal Opportunity Compliance

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

G. Responsibility for Actions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

H. Confidentiality

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- **2)** Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer.. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

K. Limitation of Liability

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

For any claims or cause of action arising under or related to the Contract: i) to the extend permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

L. Overcharges

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

M. Prohibited Conduct

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

O. Use of State Property

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other

resources of the Customer or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

P. Immigration

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and
- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

No public disclosures or news releases pertaining to this contract shall be made by Vendor without prior written approval of DIR.

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Substitutions are not permitted without the written permission of DIR or Customer.

S. Secure Erasure of Hard Disk Products and/or Services

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

- 1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
- 2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with

the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30)

calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration

of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

7) Vendor or Order Fulfiller Rights Under Termination Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office Department of Information Resources Attn: Public Information Officer 300 W. 15th Street, Suite 1300 Austin, Texas 78701 (512) 475-4759, facsimile

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.



Department of Information Resources

Request for Offer

Value Added Software Reseller and Related Services

DIR-TSO-TMP-404

Bid Package 5

Vendor References

VENDOR REFERENCES

Value Added Software Reseller and Related Services

Request for Offer DIR-TSO-TMP-404

REFERENCE DEADLINE TO DIR: No later than July 11, 2017 - 2:00 pm CT

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for Value Added Software Reseller and Related Services. The reference should only be applicable to the Value Added Software Reseller and Related Services.

NOTE TO THE RATER: The Vendor that is responding to this RFO is providing this document for you to fill out. Please return directly to DIR at the email address: valueaddedref@dir.texas.gov

This portion to be completed by the Vendor requesting reference information			
Vendor Name			
Product/Services Category			
Prime Contractor			
Subcontractor(s) Ending Date Ending I			
	Date		
Total Est. Contract Dollar Amount			
This portion to be completed by the Rater providing refevalueaddedref@dir.texas.gov.	erence and retur	ned to DIF	R at
Rating: (0) Unsatisfactory; (1) Marginally Satisfactory; (2) Satisfactory; (3) I Definitions for each rating category are contained on the following page.	Exceeds Expectation	s; (N/A) Not A	applicable
Please provide your opinion by rating the following: Quality of the Products and Services			
 Have you purchased any Value Added Software Reseller products for Yes No 	rom this Vendor in pa	ast two years	s?
 Vendor's ability to provide the products or services in a timely manner 	er? 01.	2 3.	N/A
3. Vendor's knowledge and ability to answer questions regarding the p	oroducts? 01	2 3.	N/A N/A N/A
4. Vendor's ability to resolve problems?	0 1	2 3.	N/A
Cost 5. Timely, current, accurate & complete invoices			
5. Timely, current, accurate & complete invoices	0 1	2 3.	N/A
Timeliness of Performance			
6. Adherence to delivery schedule (major tasks, milestones	0 1	2 3.	N/A
Business Relations & Customer Satisfaction	0 1	0 0	NI/A
7. Effectively communicated with customer management & staff	0 1	2 3.	N/A
Vendor personnel (professional, cooperative & flexible) Vendor's attitude toward customer service	0 1	2 3.	N/A
9. Veridor's attribute toward customer service 10. Overall Satisfaction with Vendor	0 1. ₋ 0 1. ₋	2 3. 2 3.	N/A N/A N/A N/A
Comments: (Please use additional page if necessary)			
In your opinion, should this Vendor be used again for Value Added Softv Yes No	ware Reseller and Re	elated Servic	es?
In your opinion, should this Vendor be recommended to others?		Yes	_ No
Rater's Name:	Date:		
Organization:			
Title:			
Phone Number: Fax Number:	Email address:		

VENDOR REFERENCES

Rating Scale

Excellent (3) There are no quality problems.	There are no cost issues.	There are no delays.	Responses to inquiries, technical, service, and administrative issues are effective and responsive.
Satisfactory (2) Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is usually effective and responsive.
Marginal (1) Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Cost issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.
Unsatisfactory (0) Nonconformances are compromising the achievement of contract requirements.	Cost issues are compromising performance of contract requirements.	Delays are compromising the achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is not effective and responsive.

Request for Offer Value Added Software Reseller Products and Related Services DIR-TSO-TMP-404 Bid Package 6

VPATTM

Voluntary Product Accessibility Template®

Version 1.3

The purpose of the **Voluntary Product Accessibility Template**, or **VPAT**[™], is to assist Federal contracting officials and other buyers in making preliminary assessments regarding the availability of commercial "Electronic and Information Technology" products and services with features that support accessibility. It is assumed and recommended that offerers will provide additional contact information to facilitate more detailed inquiries.

The first table of the Template provides a summary view of the Section 508 Standards. The subsequent tables provide more detailed views of each subsection. There are three columns in each table. Column one of the Summary Table describes the subsections of subparts B and C of the Standards. The second column describes the supporting features of the product or refers you to the corresponding detailed table, e.g., "equivalent facilitation." The third column contains any additional remarks and explanations regarding the product. In the subsequent tables, the first column contains the lettered paragraphs of the subsections. The second column describes the supporting features of the product with regard to that paragraph. The third column contains any additional remarks and explanations regarding the product.

Date:

Name of Product:

Contact for more Information (name/phone/email):

Summary Table VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
Section 1194.21 <u>Software</u> <u>Applications and Operating</u> <u>Systems</u>		
Section 1194.22 Web-based Internet Information and Applications		
Section 1194.23 <u>Telecommunications Products</u>		
Section 1194.24 Video and Multi- media Products		
Section 1194.25 <u>Self-Contained,</u> <u>Closed Products</u>		
Section 1194.26 <u>Desktop and</u> <u>Portable Computers</u>		
Section 1194.31 <u>Functional</u> <u>Performance Criteria</u>		
Section 1194.41 <u>Information</u> , <u>Documentation and Support</u>		

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Section 1194.21 Software Applications and Operating Systems – Detail

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Criteria	Supporting Features	Remarks and explanations
(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.		
(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.		
(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that Assistive Technology can track focus and focus changes.		

(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to Assistive Technology. When an image represents a program element, the information conveyed by the image must also be available in text.	
(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.	
(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.	
(g) Applications shall not override user selected contrast and color selections and other individual display attributes.	
(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.	
(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.	
(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.	

(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.	
(I) When electronic forms are used, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.	

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Section 1194.22 Web-based Internet information and applications – Detail VPAT™

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Criteria	Supporting Features	Remarks and explanations
(a) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).		
(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.		
(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup.		

(d) Documents shall be organized so they are readable without requiring an associated style sheet.	
(e) Redundant text links shall be provided for each active region of a server-side image map.	
(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.	
(g) Row and column headers shall be identified for data tables.	
(h) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.	
(i) Frames shall be titled with text that facilitates frame identification and navigation	
(j) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.	
(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply with the provisions of this part, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.	
(I) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by Assistive Technology.	

(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with §1194.21(a) through (I).	
(n) When electronic forms are designed to be completed on-line, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.	
(o) A method shall be provided that permits users to skip repetitive navigation links.	
(p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.	

Note to 1194.22: The Board interprets paragraphs (a) through (k) of this section as consistent with the following priority 1 Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5 1999) published by the Web Accessibility Initiative of the World Wide Web Consortium: Paragraph (a) - 1.1, (b) - 1.4, (c) - 2.1, (d) - 6.1, (e) - 1.2, (f) - 9.1, (g) - 5.1, (h) - 5.2, (i) - 12.1, (j) - 7.1, (k) - 11.4.

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Section 1194.23 Telecommunications Products – Detail VPATTM

Voluntary Product Accessibility Template®

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Criteria	Supporting Features	Remarks and explanations
(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.		
(b) Telecommunications products which include voice communication functionality shall support all commonly used crossmanufacturer non-proprietary standard TTY signal protocols.		
(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.		
(d) Voice mail, messaging, auto- attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the		

upon to indicate recent time : in	
user to indicate more time is required.	
(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.	
(f) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.	
(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.	
(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.	
(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.	
(j) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a	

usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery. (k)(1) Products which have	
mechanically operated controls or keys shall comply with the following: Controls and Keys shall be tactilely discernible without activating the controls or keys.	
(k)(2) Products which have mechanically operated controls or keys shall comply with the following: Controls and Keys shall be operable with one hand and shall not require tight grasping, pinching, twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2N) maximum.	
(k)(3) Products which have mechanically operated controls or keys shall comply with the following: If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.	
(k)(4) Products which have mechanically operated controls or keys shall comply with the following: The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.	

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Section 1194.24 Video and Multi-media Products – Detail VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
a) All analog television displays 13 inches and larger, and computer equipment that includes analog television receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. As soon as practicable, but not later than July 1, 2002, widescreen digital television (DTV) displays measuring at least 7.8 inches vertically, DTV sets with conventional displays	Supporting Features	
measuring at least 13 inches vertically, and stand-alone DTV tuners, whether or not they are marketed with display screens, and computer equipment that includes DTV receiver or display circuitry, shall be equipped with caption decoder circuitry which		

appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals.	
(b) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.	
(c) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.	
(d) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.	
(e) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.	

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Section 1194.25 Self-Contained, Closed Products – Detail

VPATTM

Voluntary Product Accessibility Template®

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Criteria	Supporting Features	Remarks and explanations
(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach Assistive Technology to the product. Personal headsets for private listening are not Assistive Technology.		
(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		
(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(d) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular		

biological characteristics, shall also be provided.	
(e) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.	
(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.	
(g) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.	
(h) When a product permits a user to adjust color and contrast	

settings, a range of color selections capable of producing a variety of contrast levels shall be provided.	
(i) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.	
(j) (1) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length on products which are freestanding, non-portable, and intended to be used in one location and which have operable controls.	
(j)(2) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is 10 inches or less behind the reference plane, the	

height shall be 54 inches maximum and 15 inches minimum above the floor.	
(j)(3) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.	
(j)(4) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following: Operable controls shall not be more than 24 inches behind the reference plane.	

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Section 1194.26 Desktop and Portable Computers – Detail VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) All mechanically operated controls and keys shall comply with §1194.23 (k) (1) through (4).		
(b) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).		
(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.		
(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards		

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Section 1194.31 Functional Performance Criteria – Detail VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for Assistive Technology used by people who are blind or visually impaired shall be provided.		
(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for Assistive Technology used by people who are visually impaired shall be provided.		
(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for Assistive Technology used by people who are		

deaf or hard of hearing shall be provided	
(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.	
(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for Assistive Technology used by people with disabilities shall be provided.	
(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.	

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Section 1194.41 Information, Documentation and Support – Detail VPAT™

Voluntary Product Accessibility Template®

Criteria	Supporting Features	Remarks and explanations
(a) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge		
(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.		
(c) Support services for products shall accommodate the communication needs of end-users with disabilities.		

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Vendor ICT Accessibility Policy A

This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describ within their organizations.

Please complete this form by checking a box for each topic that most closely match the current state of your organization. worksheet. This assessment is not a substitute for other requested accessib

All questions, inquiries, etc. regarding Bid Package 10, Vendor ICT Accessibility Policy (PDAA) should be directed
Organization information
Organization name:Company X
Organization address: _ 1111 State Blvd. Anytown, TX 78701
Responder contact information:myemailaddress@yahoo.com
Date of assessment completion:1/1/15
My organization is a (choose one or more if applicable)
☐ Manufacturer: My organization develops and sells its own ICT products / services
□ Service Provider: My organization sells IT development services
Integrator: My organization develops customer solutions using a combination of products / services from manuf
Reseller or Catalogue Supplier: Does not develop or have its own products, but offers COTS 3rd party products
For each criteria statement, please enter the number corresponding to your response in the shaded a
Responses
1. Develop, implement, and maintain an ICT accessibility policy.
0 My organization has no plan to have an ICT accessibility policy. (If selected, skip to next section of
1a. Having an ICT accessibility policy.
1 My organization is developing an ICT accessibility policy.
2 My organization is finalizing an ICT accessibility policy.
3 My organization has approved an ICT accessibility policy.
1 1b. Having appropriate plans in place to implement and maintain the policy.
f 1 My organization is developing plans to implement our ICT accessibility policy and ensure that it is
2 My organization has completed planning for initial implementation and maintenance of our acce
3 My organization has approved plans for accessibility policy implementation and maintenance.
1 1c. Establishing metrics and tracking progress towards achieving compliance to the policy.
1 My organization is identifying metrics that can be used to gauge policy compliance.
2 My organization is collecting metrics and has begun designing progress reporting based on them.
3 My organization is tracking progress on policy adoption and continues to refine the metrics.
Section 1 Comments (Provide any comments or additional information on this section here.)

Establish and maintain an organizational structure that enable

0 My organization has no plan to develop a governance system to support ICT accessibility. (If selection is support ICT accessibility).

Bid Package 8 - Vendor Accessibility Developme Services Information Request

1. Vendor Information						
Vendor Name:	Submitter Name			Date:		
Email:	Casimitor Hamo	Phone:	()	<u> </u>		
Address:	City:	1 1101101	State:	ZIP:		
2. Instructions	ony.			 .		
Complete this form if your company or or includes one or more of the following Info • Website development services • Web Application Development Se • Custom development services as • Client based software application • Other software development services Please direct any questions regarding 3. Please respond to the questions below as	ormation and Con rvices part of an integra development ser ices containing of g this request to t	nmunica nted solu vices ne or mo	ntions Technolog ution. ore user interfac	gies (ICT) offering type		
1. Describe or provide documentation regarding your organization's key business processes that include the integration of ICT accessibility activities. (Examples are product development, procurement, HR, etc.):						
2. Describe the skills and training resourd and produce accessible ICT offerings:	ces that your orga	nization	n uses (internal d	or third party) to deve	lop	
3. Describe the development and test too offerings. Provide examples of typical prodocumented:	_	_	-		ılts are	
4. Describe your organizations corrective resolving accessibility issues / defects:	actions process(es) or s	ystem(s) for doc	umenting, tracking, a	nd	
5. Describe alternate methods for ICT pro (example: 24hour / 7day/week toll free ph		-	ant with accessi	bility technical stand	ards.	
6. Provide links to example websites or o meet accessibility technical standards su				nization has produced	d that	



Addendum #1

This Addendum # 1 to Request for Offer DIR-TSO-TMP-404:

- 1. Contains questions and answers submitted in writing at the Pre-Bid Vendor Conference and Webinar, and to the Purchasing Point of Contact;
- 2. Provides a Sign-In Sheet of attendees to the Pre-Bid Vendor Conference and webinar; and
- 3. Provides the Microsoft PowerPoint presentation from the Pre-Bid Vendor Conference held on June 13, 2017.
- 4. PDAA in Excel format is attached.

QUESTIONS AND OFFICIAL ANSWERS:

- 1. Question: Bid Package 2 requires the Vendor to include the software publisher's complete catalog of products. This will result in hundreds of thousands of part numbers. Would DIR please remove the requirement to include the complete catalog?
 - **Answer:** Vendors should submit the price and discount for every category and service that the Vendor would like to be considered for award.
- **2. Question:** It was noted in the vendor conference that there were "mandated" related services. Can you specify what the mandated services are?
 - **Answer:** Please reference the RFO Section 2.1 Scope, 3rd paragraph where additional services are outlined and required at no additional cost to the state.
- **3. Question:** Section 2.1, Products There is reference made to Volume Pricing and the RFO document refers to the Instruction Tab in Bid Package 2 for Volume Pricing Instructions. We do not see an Instructions Tab. Will that be added to Bid Package 2?
 - **Answer:** Nothing will be added. Please refer to the RFO, Section 2.1 Scope. Specific instructions are provided for Bid Package 2 under the paragraph stating "For the purpose of this RFO, Vendors MUST RESPOND as follows to the "Bid Package 2".
- **4. Question:** Bid Package 7, Vendor PDAA Can DIR please provide Bid Package 7 in the Excel format so that we can complete it?
 - **Answer:** An excel version of the PDAA is attached to this addendum.
- 5. Question: Can you please provide your current Adobe agreement numbers?
 Answer: DIR current Adobe agreement number is: Government-Agreement Number: 4400622897 Academic and Higher Ed- Agreement Number: 4400625626
- **6. Question:** Publisher programs are not uniform in terms of Discounting by product for resale, can we provide a cost plus offer?
 - **Answer:** No it must be firm fixed pricing.
- 7. Question: Within a Microsoft Enterprise Agreement, Microsoft has varying discount structures, can we propose varying discounts as opposed to providing 1 discount for



Addendum # 1

everything within that program? As an example, can we provide a varying discount structure that matches Microsoft's subcategories?

Microsoft:		
Enterprise Agreement (comprised of subcategories as listed below)		
Office Professional/Standard	Level D less 7.5%	
Windows Pro Desktop Operating System	Level D less 7.5%	4.
Core CAL/Enterprise CAL Suite (to include stand alone components)	Level D less 6%	
All other or additional EA licensing	Level D	

Answer: The middle column above represents the publisher agreement with DIR. The last column is the "DIR Customer Discount" (from publisher discount level). The discount in the last column may vary per category type.

8. Question: Bid Package 5 Vendor Reference "Product/Services Category" Question, does the State require 3 total references, or is it 3 per Publisher?

Answer: Three references for each publisher if proposing all three brands 9 total.

- **9. Question:** Bid Package 5 Vendor Reference "Product/Services Category" Question, must the reference customer be an Adobe licensing customer, if we are bidding Adobe? **Answer:** Yes.
- 10. Question: Are you going to supply the PDAA form in excel and the VPAT in Word doc since we need to return these in Office format? They are in PDF right now Answer: See question 4 above.
- **11. Question:** Bid Package 7 Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment. Question: the form is cut off. Kindly provide a complete form. **Answer:** See question 4 above.
- **12. Question:** Bid Package 7 Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment. Question: We are not familiar with this form. Is this form required for **only** from the publishers ...Microsoft, Adobe and Novell? **Answer:** The form is required for all bidders.
- **13. Question:** Bid Package 7 Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment. Question: We are not familiar with this form. Is this required for the Resellers organization.

Answer: The form is required for all bidders.

14. Question: Bid Package 7 Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment. Question: if the form is not filled out correctly or completely, will our proposal be disqualified?

Answer: No, but you will be asked to make clarification/corrections.



Addendum #1

- **15. Question:** What other contracts are available to State Agencies to purchase Microsoft? **Answer:** DIR has Microsoft hardware on an Education IT contract. There are also other agreements with Microsoft for various entities Government, Education, Libraries, etc.
- 16. Question: May we email the HUB subcontracting form to Lynn Sanchez, HUB Coordinator, dir.hub@dir.texas.gov for her review and approval before bid opening?
 Answer: As instructed in the pre-bid conference, yes you may if enough time is allowed for her to complete the review and return to you prior to the due date.
- **17. Question:** Page 3, 1.2.4 Cost Recovery: DIR may change the administrative fee at any time during a contract term. DIR will notify Vendors of any change in the administrative fee. Question: Please confirm that Resell may change the discount percentage to account for an increase of the Administrative fee.

Answer: Yes.

18. Question: Page 8 2.5 Electronic and Information Resources (EIR) Accessibility Requirement: Vendors should complete a Vendor Accessibility Development Services Questionnaire (Bid Package 8) which documents Vendor's capability or ability to produce accessible electronic and information resources. Question: We are not familiar with this form. We request that the State elaborate on this requirement.

Answer: If vendor responses include web or software development services of any type (including customization based on a COTS platform, etc.) in their response, it needs to complete this form so that DIR can understand the vendor's ability to produce deliverables that meet Texas government accessibility requirements and WCAG 2.0 AA.

To net, if the vendor develops a deliverable either stand-alone (a website, for example) or as part of an overall solution that includes any user interface components that would be used by DIR customers, this form needs to be completed.

19. Question: Page 8 2.5 Electronic and Information Resources (EIR) Accessibility Requirement: Vendors should complete a Vendor Accessibility Development Services Questionnaire (Bid Package 8) Question: if this form is not fill out correctly or completely, will that disqualify our response?

Answer: See Question 14 above.

20. Question: Does the State currently use Purchasing Cards and if not does that State foresee usage in the future?

Answer: The state does have a procurement card program but this would depend on customer's policies for use of card.

21. Question: What is the purchase dollar limit per order for purchases made with a Purchasing card?

Answer: Same as question 20.



Addendum #1

22. Question: What was the total \$\$ amount of purchases made with Purchasing cards last fiscal year?

Answer: DIR does not have this information.

23. Question: Reseller is charged a cost of approximately 2.5% to process Procurement credit

card orders. May we charge the fee to the client? **Answer:** DIR does not have this information.

24. Question: Bid Package 2 - Pricing Template Select Plus Academic Publisher discount level is listed as Level D. Question: Please confirm the discount level. We believe that it should be Level A.

Answer: It is Level D.

25. Question: Page 5, Products 2.1 "Prices and discounts offered shall be firm for the entire period of the contract. Price escalation or discount reductions will NOT be allowed. Price decreases or discount increases are permitted at any time." Question: This is in direct conflict with Appendix A Standard Terms and Conditions for Products and Related Services page 12 K. Changes to prices "Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor." Microsoft, Adobe and Novell MSRP for a product may change at any time during the term of the contract. Reseller has no control when or if that occurs. Please confirm that only the Discount offered will remain firm.

Answer: What is published in the RFO overrides Appendix A terms if in conflict.

26. Question: Bid Package 2, Pricing Template: In addition to the CLP program, will DIR accept additional publishing categories to better align with current pricing programs that are available from Adobe?

Answer: Additional publishing categories may be proposed in responses. It will be DIR's sole determination as to whether or not proposed categories are evaluated or selected.

27. Question: Bid Package 2, Pricing Template: A large portion of the part numbers provided in the pricing sheet of Bid Package 2 are currently out of date and no longer available. Is it acceptable to provide currently available part numbers within a solicitation response in place of the outdated part numbers? Will DIR revise this Bid Package to include only currently available part numbers?

Answer: No, we will not revise. This was known and vendor is to update or remove old products.



Addendum #1

28. Question: Bid Package 1, Section 3.5.1 Authorized Vendors: The listed qualifications that DIR is using within this section are not commonly used by these manufacturers. If a vendor responds as a qualified offeror confirmed via an authorization letter by the appropriate manufacturer, does this meet DIR's requirements?

Answer: If it follows the requirements set forth in Section 3.5.1 and is properly signed.

29. Question: Bid Package 1, Section 3.5.1 Authorized Vendors: Per item e. of this section, is Google included as a publisher within the scope of this bid?

Answer: No.

30. Question: Bid Package 1, Section 3.3.1 RFO Schedule: We respectfully request that the deadline for submitting responses to this solicitation be extended.

Answer: There are no plans to extend this deadline date due to expiring contracts.

31. Question: In the Instructions in Bid Package 2 – Pricing Template it states "Vendors must offer ONLY one (1) discount for each Publisher Category listed." Is it possible to submit a response with pricing for one or two software publishers or must we submit pricing for all three publisher categories in order to be considered?

Answer: Question is not understood. If bidding Microsoft you should cover all categories; if bidding Adobe all categories; if bidding Novell all categories.

32. Question: Bid Package 1, Exhibit B, Item 4 asks "Indicate whether or not Texas state agencies, local governments, independent school districts, and institutions of higher education have purchased the products/services listed in this RFO from your company within the last 12 months." If the answer is "no," or if the amount is small (under \$100,000), will this disqualify us from receiving a contract?

Answer: No. It will just be considered in evaluation scoring.

33. Attendee List to Pre-bid Conference and Webinar attached.



Vendor Conference Sign In Sheet DIR-TS

34. Power point to Pre-bid is attached.



DIR-TSO-TMP-404 Vendor Pre-Bid Con





Addendum #1

35. PDAA in excel format is attached.



End of Addendum # 1



You are here: Home » Procurement » Tools » Electronic State Business Daily

Value Added Software Reseller and Related Services

Open Date: 07/11/17 02:00 PM Agency Requisition Number: DIR-TSO-TMP-404

NOTE: You will need to download all of the following files for complete specifications and other required document, including a HUB subcontracting plan(if required).

Help: Right Click to and choose "save file as" or "save target as" to your computer.

-Package 1 size: 2194817 (in bytes)
 -Package 2 size: 7129132 (in bytes)
 Type: Specification
 Format: (Compressed File)
 Format: (ASCII Plain Text)

Addendum #1 Contains questions and answers submitted in writing at the Pre-Bid Vendor Conference and Webinar, and to the Purchasing Point of Contact; 2. Provides a Sign-In Sheet of attendees to the Pre-Bid Vendor Conference and webinar; and 3. Provides the Microsoft PowerPoint presentation from the Pre-Bid Vendor Conference held on June 13, 2017. 4. PDAA in Excel format is attached. The State of Texas, acting by and through the Department of Information Resources, is seeking to enter into a statewide contract with one or more Vendors to provide Value Added Software Reseller products to eligible to Texas public entities.

Agency: DEPARTMENT OF INFORMATION RESOURCES (313)

Open Date: 07/11/17 02:00 PM Agency Requisition Number: DIR-TSO-TMP-404

Previous Price Paid: N/A

Solicitation type: 14 Days or more for entire solicitation package

NIGP Commodity Code(s):

Class-Item: 208 - 00

Class-Item: 208 - 10

Class-Item: 208 - 11

Class-Item: 208 - 12

Class-Item: 208 - 13

Class-Item: 208 - 14

Class-Item: 208 - 15 Class-Item: 208 - 18

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Contact Information:

Contact Name: Carrie Cooper

Email: carrie.cooper@dir.texas.gov

URL: www.dir.state.tx.usAddress: 300 W 15th Street

Suite 1300

Austin, TX 78701

Phone: (512) 936-2353

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texas.gov | Texas Records and Information Locator (TRAIL) | State Link Policy | Texas Homeland Security | Texas Veterans Portal

Glenn Hegar, Texas Comptroller • Home • Contact Us

Privacy and Security Policy | Accessibility Policy | Link Policy | Public Information Act | Compact with Texans

Value Added Software Reseller Products and Related Services

Request for Offer DIR-TSO-TMP-404

Vendor Pre-Bid Conference

June 20, 2017

1:30 P.M. (CT)



Welcome! Webinar

LINK:

https://attendee.gotowebinar.com/register/7692891816601279745



Conference Opening

- Welcome Attendees
- Introduction of DIR Personnel

Kerry Stennett, DIR

Contract Manager

Technology Sourcing Office

Lynn Sanchez, DIR

HUB Coordinators

Technology Sourcing Office

Jeff Kline, DIR

Statewide Electronic and Information Resources (EIR) Accessibility Coordinator

Jeff.kline@dir.texas.gov

512-463-3248

Vania Ramaekers, DIR

Web Host

Agenda

- Conference Opening
- General Information
- RFO Overview
 - > RFO purpose/scope
 - > RFO Schedule
 - Bid Packages
 - Vendor Response Package
 - Mandatory Response Contents
 - > Evaluation Criteria
- Break
- Questions
- Conference Closing

General Information

- Attendee be sure to sign in
- Silence all cell phones
- Write the questions (with RFO page number and Section number) on provided index card and turn in during the Break
- DIR may provide tentative verbal answers at the conference
- Official "Questions and Answers" will be posted as an Addendum on the <u>Electronic</u>
 <u>State Business Daily (ESBD)</u> keep checking you will not receive notification of
 Addendum postings.
- All questions regarding this RFO must be submitted in writing to <arrie.cooper@dir.texas.gov by 2:00 P.M. (CT), June 22, 2017.

General Information continued

Point of Contact for all inquiries regarding this RFO

300 W. 15th St., Ste. 1300

Austin, TX 78701

Phone:

512-936-2353

Fax:

512-936-6896

Email: carrie.cooper@dir.texas.gov

General Information continued

Disqualification of Offers

- ➤ Failure to sign Executed Offer Form
- ➤ Failure to complete Financial Information
- ➤ Failure to complete a Historically Underutilized Business (HUB) Subcontracting Plan (HSP)
- Must submit on or before due date and time

Contact with DIR Personnel

➤ Vendors and all vendor representatives shall not attempt to discuss the contents of this RFO with any employees or representatives of DIR other than designated contacts. Failure to observe this restriction may result in disqualification of any related Response.

General Information continued

Packaging of Offers

- Care must be taken to provide offers as outlined in Section 3.7 (Response Format and Contents)
- NOTE: DIR is now requiring additional copies to be provided on thumb drives instead of paper. Each drive must be labeled per requirements.





DIR Cooperative Contracts

Item 23.

This RFO will result in master contract(s) for use by eligible customers who will determine the scope of work based on their business needs. This RFO is not for a specific project.



RFO Overview

Section 1.1 - Purpose

As part of DIR's initiatives to identify strategic sourcing opportunities, DIR reserves the right to make a single award or multiple awards as determined by DIR to achieve the highest overall value to the state.

Section 1.2.4 – Cost Recovery

The administrative fee for the purposes of this RFO is .75%.

RFO Schedule

Date/Time	Activity		
June 8, 2017	Publish RFO on Electronic State Business Dail (ESBD)		
June 20, 2017 2:00 p.m. (CT)	Vendor Conference (optional)		
June 22, 2017 2:00 p.m. (CT)	Deadline for submitting questions		
June 29, 2017 5:00 p.m. (CT)	Estimated date for answering questions		
July 11, 2017 2:00 p.m. (CT)	Deadline for DIR to receive vendor references		
July 11, 2017 2:00 p.m. (CT)	Deadline for submitting Responses to RFO		

Bid Package 1

Exhibit D- HUB Subcontracting Plan



- DIR encourages all respondents to seek Historically Underutilized Business (HUB) subcontractors and maximize HUB participation in their bids.
- Responses submitted without a HUB Subcontracting Plan (HSP), will be disqualified
- All respondents, HUBs and Non-HUBs, are required to submit a completed HSP
- The HSP form includes specific instructions for meeting the Good Faith Effort requirements
- Vendors must complete a new HUB Plan and a good faith effort for this procurement

Bid Package 1

Exhibit C- HUB Subcontracting Plan continued



- If you are subcontracting, notification of subcontracting opportunity must be performed.
- Provide written notification of subcontracting opportunity listed to at least three State of Texas HUBs.
- Provide written notification of subcontracting opportunity to a minority or women's trade organization or development center.
- Allow no less than seven (7) working days from their receipt of notice for HUBs to respond (keep delivery receipt emails).
- Note: Attach supporting documentation (letters, fax transmittals, email, etc.) demonstrating evidence of the good faith effort performed with RFO submittal.

Item 23.

Bid Package 1

Exhibit C- HUB Subcontracting Plan continued



- If not subcontracting, your response must contain an explanation demonstrating **HOW** your company will fulfill the entire contract with its own resources
 - Self-Performance Justification an explanation must be in the space provided, do not reference sections in the RFO

Please make sure that you provide TWO (2) separate signed copies of the **HUB Subcontracting Plan.**

ONE (1) in the three ring proposal binder; and

ONE (1) in a separate sealed envelope. Provide an editable electronic copy in your complete response.

- Alternative to the Good Faith Effort
 - State of Texas Mentor Protégé Program
 - ➤ Protégé must be a State of Texas HUB
 - >Approval process is no less than two weeks
 - Contact DIR's HUB Office: dir.hub@dir.texas.gov

Item 23.

Bid Package 1

Exhibit C- HUB Subcontracting Plan continued

You may contact DIR's HUB Department for assistance in completing your HUB Subcontracting Plan (HSP) at any time during the solicitation.

Lynn Sanchez

512-463-9813

Email: dir.hub@dir.texas.gov

Bid Package 6 Voluntary Product Accessibility Template (VPAT)

What is a VPAT?

- A standardized template used in the industry to document product accessibility conformance to U.S. Section 508
 - manufacturer-generated, <u>product-specific</u> document using the VPAT template
 - provides relevant and specific information about compliance with Section 508
 Standards
- Helps procurement and contracting officials make preliminary assessments of the degree of accessibility compliance in a vendor's EIR.
- Allows procurement staff and others to evaluate accessibility compliance consistently across multiple vendors.

Bid Package 6- VPAT continued

The VPAT Form

- VPAT documents are formal statement of compliance by your organization.
- VPATs should be filled out by an individual that has knowledge of the product accessibility.
- VPAT claims should be backed by an audit trail.
- VPAT claims should be based on the demonstrable accessibility of a product. (i.e., accessibility testing).
- Inaccurate claims of compliance could generate end user complaints under the Americans with Disabilities Act.

Bid Package 7 Policy Driven Adoption Assessment PDAA



Why is DIR requesting information on vendor accessibility policy?

- Texas agencies and institutions of higher education are required to procure or develop accessible offerings. Gaps in vendor internal governance systems and leadership commitment inhibit the ability to meet these standards for their products / services.
 - Making vendor's IT offerings accessible to people with disabilities requires commitment in many areas of an organization. PDAA data helps DIR better understand the commitment and progress by vendors in making their offerings accessible.
- Accessibility policy maturity provides insight into vendors' ability to develop accessible commercial off the shelf (COTS) and non-COTS offerings, which can increase the confidence in accuracy of vendor's accessibility documentation.
 - A mature accessibility policy implementation signals that a vendor is fully aware of the implications of accessibility requirements and is prepared to resolve any issues in a timely manner.

Bid Package 7- PDAA continued

How will this information be used?

- The completed form will establish a baseline for where a vendor stands with regard to its accessibility policy.
 - illustrates the depth and maturity of the vendor's support for accessibility policy and practices as illustrated via the PDAA Maturity Model.
- Bid Package 8 Questionnaire may also be included in future solicitations so that progress can be assessed.
- Vendors can use the results as a roadmap for implementing their organization—wide ICT accessibility initiatives, which will help ensure that programs and processes are in place to facilitate the development of future accessible offerings.

Item 23.

RFO Overview - Bid Packages

Bid Package 1	Request for Offer DIR-TSO-TMP-404		
Bid Package 1a Exhibit D	HUB Subcontracting Plan		
Bid Package 2	Pricing Index		
Bid Package 3	Sample Contract		
Bid Package 4	Appendix A Standard Terms and Conditions		
Bid Package 5	Vendor Reference Questionnaire		
Bid Package 6	Voluntary Product Accessibility Template (VPAT)		
Bid Package 7	Policy Driven Adoption Assessment (PDAA)		
Bid Package 8	Vendor Accessibility Development Services Questionnaire		

Bid Package 1



- Bid Package 1 RFO DIR-TSO-404
 - Products and Related Services Definition (Section 2.1)
 - General Information
 - Evaluation, Negotiations, and Award
 - Exceptions Exhibit A, Item 10) & Exhibit A, Vendor Information SIGNATURE REQUIRED
 - Item 10, **Exceptions** used for:
 - Appendix A Standard Terms and Conditions
 - Sample Contract

Section	Section Title	Explanation of Exception	Proposed Language (redline)

Exhibit A - Vendor Information Form

- Attachment 1 Cancelled Contract References
- Attachment 2 Respondent Release of Liability

Exhibit B – Contract Support Plan

Exhibit C - Contract Marketing and Support Plan

Exhibit D - Historically Underutilized Business (HUB) Subcontracting Plan

Bid Package 1



Section 3.5.1 Authorized Vendors

Vendors responding to this RFO must supply a signed letter from the Manufacturer/Publisher certifying that Vendor is an authorized reseller of Manufacturer's/Publisher's products to the agencies and political subdivisions of the State, including institutions of higher education, and may sell such products under the terms and conditions of the DIR Contract, in support of Vendor's proposal. Signed letters of authorization must be submitted with Vendor's proposal. Failure to supply the letter will result in elimination of the related product from consideration.

Item 23.

Bid Package 2

Bid Package 2 – Pricing Index

• Excel Spreadsheet

Discount Sheet Pricing Sheet Complete Catalogue

Other Bid Packages

- Bid Package 3 Sample Contract
 - Products and Related Services
- Bid Package 4 Standard Terms and Conditions
 Products and Related Services
- Bid Package 5 **Vendor References**
- Bid Package 6 Voluntary Product Accessibility Template (VPAT)
- Bid Package 7- Policy Driven Adoption Assessment (PDAA)
- Bid Package 8 Vendor Accessibility Development Questionnaire

Bid Package 5 - References



VENDOR REFERENCES

Value Added Software Reseller and Related Services

Request for Offer DIR-TSO-TMP-404

REFERENCE DEADLINE TO DIR: No later than July 11, 2017 - 2:00 pm CT

Texas Department of Information Resources (DIR) requests your assistance in providing a Vendor reference for Value Added Software Reseller and Related Services. <u>The reference should only be applicable to the Value Added Software Reseller and Related Services.</u>

NOTE TO THE RATER: The Vendor that is responding to this RFO is providing this document for you to fill out.

Please return directly to DIR at the email address: valueaddedref@dir.texas.gov

This portion to be completed by the Vendor requesting reference information				
Vendor Name	<u> </u>			
Product/Services Category				
Prime Contractor				
Subcontractor(s)				
Dates of Performance: Starting Date Ending	ng Date			
Total Est. Contract Dollar Amount				
TI: (2 () 1				
This portion to be completed by the Rater providing re	eterence and returned to DIR at			
valueaddedref@dir.texas.gov.				
Rating: (0) Unsatisfactory; (1) Marginally Satisfactory; (2) Satisfactory; (3)				
Definitions for each rating category are contained on the following page.).			
Diagon provide your eninion by reting the fellowing				
Please provide your opinion by rating the following: Quality of the Products and Services				
Have you purchased any Value Added Software Reseller products	ts from this Vendor in past two years?			
Yes No	is nom this vehicle in past two years:			
	unner? 0. 1. 2. 3. N/A			
 Vendor's ability to provide the products or services in a timely mar Vendor's knowledge and ability to answer questions regarding the Vendor's ability to resolve problems? 	e products? 0. 1. 2. 3. N/A			
4. Vendor's ability to resolve problems?	0. 1. 2. 3. N/A			
, , , , , , , , , , , , , , , , , , ,				
Cost				
5. Timely, current, accurate & complete invoices	0 1 2 3 N/A			
Timeliness of Performance				
6. Adherence to delivery schedule (major tasks, milestones	0 1 2 3 N/A _			
Business Relations & Customer Satisfaction				
7. Effectively communicated with customer management & staff	0 1 2 3 N/A_ 0 1 2 3 N/A_			
Vendor personnel (professional, cooperative & flexible)	0 1 2 3 N/A_			
9. Vendor's attitude toward customer service	0 1 2 3 N/A_ 0 1 2 3 N/A_			
10. Overall Satisfaction with Vendor	0 1 2 3 N/A_			
Comments: (Please use additional page if necessary)				
comments. (Flease use additional page if flecessary)				
In your opinion, should this Vendor be used again for Value Added So	oftware Reseller and Related Services?			
Yes No				
In your opinion, should this Vendor be recommended to others?	Yes No			
				
Rater's Name:	Date:			
Organization:				
Title:				
Phone Number: Fax Number:	Email address:			

2

Mandatory Response Contents



VENDOR MUST PROVIDE THE ITEMS LISTED BELOW OR THE RESPONSE WILL BE REJECTED.

1) Vendor Information – Exhibit A of this RFO

This form must be filled out in its entirety and signed by an officer or agent empowered to contractually bind the Vendor.

Contract Support Plan - Exhibit B of this RFO

Vendor must describe their history and experience.

3) Contract Marketing and Support Plan – Exhibit C of this RFO

Vendor must provide a plan that describes the Vendor's ability and strategy for promoting and supporting the contact, if awarded.

3) **HUB Subcontracting Plan Forms – Exhibit D of this RFO**

All Vendors, INCLUDING THOSE WITH HUB DESIGNATION AND THOSE THAT DO NOT PLAN TO USE SUBCONTRACTORS, must submit a HUB Subcontracting Plan. HUB Subcontracting Plan Forms are provided in Exhibit C. Refer to Section 3.4 for more information regarding HUB subcontracting. Note: For the purposes of the HUB Subcontracting Plan, Order Fulfillers designated by a manufacturer or publisher to sell directly to Customers on its behalf are considered subcontractors. The paper copy of the HSP must be submitted in a separate envelope.

Product Pricing – Bid Package 2

Brands and products should be listed in the Excel spreadsheet that is attached as "Bid Package 2" to the posting for this RFO Number DIR-TSO-TMP-404, on the Electronic State Business Daily, http://esbd.cpa.state.tx.us/. Vendor shall provide specific pricing as instructed in RFO. If Vendor offers government and educational pricing, both pricing structures must be included in Vendor's response.

Related Services Description and Pricing – Bid Package 2

Vendor shall provide a detailed description and the specific pricing for any value-added, product-related service s that Vendor is proposing to offer in response to this RFO.

6) References – Bid Package 5

Vendor must send the Vendor Reference Questionnaire (See Bid Package 5) to three (3) companies or government agencies. Instructions are included in Bid Package 5. DIR is not responsible for undeliverable e-mails or for non-responsive references. Include all requested information. References must respond to DIR on the form provided by the due date in order to be considered in proposal evaluation. The Vendor Reference Questionnaire form must be submitted directly from the reference to DIR. The Vendor may not submit the reference form to DIR.

PDAA – Bid Package 7

Vendor shall provide Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment (Bid Package 7) with their proposal.

Accessibility of Electronic Response Documents

Vendor response documents should be submitted in a format that is accessible to people with disabilities. This can include, but is not limited to accessible Office or other productivity document suite. The submission of scanned documents is discouraged.

Item 23.

Evaluation Criteria

- RFO Section 4.1 Evaluation of Responses
 - Incomplete response package will be rejected
 - The financial review and HSP review are on a pass/fail basis.
 - Failure to provide a DUNs number will result in your response being disqualified.
 - Only responses that receive the passing grade will proceed to the next evaluation phase.
- RFO Section 4.2 Evaluation Criteria

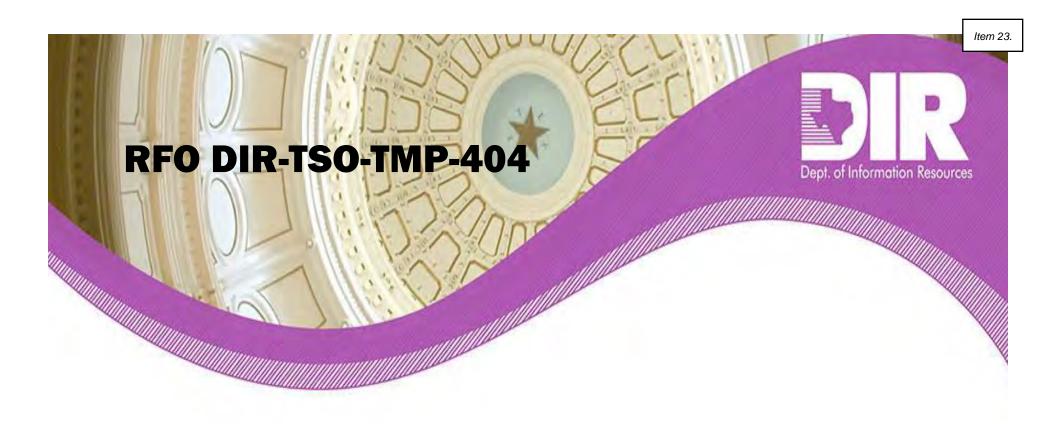
The criteria and weight to be used in determining the best value for the State are as follows:

45%	Pricing
43/0	Filing
30%	Vendor History and Experience in providing the products and services requested. (Exhibit B)
25%	Vendor's plan for promoting and supporting the Contract. (Exhibit C)

Item 23.

Questions & Answers

- Break (10 minutes)
- We will answer your questions. Reference the Section Number and page number in your written question.
- Answers are unofficial until posted on the ESBD.



Pre-Bid Conference Break

Conference Closing

- Deadline for submitting Questions: June 22, 2017, 2:00 p.m. (CT)
- Frequently visit the ESBD esbd.cpa.state.tx.us
- All questions, inquiries must be directed to <u>Carrie Cooper</u>

Carrie Cooper

Phone: 512-936-2353

Fax: 512-936-6896

Email: carrie.cooper@dir.texas.gov



Volume Licensing

Program Signature Form

MBA/MBSA number

Agreement number 01E73535

5-0000010133622

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code	
Enterprise Enrollment (Indirect)	X20-10635	
Enterprise Amendment	M97 (NEW)	
Discount Transparency Disclosure Form	1338689.004 DTDF	
Product Selection Form	1338689.004 PSF	

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer		
Name of Entity (must be legal entity name)* New Braunfels Utilities		
Signature*		
Printed First and Last Name*		
Printed Title		
Signature Date*		
Tax ID		

^{*} indicates required field

Microsoft Affiliate

Microsoft Corporation

Signature

Printed First and Last Name

Printed Title

Signature Date

(date Microsoft Affiliate countersigns)

Agreement Effective Date

(may be different than Microsoft's signature date)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer

Name of Entity (must be legal entity name)*

Signature*

Printed First and Last Name*

Printed Title

Signature Date*

Outsourcer

Name of Entity (must be legal entity name)*

Signature*

Printed First and Last Name*

Printed Title

Signature Date*

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation

Dept. 551, Volume Licensing 6880 Sierra Center Parkway Reno, Nevada 89511 USA

^{*} indicates required field

^{*} indicates required field



Volume Licensing

Enterprise Enrollment

(Reseller to complete)

01-1-		
State	and	Loca

Enterprise Enrollment number (Microsoft to complete)	48978976
Previous Enrollment number	83755340

Framework ID (if applicable)			
1,1,1			

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at http://www.microsoft.com/licensing/contracts. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means http://www.microsoft.com/licensing/contracts or a successor site.

2. Order requirements.

- a. Minimum order requirements. Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) Enterprise commitment. Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) Enterprise Online Services only. If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- Additional Products. Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. Use Rights for Enterprise Products. For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. Country of usage. Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. Resellers. Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

f. Adding Products.

(i) Adding new Products not previously ordered. New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) Adding Licenses for previously ordered Products. Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. True-up requirements. Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
 - (i) Enterprise Products. For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
 - (ii) Additional Products. For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
 - (iii) Online Services. For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.
 - (iv) Subscription License reductions. Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
 - 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

- (v) Update statement. An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
- (vi) True-up order period. The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The thirdyear true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

- may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.
- (vii)Late true-up order. If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. Step-up Licenses. For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
 - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
 - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- i. Clerical errors. Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- Verifying compliance. Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

Pricing.

- a. Price Levels. For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. Setting Prices. Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. Payment terms.

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. End of Enrollment term and termination.

- a. General. At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. Renewal option. At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.

Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

- (i) Software Assurance. If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.
- (ii) Online Services eligible for an Extended Term. For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
 - 1) Extended Term. Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
 - 2) Cancellation during Extended Term. At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.
- (iii) Subscription Licenses and Online Services not eligible for an Extended Term. If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. Termination for cause. Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- e. Early termination. Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. Government Community Cloud.

- a. Community requirements. If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.
- All terms and conditions applicable to non-Government Community Cloud Services also apply

- to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. Use Rights for Government Community Cloud Services. For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

Enrollment Details

Enrolled Affiliate's Enterprise.

a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

☑ Enrolled Affiliate only	
☐ Enrolled Affiliate and all Affiliates	
☐ Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be if fewer than all Affiliates are to be included in the Enterprise):	ncluded
Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:	

 Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Include future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at https://www.microsoft.com/licensing/servicecenter.

a. Primary contact. This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* New Braunfels Utilities Contact name* First Bill Last Ryan
Contact email address* billryan@nbutexas.com
Street address* 263 Main Plaza
City* New Braunfels
State* TX
Postal code* 78130-5135(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 830-629-8477
Tax ID
* indicates required fields

b. Notices contact and Online Administrator. This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Servies, including adding or reassigning Licenses and stepping-up prior to a true-up order.

□ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Bill Last Ryan
Contact email address* billryan@nbutexas.com
Street address* 263 Main Plaza
City* New Braunfels
State* TX
Postal code* 78130-5135(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 830-629-8477
Language preference. Choose the language for notices. English
□ This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives

personally identifiable information of the Customer and its Affiliates.

* indicates required fields

c. Online Services Manager. This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Bill Last Ryan

Contact email address* billryan@nbutexas.com

Phone* 830-629-8477

☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

* indicates required fields

d. Reseller information. Reseller contact for this Enrollment is:

Reseller company name* SHI International Corp.

Street address (PO boxes will not be accepted)* 290 Davidson Ave

City* Somerset

State* NJ

Postal code* 08873-4145

Country* United States

Contact name* Scott Doherty

Phone* 888-764-8888

Contact email address* msteam@shi.com

* indicates required fields

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature* Scott Doherty

Printed name* Scott Doherty

Printed title*

Date*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the

^{*} indicates required fields

- other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.
- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. Otherwise, the notices contact and Online Administrator remains the default.
 - (i) Additional notices contact
 - (ii) Software Assurance manager
 - (iii) Subscriptions manager
 - (iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing?

Yes,
No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

Volume Licensing



Previous Enrollment(s)/Agreement(s) Form

Entity Name: New Braunfels Utilities

Contract that this form is attached to: State Local Government

For the purposes of this form, "entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

Please provide a description of the previous Enrollment(s), Agreement(s), Purchasing Account(s), and/or Affiliate Registration(s) being renewed or consolidated into the new contract identified above.

- a. Entity may select below any previous contract(s) from which to transfer MSDN subscribers to this new contract. Entity shall ensure that each MSDN subscriber transferred is either properly licensed under the new contract or is removed.
- b. Entity may select below only one previous contract from which to transfer the Software Assurance (SA) Benefit contact details, i.e., benefits contact (not the SA manager) and the program codes, to this new contract.
- An Open License cannot be used to transfer either the SA Benefit details or MSDN subscribers.
- d. The date of the earliest expiring Enrollment/Agreement that contains SA or Online Services will be the effective date of the new contract (or SA coverage period for Select Plus).
- Please insert the number of the earliest expiring Enrollment/Agreement with SA or Online Services in the appropriate fields of the new contract.

Enrollment/Agreement/ Purchasing Account/Affiliate Registration Description	Enrollment/Agreement/ Purchasing Account/Affiliate Registration Public Customer Number	Transfer SA Benefit Contact	Transfer MSDN Subscribers
Standard Enrollment	83755340	X	



Volume Licensing

Amendmer	nt to	Contract	Docume	nte
MILICITATION	IL LO	Contract	Docume	1113

Enrollment Number	
100000000000000000000000000000000000000	5-0000010133622

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

Enterprise Enrollment Invoice for Quoted Price Amendment ID M97

The price quoted to Enrolled Affiliate is a fixed price based on an estimated order submission date. Microsoft will invoice Enrolled Affiliate based on this fixed price quote. If this order is submitted later than the estimated order submission date, Enrolled Affiliate will be charged for net new Monthly Subscriptions (including Online Services) for the period during which these services were not provided. For Indirect models, Pricing to Enrolled Affiliate is agreed between Enrolled Affiliate and Enrolled Affiliate's Reseller.

SKU Number	SKU Description	Existing Quantity	Incremental quantities
AAA-22360	Win E5 Sub Platform Per User	310	0
AAA-51068 Win OLS Activation User Sub Add-on E5		310	0

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

(M97)EnrAmend(Ind)(InvoiceforQuotedPrice)(M97	В
(W97)EnrAmend(Ind)(InvoiceforQuotedPrice)(WW)(ENG)(Jan2023)v2(IU).docx	M97	В

Microsoft Volume Licensing

Discount Transparency Disclosure Form

6/12/2023

Program:

Date:

Enterprise 6

Enrollment Number:

Renewal

Quote Number:

1338689.004

Reseller Name:

SHI International Corp.

Reseller Address:

290 Davidson Ave

Somerset, New Jersey, US, 08873-4145

Discount Details

For this enrollment, Microsoft provided the Customer's Partner a discount off of the Partner's Net Price. The Partner is required, by Microsoft, to pass on the discount to the Customer by reducing the Microsoft Product resale price by an amount equal to or greater than the discount.

Listed on this form is the maximum price the Partner may charge for the Microsoft Products to be ordered under this enrollment. The Maximum Resale Price (MRP) is calculated by subtracting the discount provided to the Partner, from the total estimated resale price for the Microsoft Products.

The requirement to pass through the discount does not mean that Microsoft is setting the Customer's actual price. Partners remain free to set the price charged for Microsoft Products at any point equal to or below MRP. The Customer's actual price will be established by a separate agreement between Customer and its Partner. Note that the MRP listed on this form does not include fees for non-Microsoft products, partner services or normal transaction costs. Normal transaction costs include taxes or other fees assessed by a local or federal government.

For Ordered Products				
Currency	Maximum Resale Price			
US Dollar	718,615.20			

In this form, the following definitions apply:

"Customer" means the entity that may enter or has entered into a Contract with the Partner.

"Contract" means a binding agreement between the Partner and Affiliate, under which Customer orders Products from Partner.

'Microsoft" means (1) the entity that has entered into an agreement with Partner under which Partner may place orders for Microsoft Products for use by the Customer and (2) the affiliates of such entity, as appropriate.

'Maximum Resale Price" means the sum of the Estimated Resale Price for the Microsoft Products ordered under the Customer Contract minus the discount off of the Partner's Net Price provided by Microsoft listed in the currency in which the Partner or Partner's reseller transacts with Microsoft.

"Product" means all Microsoft Products Identified in the Product Terms, such as all Software, Online Services, and other web-based services, including pre-release or beta version. Microsoft product availability may vary by region.

Partner:

SHI International Corp.

Customer:

New Braunfels Utilities

Signature of Customer's authorized representative:

Printed name:

Printed title:

Date:

		Ordered Product	Pricing & Usage Year	1	
Product Description	Part Number	Maximum Price (USD)	License Quantity	Usage Country	Subtotal (USD)
Enterprise		(030)			
Office Professional Plus ALng SA Platform	269-12442	118.28	450	United States	53,226.0
Core CAL ALng SA Platform UCAL	W06-01072	53.24	310	United States	16,504.4
Additional Products CIS Suite Datacenter Core	F				
ALng SA 2L Exchange Server Ent ALng SA	9GS-00135	200.00		United States	56,000.
exending server cite Acing SA	395-02504	875.00	4	United States	3,500.0
SQL Server Standard Core ALng SA 2L	7NQ-00292	774.00	82	United States	63,468.0
Win Remote Desktop Services CAL ALng SA UCAL	6VC-01254	29.00	140	United States	4,060.0
Total Year 1 Maximum Price Lic	censes and Software	Assurance			196,758.4
		Ordered Product F	Pricing & Usage Year	2	
Dendum Description	Don't Nove to all	Maximum Price	Constitution of the Consti	The state of the s	e a constituent
Product Description	Part Number	(USD)	License Quantity	Usage Country	Subtotal (USD)
Enterprise					
Office Professional Plus ALng SA Platform	269-12442	118.28	450	United States	53,226,0
Core CAL ALng SA Platform UCAL	W06-01072	53.24	310	United States	16,504.4
Additional Products CIS Suite Datacenter Core	120.01027.	MAKE			20.00
ALng SA 2L	9GS-00135	200.00	280	United States	56,000.0
Exchange Server Ent ALng SA	395-02504	875.00	4	United States	3,500.0
SQL Server Standard Core ALng SA 2L	7NQ-00292	774.00	82	United States	63,468.0
Win Remote Desktop Services CAL ALng SA UCAL	6VC-01254	29.00	140	United States	4,060.0
Total Year 2 Maximum Price Lic	enses and Software A	ssurance			196,758.4
		Ordered Product P	ricing & Usage Year	3	
Product Description	Part Number	Maximum Price (USD)	License Quantity	Usage Country	Subtotal (USD)
Enterprise		THE STATE OF THE S			
Office Professional Plus ALng SA Platform	269-12442	118.28	450	United States	53,226.0
Core CAL ALng SA Platform UCAL	W06-01072	53.24	310	United States	16,504.4
Additional Products					
CIS Suite Datacenter Core ALng SA 2L	9GS-00135	200,00	280	United States	56,000.0
Exchange Server Ent ALng SA	395-02504	875.00	4	United States	3,500.00
SQL Server Standard Core ALng SA 2L	7NQ-00292	774.00	82	United States	63,468.00
Vin Remote Desktop Services CAL ALng SA UCAL	6VC-01254	29.00	140	United States	4,060.00

			22012000		CONTRACTOR OF THE PARTY OF THE				_
			Ordered Pro	duct Pricing & Us	age Year 1				
Product Description	Part Number	Usage Indicator	Usage Start Date	Unit Of Measure	Unit Quantity	Maximum Price (USD)	License Quantity	Usage Country	Subtota (USD)
Enterprise				200					
Win E5 Sub Platform Per User	AAA-22360	Adjustable	6/1/2023	Monthly	12	11.50	310	United States	42,780.0
Additional Products									
Win OLS Activation User Sub Add-on E5	AAA-5106B	Adjustable	6/1/2023	Monthly	12	0.00	310	United States	0.0
Azure Monetary Commitment Provision	AAA-35418	Adjustable	6/1/2023	Monthly	12	0.00	1	United States	0.0
Total Year 1 Maximum Price M	onthly Subscript	ions							42,780.0
			Ordered Pro	duct Pricing & Us	age Year 2				
Product Description	Part Number	Usage Indicator	Usage Start Date	Unit Of Measure	Unit Quantity	Maximum Price (USD)	License Quantity	Usage Country	Subtota (USD)
Enterprise				Contract of the contract of th					V-11-0
Win E5 Sub Platform Per User	AAA-22360	Adjustable		Monthly	12	11.50	310	United States	42,780.0
Additional Products				- (
Win OLS Activation User Sub Add-on E5	AAA-51068	Adjustable		Monthly	12	0.00	310	United States	0.0
Azure Monetary Commitment Provision	AAA-35418	Adjustable		Monthly	12	0.00	1	United States	0.0
Total Year 2 Maximum Price Mo	onthly Subscripti	ons							42,780.0
The second second			Ordered Proc	duct Pricing & Usa	age Year 3				
Product Description	Part Number	Usage Indicator	Usage Start Date	Unit Of Measure	Unit Quantity	Maximum Price (USD)	License Quantity	Usage Country	Subtotal (USD)
Enterprise									
Win ES Sub Platform Per User	AAA-22360	Adjustable		Monthly	12	11.50	310	United States	42,780.0
Additional Products									
Win OLS Activation User Sub Add-on E5	AAA-51068	Adjustable		Monthly	12	0.00	310	United States	0.0
Azure Monetary Commitment	AAA-35418	Adjustable		Monthly	12	0.00	1	United States	0.0

	Enterprise Products				
Product Description	Part Number	P	ricing Information		
		Max	True Up Price (USI)	
True-Ups - Enterprise Products		Year 1	Year 2	Year 3	
Office Professional Plus ALng LSA Platform	269-12445	560.23	465.41	371.6	
Core CAL ALng LSA Platform UCAL	W06-01066	271.02	226.26	183.5	
Online Services - Enterprise Products			Max Price (USD)/ Month		
Win E5 Sub Platform Per User	AAA-22360		11.5		
	Additional Products				
Product Description	Part Number	Pr	icing Information		
		Max	True Up Price (USE)	
True-Ups		Year 1	Year 2	Year 3	
CIS Suite Datacenter Core ALng LSA 2L	9GS-00495	1,299.00	1,098.00	899.00	
Exchange Server Ent ALng LSA	395-02412	5,685.00	4,810.00	3,935.00	
SQL Server Standard Core ALng LSA 2L	7NQ-00302	5,031.00	4,258.00	3,483.00	
Win Remote Desktop Services CAL ALng LSA UCAL	6VC-01252	186.00	158.00	129.00	
	Additional Online Products		100 m		
Product Description	Part Number	Pri	Pricing Information		
Online Services			Max Price (JSD)/ Month	
Win OLS Activation User Sub Add-on E5	AAA-51068		200000000000000000000000000000000000000	0.00	

Enterprise Enrollment Product Selection Form

Proposal ID

Microsoft | Volume Licensing

Enrollment Number

Language: English (Unite	89.004 ed States)	J		
Enrolled Affiliate's Enterprise Product	s and Enterprise Online Ser	vices summary fo	r the initial order:	
Profile	Qualified Devices	Qualified Users	Device / User Ratio	CAL Licensing Model
Enterprise	310	310	1.0	User Licenses

Products	Enterprise Quantity
Office Professional Plus	
Office Professional Plus	450
Client Access License (CAL)	
Core CAL	
Core CAL	310
Windows Desktop	
Windows E5 per User	310

Price Group	1	2	3	4
Enterprise Products	Office Professional Plus + M365 Apps for Enterprise + Office 365 (Plans E3 and E5) + Microsoft 365 Enterprise	Office 365 (Plans E1, E3	Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise	
Quantity	450	310	310	310

Product Offering / Pool	Price Leve
Enterprise Products and Enterprise Online Services USLs: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4.	D
Additional Product Application Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1.	D
Additional Product Server Pool: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3.	D
Additional Product Systems Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 4.	D

Enterprise Enrollment Product Selection Form

Microsoft | Volume Licensing

Notes

Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:

Quantity of Licenses and Software Assurance	Price Level
2,399 and below	A
2,400 to 5,999	В
6,000 to 14,999	c
15,000 and above	D

Note 1: Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.

Note 2: Unless otherwise indicated in associated Agreement documents, the CAL selection must be the same across the Enterprise for each Profile.

Note 3: Enrolled Affiliate acknowledges that in order to use a third party to reimage the Windows Operating System Upgrade, Enrolled Affiliate must certify that it has acquired qualifying operating system licenses. The requirement applies to Windows Enterprise OS Upgrade. See Product Terms for details.

Note 4: If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.

Vendor

Additional Terms and Conditions under Texas DIR-TSO-4092

between

and

SHI Government Solutions, Inc. ("Vendor" or "SHI GS") 1301 South MoPac Expressway, Suite 375 Austin, Texas 78746 New Braunfels Utilities ("Customer" or "NBU") 263 Main Plaza New Braunfels, Texas 78130

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Vendor and Customer agree as follows. Effective as of the date of the last signature below (the "Effective Date"), this Texas Department of Information Resources ("DIR") Contract DIR-TSO-4092 ("DIR Contract") for cooperative purchases for specific services from SHI Government Solutions, Inc. is incorporated by reference into and made part of these Additional Terms and Conditions (the "Agreement"). The Agreement will govern the purchases and orders and each statement of work (SOW) that are provided to NBU from Vendor that are made during the term of DIR Contract with Vendor for Microsoft Volume Licensing. The Customer is an eligible purchaser of the offerings under the DIR Contract, which is publicly available on the DIR website at:

https://dir.texas.gov/contracts/dir-tso-4092

This Agreement shall become effective on the Effective Date and shall remain in effect for an initial term of one (1) year. This Agreement may be extended beyond the initial term for up to three (3) additional one-year terms, at NBU's sole option. Cumulative purchases under this Contract shall not exceed \$750,000.

Per the DIR Contract, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the DIR Contract. Within five (5) business days of the execution of this Agreement and upon future request from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU listed as additional insured. Vendor will provide an updated Certificate of Insurance to NBU prior to the expiration of each applicable policy.

In the event that data collected or obtained by the Vendor in connection with this Agreement is believed to have been compromised or in the event of a cybersecurity event or breach, the Vendor shall notify NBU immediately. Before NBU will allow Vendor access to the NBU network after a cybersecurity event or breach, Vendor shall provide NBU with: (1) an audit of the systems compromised to be completed by an independent firm unaffiliated with Vendor and (2) evidence that the Vendor's system is no longer a threat to the NBU network.

This Agreement and all of the rights and obligations of the parties shall be governed by and enforced under the laws of the State of Texas and the United States, as applicable. In the unlikely event any such situation may be necessary, the exclusive venue for any litigation under this Agreement shall be in a court of competent jurisdiction in Comal County, Texas. The parties agree to communicate and cooperate to resolve any concerns prior to filing litigation. Any mediation will be conducted by a mediator selected by both parties, and mediation shall be located in New Braunfels, Texas.

NBU and Vendor agree to reference the applicable current DIR Contract for quotations, purchase orders, and SOWs that are for offerings available from Vendor under the DIR Contract. The parties also agree to

cooperate to resolve any administrative issues for proper processing of orders and billing related to this Agreement. This Agreement is entered into on behalf of the parties by their below authorized representatives:

Vendor:	
SHI Government	
Solutions, Inc	
Signature: Lan My	
Name: Ian Nix	
Position: Manager - Contracts,	Legal
Date: 11/3/2023	1 - 1

Customer:	
New Braunfels Utilities	
Signature:	
Name:	
Position:	
Date:	



Pricing Proposal

Quotation #: 23229514
Reference #: EA 83755340
Created On: 3/17/2023
Valid Until: 12/29/2023

TX-New Braunfels Utilities

Jeffrey Jones

P.O. BOX 310289

NEW BRAUNFELS, TX 78131

United States Phone: 8306088868

Fax:

Email: jjones@nbutexas.com

Microsoft Inside Account Manager

Shaina Walker

290 Davidson Avenue Somerset, NJ 08873 Phone: 732-868-6191

Fax:

Email: Shaina_Walker@shi.com

All Prices are in US Dollar (USD)

Ρ	roduct	Qty	Your Price	Total
	office Professional Plus ALng SA Platform Microsoft - Part#: 269-12442 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 – 5/31/2024 Note: Year 1 of 3	450	\$103.14	\$46,413.00
	ore CAL ALng SA Platform UCAL Microsoft - Part#: W06-01072 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 – 5/31/2024 Note: Year 1 of 3	310	\$45.84	\$14,210.40
	zure Monetary Commitment Provision (Commerical) Microsoft - Part#: AAA-35418 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 – 5/31/2024 Note: Year 1 of 3	1	\$0.00	\$0.00
	IS Suite Datacenter Core ALng SA 2L Microsoft - Part#: 9GS-00135 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 – 5/31/2024 Note: Year 1 of 3	280	\$163.72	\$45,841.60
	xchange Server Ent ALng SA Microsoft - Part#: 395-02504 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 – 5/31/2024 Note: Year 1 of 3	4	\$716.28	\$2,865.12

Item 23.

Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 - 5/31/2024 Note: Year 1 of 3 7 Win E5 Sub Platform Per User 310 \$112.92 \$35,005.20 Microsoft - Part#: AAA-22360 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 - 5/31/2024 Note: Year 1 of 3 8 Win OLS Activation User Sub Add-on E5 310 \$0.00 \$0.00 Microsoft - Part#: AAA-51068 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 - 5/31/2024 Note: Year 1 of 3 9 Win Remote Desktop Services CAL ALng SA UCAL 140 \$23.74 \$3,323.60 Microsoft - Part#: 6VC-01254 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2023 - 5/31/2024 Note: Year 1 of 3 10 Office Professional Plus ALng SA Platform 450 \$103.14 \$46.413.00 Microsoft - Part#: 269-12442 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 - 5/31/2025 Note: Year 2 of 3 11 Core CAL ALng SA Platform UCAL 310 \$45.84 \$14,210.40 Microsoft - Part#: W06-01072 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 - 5/31/2025 Note: Year 2 of 3 12 Azure Monetary Commitment Provision (Commerical) 1 \$0.00 \$0.00 Microsoft - Part#: AAA-35418 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 - 5/31/2025 Note: Year 2 of 3 280 13 CIS Suite Datacenter Core ALng SA 2L \$163.72 \$45,841.60 Microsoft - Part#: 9GS-00135 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 - 5/31/2025 Note: Year 2 of 3 14 Exchange Server Ent ALng SA \$716.28 \$2,865.12 Microsoft - Part#: 395-02504 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 - 5/31/2025 Note: Year 2 of 3

Microsoft - Part#: 7NQ-00292

Contract Name: Microsoft Software VAR

15	SQL Server Standard Core ALng SA 2L Microsoft - Part#: 7NQ-00292 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 – 5/31/2025 Note: Year 2 of 3	82	\$633.60	\$ <u></u>
16	Win E5 Sub Platform Per User Microsoft - Part#: AAA-22360 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 – 5/31/2025 Note: Year 2 of 3	310	\$112.92	\$35,005.20
17	Win OLS Activation User Sub Add-on E5 Microsoft - Part#: AAA-51068 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 – 5/31/2025 Note: Year 2 of 3	310	\$0.00	\$0.00
18	Win Remote Desktop Services CAL ALng SA UCAL Microsoft - Part#: 6VC-01254 Contract Name: Accounting Usage Only Contract #: 0-0 Coverage Term: 6/1/2024 – 5/31/2025 Note: Year 2 of 3	140	\$23.74	\$3,323.60
19	Office Professional Plus ALng SA Platform Microsoft - Part#: 269-12442 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2025 – 5/31/2026 Note: Year 3 of 3	450	\$103.14	\$46,413.00
20	Core CAL ALng SA Platform UCAL Microsoft - Part#: W06-01072 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2025 – 5/31/2026 Note: Year 3 of 3	310	\$45.84	\$14,210.40
21	Azure Monetary Commitment Provision (Commerical) Microsoft - Part#: AAA-35418 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2025 – 5/31/2026 Note: Year 3 of 3	1	\$0.00	\$0.00
22	CIS Suite Datacenter Core ALng SA 2L Microsoft - Part#: 9GS-00135 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2025 – 5/31/2026 Note: Year 3 of 3	280	\$163.72	\$45,841.60
23	Exchange Server Ent ALng SA Microsoft - Part#: 395-02504 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 6/1/2025 – 5/31/2026 Note: Year 3 of 3	4	\$716.28	\$2,865.12

24	SQL Server Standard Core ALng SA 2L	82	\$633.60	\$ Item 23.
	Microsoft - Part#: 7NQ-00292			
	Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092			
	Coverage Term: 6/1/2025 – 5/31/2026			
	Note: Year 3 of 3			
25	Win E5 Sub Platform Per User	310	\$112.92	\$35,005.20
	Microsoft - Part#: AAA-22360			
	Contract Name: Microsoft Software VAR			
	Contract #: DIR-TSO-4092			
	Coverage Term: 6/1/2025 – 5/31/2026 Note: Year 3 of 3			
	Note. Teal 3 of 3			
26	Win OLS Activation User Sub Add-on E5	310	\$0.00	\$0.00
	Microsoft - Part#: AAA-51068			
	Contract Name: Microsoft Software VAR			
	Contract #: DIR-TSO-4092			
	Coverage Term: 6/1/2025 – 5/31/2026 Note: Year 3 of 3			
	Note: Teal 3 of 3			
27	Win Remote Desktop Services CAL ALng SA UCAL	140	\$23.74	\$3,323.60
	Microsoft - Part#: 6VC-01254			
	Contract Name: Microsoft Software VAR			
	Contract #: DIR-TSO-4092 Coverage Term: 6/1/2025 – 5/31/2026			
	Note: Year 3 of 3			
		-		
			Total	\$598,842.36

Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

Thank you for choosing SHI-GS! The pricing offered on this quote proposal is valid through the expiration date set above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order. SHI Government Solutions, Inc. is 100% Minority Owned, Woman Owned Business. TAX ID# 22-3695478; DUNS# 14-724-3096

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.



None

Meeting Date:	December 14, 2	2023	Agenda Type:	Consent Items for Action
From:	Laura Rivers		Reviewed by:	Laura Rivers
	Chief of Staff			Chief of Staff
Submitted by:	Laura Rivers		Approved by:	Ryan Kelso
	Chief of Staff			Interim Chief Executive Officer
RECOMMENI	DED ACTION:			art Blythin as Vice Chair of the and Other Matters in Connection
BACKGROUNI)			
On August 31, 2023, the NBU Board of Trustees approved Resolution #2023-176 establishing the Community Advisory Panel (the "CAP"), which is tasked with reviewing certain NBU initiatives, including but not limited to NBU's Integrated Resource Plan (the "IRP"), the drought ordinance, and the Fiscal Year 2026-2027 Rate Plan. On October 26, 2023, the NBU Board of Trustees appointed thirteen (13) community members to the CAP and named Justin Meadows as Chair. The Committee requests the appointment of Stuart Blythin as Vice Chair of the CAP.				
The financial imp				
LINK TO STRA	TEGIC PLAN			
Customers and (Community			
Financial Excell	ence			
Stewardship				
EXHIBITS				



Meeting Date:	December 14, 2023	Agenda Type:	Action Item
From:	Kimberly Huffman	Reviewed by:	Ashley Van Booven
	Accounting Manager		Director of Finance
Submitted by:	Dawn Schriewer	Approved by:	Ryan Kelso
	Chief Executive Officer		Interim Chief Executive Officer
RECOMMENI	DED ACTION: Discuss and Co	onsider Approval	of the NBU Annual Comprehensive

Financial Report and Red Flag and Cybersecurity Incidents Report

BACKGROUND

Moss Adams conducted an audit of the fiscal year 2023 financial results and issued an unqualified opinion, otherwise known as a "clean" opinion. The auditor performed preliminary fieldwork from July 17-21, 2023, which included testing of internal controls and procedures. Final fieldwork was conducted from October 16-20, 2023, which included detailed examination and testing of financial records for accuracy. The majority of the audit testing was completed during this time, but additional testing occurred after these dates through November 13, 2023.

The following reports will be presented to the Board for consideration at the Board meeting:

- a. Report from Auditor, Keith Simovic of Moss Adams; and
- b. Report from NBU Audit Committee.

FINANCIAL IMPACT

None

LINK TO STRATEGIC PLAN

Customers and Community

Financial Excellence

EXHIBITS

- 1. Fiscal Year 2023 Annual Comprehensive Financial Report
- 2. Red Flag and Cybersecurity Incident Report



MEMORANDUM



To: NBU Audit Committee of the Board of Trustees

From: Greg Brown, Chief Technology and Security Officer

Date: November 30, 2023

Subject: Red Flag Report for 2023

The Fair and Accurate Credit Transactions Act of 2003 (FACTA) required reasonable procedures to identify "Red Flags" defined by the Federal Trade Commission as "a pattern, practice, or specific activity that indicates the possible existence of identity theft." In response to the FACTA of 2003, New Braunfels Utilities (NBU) has adopted the Identity Theft Prevention Policy to mitigate potential threats via proactive measures and reporting. NBU implemented the Identity Theft Prevention Program to manage the following activities for "Red Flag" identification:

- 1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the program;
- 2. Incorporate Red Flags already identified in existing NBU Policy into the program;
- 3. Describe and establish appropriate responses to any Red Flags as detected to prevent and mitigate identity theft; and
- 4. Update the Program periodically to assess changes in customer risk incidents, methods of risk identification or classification, supervisory oversight requirements, and training needs.

Incidents:

Customer Service stolen laptop:

On January 3, 2023 our customer service assistant manager had her laptop stolen. We proceeded to ask her probing questions in regards to the theft. This theft has a police report number T23000017 assigned to it. This laptop did not contain any customer files that could reveal any customer Personal Identification Information (PII) or Payment Card Industry (PCI) Data. This laptop was not logged into any active applications at the time of theft. The end user was encouraged to change her NBU password as well as any personal passwords to any accounts she may have accessed on said laptop.

Accomplishments

The Cybersecurity Team delivered on many planned goals in FY23. The accomplishments included the deployment of a modern endpoint management system with vulnerability scanning capabilities, the completion of two (2) program evaluations with recommended roadmaps defining a maturity path, a strategic plan that redesigns the program with a focus



NEW BRAUNFELS UTILITIES

MEMORANDUM

on business interoperability and resiliency, and the acquisition of professional services to scale the program appropriately.

In March 2023, the cybersecurity team successfully deployed a modern endpoint management system (Taegis XDR). The robust cyber platform provides in-depth insights and awareness in the NBU technology infrastructure environment. The platform introduced a sophisticated vulnerability scanning function to identify critical vulnerabilities. This feature redefined the methods for remediation in the organization using a policy driven remediation table to generate baselines for future analysis.

The Cybersecurity Team completed two (2) program evaluations in FY23. The first was an automated process using the online tools from NBU's global technology partner, Gartner. The second evaluation was a more detailed process that consisted of on-site interviews with both technology and non-technology employees. The results from both evaluations included roadmaps defining a path to mature the program. These roadmaps were combined with internal gap assessment findings to create one centralized cybersecurity roadmap.

The Cybersecurity Team also developed a strategic plan that adopts the National Institute of Standards and Technology (NIST) framework. The framework is one of the most trusted methods for defining a set of guidelines to mitigate cybersecurity risks. The strategic plan aligns with the Technology Strategic Plan and the NBU Organizational Strategic Plan.

NBU has procured the professional services of a cybersecurity firm, iSphere, with a specialty in electric utilities. The firm has members on staff with national recognition in key areas that will be beneficial to strengthening our security posture. The firm's responsibility will include assistance with developing and deploying the existing roadmap, developing sustainable programs at the appropriate scale of the organization, refining reporting media, and Board level updates.

Per Texas House Bill 3834, our Cybersecurity and Learning & Development teams provided the following training required by the State of Texas:

Texas Cybersecurity Awareness Training 2023

- Topic Included:
 - Information Security Habits
 - Procedures that protect Information resources
 - Best practices for detecting, assessing, reporting, and addressing Information Security Risks

A total of 372 employees completed the training by July 18, 2023, a 100% completion rate.





MEMORANDUM

In Summary:

The existing Identity Theft, Red Flag, and Suspicious Activity detection methods as described in the NBU Identity Theft Prevention Policy continue to be reasonable, appropriate, and sufficient to mitigate risks to NBU and its customers.

Per Texas House Bill 3834, cybersecurity training and proof of compliance will be required annually. All NBU employees will be required to complete the training. The Cybersecurity and Learning & Development teams will continue to implement and deploy the training program.

Phishing Simulation Summary:

A phishing campaign is an attempt by threat actors to steal personal information that could compromise the integrity of the user's personal or corporate security. Phishing campaigns are executed via email where cybercriminals send fraudulent emails disguised as a trustworthy organization or reputable person. The goal of the phishing campaign is to obtain sensitive information that can be used to cripple an organization's ability to provide services to its customers.

In order to mitigate the potential damage resulting from a successful phishing campaign launched against NBU, the Cybersecurity Operations and Learning and Development teams work collaboratively to identify vulnerabilities in user awareness and provide follow-up training for those required. The program is a phishing simulation initiative whose goal is to train end users in the identification of social engineering tactics so they can make the right decision in the event of a real attack.

During the phishing campaign, the NBU average click rate for the past year is 4.75%, six percentage points lower than last year. The click rate is the percentage of end users that fail the simulation test. The Technology and Learning & Development teams will take remediation steps to lower the click rate by increasing training and continue phishing simulations for all end users. The goal of the phishing simulation initiative is to be below the utility industry click rate average of 5%.



NEW BRAUNFELS UTILITIES

MEMORANDUM

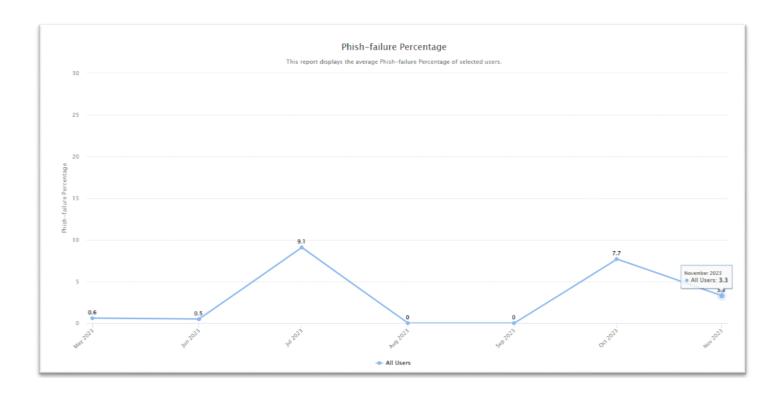
The information below details the phishing simulations for the past year.

Dates of Simulation	Subject of the Simulation	Results of the Simulation (Click Rate)
August 2022	HR: All Company Meeting Recap has been shared with you	9%
September 2022	IT@ has shared a printer with you	1%
October 2022	HR: Employee Data Review	2%
November 2022	Please review: Appropriate Halloween costumes	0%
December 2022	IT: Holiday travel with your work device	0%
January 2023	Inclement Weather Policy Update	18%
March 2023	Health and Safety Compliance Notice	4%
April 2023	HR: New requirements tracking Covid vaccinations	12%
May 2023	Celebrate National Chocolate Chip Day	1%
June 2023	IT: Updating Chrome Browser	1%
July 2023	June 10 - CEO Message	9%
August 2023	HRPaycheck	0%
September 2023	IT: ChatGPT Demand Survey	0%
October 2023	N/A	9%
November 2023	Reminder to activate your company LinkedIn Learning account	3%



MEMORANDUM

The chart below represents the Phish-failure Percentage. The click rate lowered after the increased phishing simulations and the establishment of the cyber warrior program.



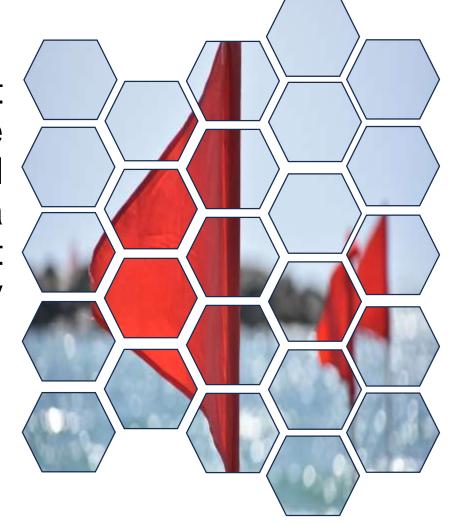


Red Flag Report

December 14, 2023

What is the Red Flag Report

• Fair and Accurate Credit Transactions Act of 2003 (FACTA) required reasonable procedures to identify "Red Flags" defined by the Federal Trade Commission as "a pattern, practice, or specific activity that indicates the possible existence of identity theft."





NBU implemented the Identity Theft Prevention Program to manage the following activities for "Red Flag" identification:

- 1
- 2
- 3
- 4

Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the program;

Incorporate Red Flags already identified in existing NBU Policy into the program;

Describe and establish appropriate responses to any Red Flags as detected to prevent and mitigate identity theft; and



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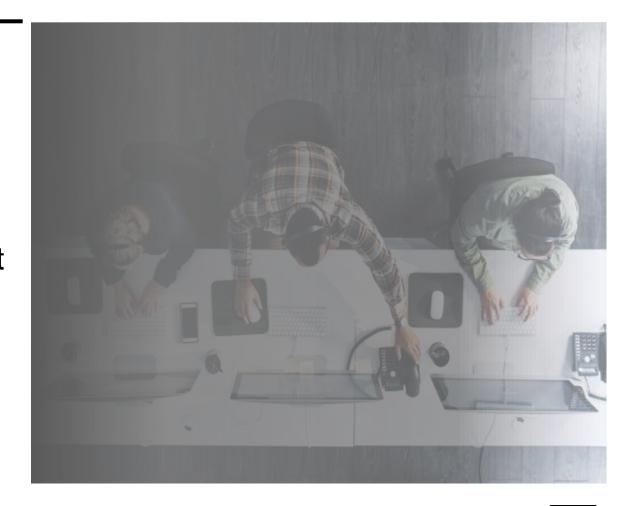
Incorporate Red Flags already identified in existing NBU Policy into the program;

Describe and establish appropriate responses to any Red Flags as detected to prevent and mitigate identity theft; and



Incidents

- Event Date: January 3, 2023
- Department: Customer Service
- Event Type: Stolen Laptop
- Event Resolution: Notification to the New Braunfels Police Department and a case files was created





Endpoint Management Platform

Implementation of a modern platform to monitor and identify vulnerabilities for remediation.

Program Evaluations

Completion of two (2) program evaluations that will define a maturity path in the form of a multi-year roadmap.

Awareness Training

Successful completion of the mandatory annual cybersecurity awareness training with 100% employee and Board of Trustee participation.

Vulnerability Remediation



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Vulnerability Remediation



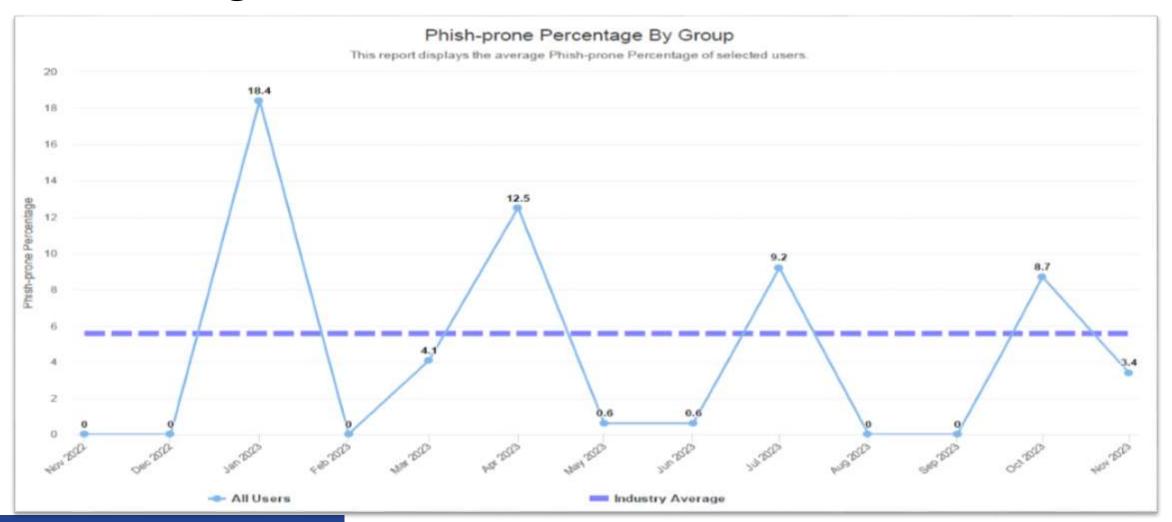
Phishing Simulations



- Phishing campaign vs phishing simulation
- Monthly cadence of simulated attacks
- NBU Click Rate is 4.75% compared to national utility average of 5.6%
- Decrease of 6% compared to 2021



Phishing Simulations





Questions





Red Flag Report

December 14, 2023



Meeting Date:December 14, 2023Agenda Type:Action ItemsFrom:John Warren
Finance ManagerReviewed by:Ashley Van Booven
Director of FinanceSubmitted by:Dawn Schriewer
Chief Financial OfficerApproved by:Ryan Kelso
Interim Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Adopting Resolution #2023-181 Relating to

the Issuance of the "City of New Braunfels, Texas Utility System Revenue and Refunding Bonds, Series 2024" and Resolving Other

Matters Related Thereto

BACKGROUND

During the New Braunfels Utilities ("NBU") budget workshop on March 27, 2023, NBU staff discussed its desire to issue bonds of up to \$125.2 million to fund planned capital expenditures in fiscal year 2024 and continue the use of its commercial paper program, both of which will allow NBU to remain flexible and liquid with quick access to funds when needed. The Board approved the fiscal year 2024 budget and five-year financial operating plan through fiscal year 2028, including the above planned bond issuances, at its March 30, 2023 Board meeting. NBU's staff has determined that refunding the outstanding commercial paper notes will provide the necessary capacity to fund planned expenditures in fiscal year 2024. In light of the fact that major projects are underway, NBU staff recommends that the Series 2024 bond issuance be initiated.

The Series 2024 bond issuance includes \$83 million for a potential refunding of the Series 2015 and Series 2016 bond issues and the refunding of up to \$75 million in commercial paper notes. Refunding the outstanding commercial paper notes adheres to NBU's Financial Policy, which states that NBU will refund the outstanding commercial paper notes with long-term debt once the authorized commercial paper amount is fully utilized or if it is determined that market conditions are no longer favorable for the issuance and remarketing of commercial paper notes. Refunding the commercial paper notes allows NBU to utilize the \$75 million in commercial paper capacity again and to continue to benefit from access to funds at the usually lower short-term interest repayment rates associated with a commercial paper program. The Series 2024 bond issuance also includes a potential new money component in the amount of up to \$50 million. The Series 2015 bond issue is currently available for optional redemption, while the Series 2016 bond issue will be available for optional redemption on July 1, 2024.

NBU staff recommends that the Board approve NBU staff, financial advisor (SAMCO Capital Markets, Inc.), and bond counsel (Norton Rose Fulbright US LLP) to begin the bond offering process and preparation of documents relating to the issuance of the Series 2024 Bonds. The proposed timeline

includes City Council authorization of the issuance of the bonds in January 2024, bond pricing in January 2024, and the closing of the bonds in February 2024.

NBU staff recommends that the Board authorize the "parameter" process for issuing the Series 2024 Bonds. The City is a qualified issuer under Government Code Chapter 1371, which allows the delegation of the authority by the City Council to finalize the bond transaction within certain parameters. Section 1207.007 of the Government Code allows for the parameter delegation of the refunding component of the bond issue. The approval to issue bonds under these statutes allows the City Council to set certain parameters, including the maximum original principal amount, a maximum maturity date, a not-to-exceed interest rate, and a minimum net present value savings on the par value of the refunded bonds. If all of these parameters are met, then the ultimate final approval of pricing would be delegated to certain appointed officials, such as the City Manager and CEO of NBU. This process eliminates the strict timeline of having to coordinate pricing to the date of an NBU Board meeting and a City Council meeting. This process also gives the City and NBU the flexibility to time its actions in the market by adjusting the pricing in response to potential positive market developments or to avoid adverse market developments. The City Manager would be fully advised once the financing is completed. This approach also has the advantage of not requiring an additional separate City Council meeting to approve the bond issue. NBU has successfully utilized this process in prior NBU bond offerings.

A summary of the proposed parameters is as follows:

- 1. the maximum original principal amount of \$208,000,000;
- 2. a maximum maturity date that will not exceed July 1, 2055;
- 3. an interest rate that will not exceed 6.50%; and
- 4. a minimum net present value savings on the par value of the refunded bonds of at least 3.00%

FINANCIAL IMPACT

The total financial impact of issuing the Series 2024 bonds is \$208 million plus interest of no more than 6.50%

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

- 1. Parameters Series 2024 Bonds
- 2. Resolution #2023-191

City of New Braunfels, Texas, Utility System Revenue and Refunding Bonds, Series 2024 Parameters Included in the Proposed Ordinance For the Issuance of Bonds

<u>Item</u>	<u>Description</u>	<u>Parameter</u>
1	Principal Amount	Not to Exceed \$208,000,000
2	Maximum Interest Rate	Not to Exceed 6.50%
3	Maximum Maturity Date	Not to Exceed July 1, 2055
4	Net Present Value Savings as Percentage of Par Value of Refunded Bonds	At least 3.00%

R-2023-181

A RESOLUTION RELATING TO THE ISSUANCE OF "CITY OF NEW BRAUNFELS, TEXAS, UTILITY SYSTEM REVENUE AND REFUNDING BONDS, SERIES 2024," AND RESOLVING OTHERMATTERS INCIDENT AND RELATED THERETO

WHEREAS, pursuant to the authority contained in Texas Government Code, Section 1502.051 et seq. and by the Charter of the City of New Braunfels, Texas (the "City"), the complete management and control of the City's Waterworks, Sanitary Sewer and Electric Light and Power Systems (the "System"), during such time as the net revenues of the System may be encumbered pursuant to the ordinances authorizing the issuance of the City's outstanding revenue bonds, are vested in the Board of Trustees of the System (the "Board of Trustees"); and

WHEREAS, the Board of Trustees and the City intend that revenue and refunding bonds should be issued for the purposes of (i) refunding all or a portion of the "City of New Braunfels, Texas, Utility System Commercial Paper Notes, Series 2019A" (the "Refunded CP Notes"), (ii) (a) refunding all or a portion of the City of New Braunfels, Texas, Utility System Revenue Bonds, Series 2015, and (b) the City of New Braunfels, Texas, Utility System Revenue and Refunding Bonds, Series 2016 (collectively, the "Refunded Bonds" and together with the Refunded CP Notes, the "Refunded Obligations"), (iii) improvements, extensions and repairs to the City's waterworks, sewer and electric light and power systems and facilities, (iv) funding the Reserve Fund, and (v) paying costs of issuance, in conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapters 1207, 1371 and 1502, as amended; and

WHEREAS, the Board of Trustees hereby finds and determines the best interest of the City and the System would be served by proceeding with the issuance and sale of revenue and refunding bonds as contemplated; now, therefore,

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES:

SECTION 1: The President of the Board of Trustees, Secretary to the Board of Trustees, the Chief Executive Officer, and the Chief Financial Officer, any one or more of said officials, together with the Board's financial advisor, SAMCO Capital Markets, Inc., and bond counsel, Norton Rose Fulbright US LLP, are hereby authorized and directed to proceed on behalf of New Braunfels Utilities with the offering and sale of revenue and refunding bonds hereinabove referenced, and the Chief Executive Officer and Chief Financial Officer and other appropriate officials of the Board are hereby authorized and directed to assist and furnish said consultants with information and data needed in connection with the issuance of such bonds.

<u>SECTION 2</u>: Any previous actions of such consultants related to the issuance of such bonds are hereby confirmed and approved in all respects.

SECTION 3: It is officially found, determined and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at said meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

<u>SECTION 4</u>: This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND ADOPTED, this December 14, 2023.

NEW BRAUNFELS UTILITIES

Wayne Peters
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ryan Kelso Secretary, Board of Trustees New Braunfels Utilities

(Board Seal)



Series 2024 Bond Issuance

12/14/2023

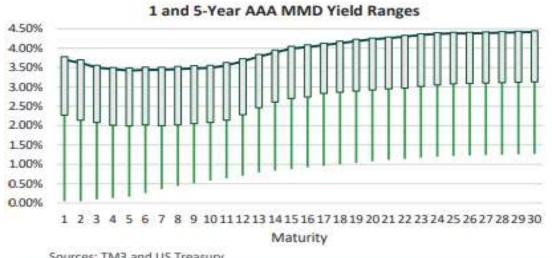
Market Update

- Fixed income and equity markets have continued to be more volatile as inflationary and geo-political pressures have weighed on the markets.
- The municipal market has seen rates bounce up and down since January 1 with the major trend being up.
 - The yield curve has been inverted with short term rates being higher than medium and longer term rates.
 - There seems to be a general consensus that the Fed may be done with raising the short term rates and many are predicting that we will see the Fed cut rates mid 2024.
 - All things considered the long term fixed tax exempt rates are still at relatively low historic levels.



Rates as of November 1, 2023

Item 2.



Tax-Exempt MMD Rates

Mty	Current	WoW	MoM	YoY	5Yo5y	MMD/UST	
1Yr	3.70%	0.00%	0.45%	0.81%	1.80%	66%	
5Yr	3.42%	0.01%	0.49%	0.44%	1.12%	70%	
10Yr	3.49%	0.01%	0.49%	0.36%	0.76%	74%	
20Yr	4.23%	0.06%	0.50%	0.67%	0.97%	90%	
30Yr	4.42%	0.06%	0.48%	0.68%	1.02%	87%	
			Volatilit	y Range			
1Yr		0.09%	0.53%	1.51%	3.73%		
5Yr		0.13%	0.56%	1.50%	3.33%		
10Yr		0.13%	0.56%	1.48%	2.98%		
20Yr		0.18%	0.53%	1.34%	3.18%		
30Yr		0.18%	0.51%	1.32%	3.18%		

Sources: TM3 and US Treasury

0.00%

6.00% ----- 10Y Treas 5.00% ----- 30Y Treas ----- 2Y Treas 4.00% 3.00% 2.00% 1.00%

Oct-18 Apr-19 Oct-19 Apr-20 Oct-20 Apr-21 Oct-21 Apr-22 Oct-22 Apr-23

5-Year Historical Yields

Sources: TM3 and US Treasury; Bloomberg, CME FedWatch Tool

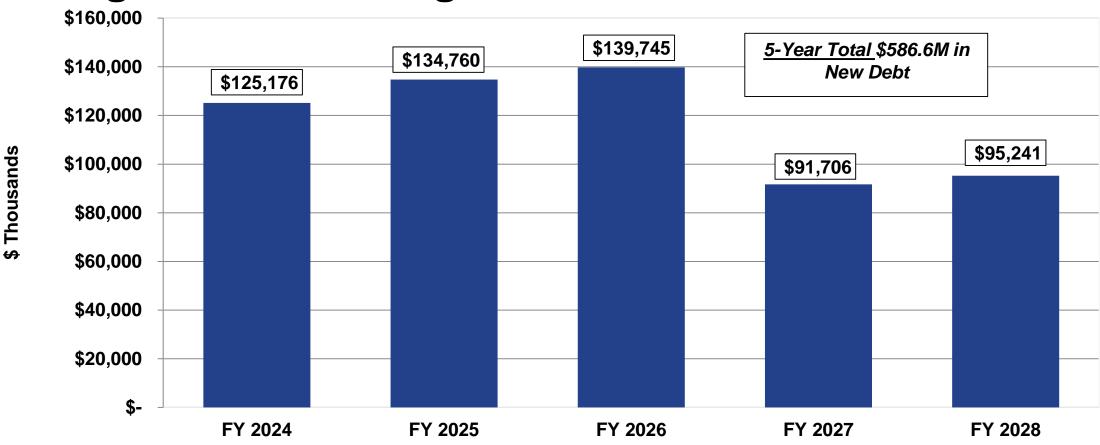
Interest Rate Consensus Projections - Bloomberg

Mty	Current	Q4 23	Q1 24	Q2 24	Q3 24
Fed Funds	5.50%	5.55%	5.45%	5.10%	4.70%
2Yr UST	5.08%	4.73%	4.40%	4.08%	3.78%
10Yr UST	4.82%	4.05%	3.87%	3.73%	3.64%
30Yr UST	4.94%	4.19%	4.05%	3.92%	3.85%

Fed Funds Rate Projections - CME Group

Meeting	-50 bps	-25 bps	0 bps	+25 bps	+50 bps
11/1/23	-	-	88.0%	12.0%	27
12/13/23	23	2	57.1%	38.7%	4.2%
1/31/23	***		50.0%	41.0%	8.5%
3/20/24	+3	7.5%	48.7%	36.1%	7.3%
5/1/24	2.5%	21.5%	44.4%	26.3%	5.0%
6/12/24	10.0%	30.5%	37.2%	17.9%	3.1%

Debt Funding Requirement Long-Term Financing





Bond Issuance Details

- The parameter approval under consideration is actually composed of four different components including the refunding, or take out of the commercial paper, the possible inclusion of new money proceeds, and the potential of refunding the Series 2015 and the Series 2016 outstanding bonds for savings.
- The combination of the four components into this one approval is intended to make the process of NBU Board approval and the City Council approval more efficient by getting this completed at one time. It also provides NBU the ability to be flexible and responsive to market conditions without having to start the process of Board and Council approval over again.
- This approval is only valid for six months and will allow for more than one issuance to complete all of the components. For example, the refunding of the CP could be completed in January as planned but the market may be such that the refunding of the outstanding debt does not create any savings. In this scenario, NBU would not complete the refundings in January, but postpone to March, assuming the market has turned in NBU's favor allowing NBU to achieve debt service savings on the potential refunding that exceed the minimum established by the parameter authorization. NBU could still proceed and complete the refundings in a second issuance, with the approval of the NBU CEO and City Manager, because the transaction would then exceed the minimum savings parameter and would occur within six months of the Board and Council approval.
- Additional details are provided on the following page.



Bond Issuance Details

- Refund \$75 million in commercial paper notes this component will certainly be issued and completed.
- Issue up to \$50 million in new money bond proceeds this component will only be issued if it is determined the new money is needed and it is cost effective to issue at this time, in an amount not to exceed \$50 million.
- Refund Series 2015 bond issue in the amount of \$24.705 million this component will only be completed if market is favorable for refunding and we can meet or exceed the minimum required savings.
- Refund Series 2016 bond issue in the amount of \$56.445 million this component will only be completed if market is favorable for refunding and we can meet or exceed the minimum required savings.
- Approximate total issuance in the amount of \$206.150 million, not to exceed \$208 million this is the total combined possible amount of the four components described above. The approval would also allow this to be accomplished in more than one issuance as previously described.



Issuing Debt to Refill Commercial Paper Benefits to NBU

- Interest Rate Savings
 Generally carries lower interest repayment rates than bonds due to the short term maturities of CP
- Provides Additional Flexibility
 Can match construction funding availability with construction expenditure needs
 Can issue CP with maturities tailored to match cash flow needs
- Unused Capacity Noted by Ratings Agencies Included in Days Liquidity on Hand calculation
- Potential Long-Term Alternative
 Can choose to continuously include CP in debt portfolio as additional financing option



Resolution Relating to Bond Issuance

- Recommending a Parameter Order approval which has been successfully utilized in prior NBU bond offerings
- Parameters (Combined Components):
 - Par amount not to exceed \$208,000,000
 - Maximum interest rate not to exceed 6.50%
 - Maximum maturity not to exceed July 1, 2055
 - Minimum net present value savings on the par value of the refunded bonds of at least 3.00% (relates only to the refunding of the Series 2015 and Series 2016)
- The Parameter Order provides flexibility in pricing in times when markets are volatile



Underwriting Team

- HilltopSecurities, Senior Manager
- Piper Sandler & Co., Co-Manager
- Frost Bank, Co-Manager



Bond Issuance Timeline

Date	Item
December 14, 2023	NBU seeks Board approval of bond issuance & underwriting team
December 18, 2023	Rating Agency Meeting
January 8, 2024	NBU seeks City Council approval of bond issuance (parameter authorization)
January 11, 2024	Price bond issuance in the market
February 8, 2024	Delivery and settlement of the bond issuance





Meeting Date: December 14, 2023 **Agenda Type:** Action Items John Warren From: **Reviewed by:** Ashley Van Booven Finance Manager Director of Finance **Submitted by:** Dawn Schriewer Approved by: Ryan Kelso Chief Financial Officer Interim Chief Executive Officer **RECOMMENDED ACTION:** Discuss and Consider Approval and Authorization to Select the Underwriting Team for the City of New Braunfels, Texas, Utility

System Revenue and Refunding Bonds, Series 2024

BACKGROUND

New Braunfels Utilities ("NBU") staff requests that the NBU Board approve HilltopSecurities, Piper Sandler & Co., and Frost Bank (the "Underwriting Team") as underwriters for the proposed City of New Braunfels, Texas, Utility System Revenue and Refunding Bonds, Series 2024 (the "Series 2024 Bonds"). NBU's staff further recommends that HilltopSecurities serve as the lead underwriter and the remaining two firms serve as co-managers.

HilltopSecurities is a large, major regional investment banking firm based in Texas. The firm maintains twelve sales and underwriting offices in twelve states and employs a total of 191 sales, trading, underwriting, and retail sales professionals across the United States. HilltopSecurities covers all levels of investors, from Tier 1 institutional investors to individual retail investors, and is regularly included in the list of top underwriters in the State of Texas. The lead banker for Hilltop Securities, to be assigned to the Series 2024 Bonds transaction, is a local New Braunfels resident and an active participant in the New Braunfels community.

Piper Sandler & Co. was founded in 1895 and is a client-focused, full-service investment banking firm. It is a super-regional firm, headquartered in Minneapolis, Minnesota, with over 60 offices across the United States including 40 public finance offices, 24 sales offices, and 11 trading desks. Piper Sandler is focused on providing bond underwriting services to communities across the State of Texas and has nine bankers in Texas, including a local office in San Antonio. Its public finance banking team is supported by one of the largest municipal institutional sales forces in the country. Piper Sandler consistently ranks as one of the top municipal bond underwriters in the State of Texas.

Frost Bank, established in 1868 in San Antonio, Texas is a major regional firm and has continued to grow its municipal underwriting portfolio. Over the past five years, Frost Bank has been a very active participant in the Texas negotiated underwriting marketplace. It also maintains one of the largest municipal bond portfolios in the country. Frost Bank has been active in the New Braunfels and Comal County area, participating in underwritings for the City of New Braunfels, New Braunfels ISD, Comal ISD, and Comal County.

FINANCIAL IMPACT

The underwriting team will be paid from the proceeds from the sale of the Series 2024 Bonds.

LINK TO STRATEGIC PLAN

Financial Excellence

EXHIBITS

None



Meeting Date: December 14, 2023 Agenda Type: Action Items

From: Jessica Green Reviewed by: Shawn Schorn

Reliability & Resiliency Director of Business Planning

Manager

Submitted by: Shawn Schorn Approved by: Ryan Kelso

Director of Business Planning Interim Chief Executive Officer

RECOMMENDED ACTION: Discuss and Consider Approval of a Professional Services

Agreement with GHD, Inc. DBA GHD Consulting Inc. for Asset

Management Support Services

BACKGROUND

In 2019, GHD INC. DBA GHD CONSULTING INC. ("GHD") provided Enterprise Asset Management Program support to New Braunfels Utilities ("NBU"), including developing a Strategic Asset Management Plan ("SAMP") and an Asset Management Policy. In order to continue these efforts, this Professional Services Agreement between NBU and GHD (the "Agreement") includes Enterprise Asset Management Program development support services over fiscal years 2024 through 2026 (the "Project").

The key components of the Agreement include (i) program management, (ii) computerized maintenance management system and data audit/gap assessment services, (iii) update to the strategic asset management plan with department roadmaps, (iv) establishing asset data and information standards, (v) business process mapping, (vi) development of asset management levels of service framework, (vii) development of the Surface Water Treatment Plant tactical asset management plan, (viii) development of the fleet tactical asset management plan, (ix) development of the water linear infrastructure tactical asset management plan, (x) development of asset condition assessment protocols, and (xi) technical and engineering support for the Project.

NBU staff requests the Board of Trustees approve the Agreement with GHD for the Project.

This item is being presented to the Board because the total amount of the Agreement exceeds \$500,000.

FINANCIAL IMPACT

The total financial impact of the Agreement with GHD for the Project is \$1,304,771.60. The Project is budgeted within the approved support services operations and maintenance budget for fiscal years 2024 through 2026.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

Financial Excellence

Stewardship

EXHIBITS

1. Professional Services Agreement with GHD

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made and entered by and between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility ("NBU"), and **GHD INC. DBA GHD CONSULTING INC.**, a California corporation authorized to transact business in the State of Texas (the "Professional"). For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. <u>Term of Agreement</u>. This Agreement shall become effective the date on which the last party to this Agreement executes this Agreement and this Agreement shall not be binding until executed by all parties (the "Effective Date"). Once this Agreement is executed by both parties, this Agreement shall remain in effect until the completion date specified in Exhibit A, unless terminated as provided for in this Agreement. Subject to Section 271.904 of the Texas Local Government Code, as amended, Exhibit A shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks related to the Services (hereinafter defined).

Section 2. Scope of Services.

- (A) The Professional shall perform the services described in Exhibit A (the "Services") within the timeframe specified therein. The time limits for the Services stated in Exhibit A are of the essence of the Agreement. By executing this Agreement, the Professional confirms that the timeframe in Exhibit A is a reasonable period for performing the Services. The scope of work described in the Services constitutes the "Project."
- (B) The quality of Services provided hereunder shall be of the level of professional quality performed by professionals regularly rendering this type of service.
- (C) The Professional shall perform the Services in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Professional may rely upon the accuracy of reports and surveys provided to it by NBU except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

- (A) <u>Amount</u>. The Professional shall be paid the amount set forth in Exhibit B as described herein.
- (B) <u>Billing Period</u>. NBU shall pay the Professional within thirty (30) days after receipt and approval of invoices and based upon work satisfactorily performed and completed to date. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. In

the event any uncontested portions of any invoice are not paid within thirty (30) days of receipt and approval of the Professional's invoice, the Professional shall have the right to suspend work.

(C) <u>Reimbursable Expenses</u>. Any and all reimbursable expenses related to the Project shall be described in the Services defined in Exhibit A and accounted for in the total compensation amount in Exhibit B. If these items are not specifically accounted for in both Exhibit A and Exhibit B, NBU shall not be required to pay such amounts unless otherwise agreed to in writing by both parties or unless agreed to pursuant to Section 4 of this Agreement.

Section 4. Changes to the Project Work; Additional Work.

- (A) <u>Changes to Work.</u> The Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If NBU finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by NBU and such services shall be considered as additional work and paid for as specified under the following paragraph.
- (B) Additional Work. NBU retains the right to make changes to the Services at any time by a written contract amendment. Work that is clearly not within the general description of the Services under this Agreement must be approved in writing by NBU by contract amendment before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Services described in Exhibit A and therefore constitutes additional work, the Professional shall promptly notify NBU of that opinion in writing. If NBU agrees that such work does constitute additional work, then NBU and the Professional shall execute a contract amendment for the additional work and NBU shall compensate the Professional for the additional work on the same basis of the rates for the Services contained in Exhibit B. If the changes deduct from the extent of the scope of work for the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by the Professional not previously approved as additional work shall be at risk of the Professional.
- Section 5. Ownership of Documents. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by NBU shall be delivered to and become the property of NBU. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to NBU without restriction or limitation on the further use of such materials; however, such materials are not intended or represented to be suitable for reuse by NBU or others. Any reuse of the materials related to the Services without prior verification or adaptation by the Professional for the specific purpose intended will be at NBU's sole risk and without liability to the Professional. Where applicable, the Professional shall retain all pre-existing proprietary rights in the materials provided to NBU but shall grant to NBU a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at the Professional's expense, have copies made of the documents or any other data furnished to NBU under or pursuant to this Agreement.

Section 6. <u>Personnel</u>. The Professional shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. The Professional agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to NBU. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Professional shall immediately notify NBU of same and shall replace such personnel with personnel possessing substantially equal ability and qualifications.

Section 7. <u>Licenses; Materials</u>. The Professional shall maintain in current status all federal, state, and local licenses and permits required for the Professional to perform the Services and operate its business. NBU has no obligation to provide the Professional, its employees or subcontractors any business registrations or licenses required to perform the Services described in this Agreement. NBU has no obligation to provide tools, equipment, or materials to the Professional.

Section 8. Professional's Seal; Standard of Care. To the extent the Professional has a professional seal, the Professional shall place such seal on all final documents and data furnished by the Professional to NBU. Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date on the title sheet of bound engineering reports, specifications, details, calculations or estimates, and each sheet of plans or drawings regardless of size or binding. As required by Section 271.904 of the Texas Local Government Code, as amended, all services provided under this Agreement will be performed with the professional skill and care ordinarily provided by competent engineers or architects, as applicable, practicing under the same or similar circumstances and professional license. The Professional shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as applicable. The plans, specifications, and data provided by the Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by NBU and the Professional. NBU acknowledges that the Professional does not have control over the methods or means of work or the costs of labor, materials, or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

Section 9. Indemnification.

(A) GENERAL. TO THE EXTENT PERMITTED BY LAW, INCLUDING SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PROFESSIONAL SHALL INDEMNIFY AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE, AGENT, AND REPRESENTATIVE THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY") FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED BY ANY INDEMNIFIED PARTY WHICH ARE:

- i. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY THE PROFESSIONAL, ITS AGENT, EMPLOYEE, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- ii. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF PROFESSIONAL'S STANDARD OF CARE, BY THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- iii. CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL;
- iv. DUE TO THE FAILURE OF THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL TO PAY THEIR CONSULTANTS OR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR
- V. OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE PROFESSIONAL, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.
- (B) REIMBURSEMENT OF NBU'S FEES IN DEFENSE OF CLAIMS. TO THE EXTENT NBU INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST NBU THAT ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF THE PROFESSIONAL DESCRIBED IN THIS SECTION, THE PROFESSIONAL SHALL REIMBURSE NBU ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE PROFESSIONAL'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

The obligations of the Professional under this Section shall survive the termination of this Agreement.

Section 10. Insurance.

(A) General.

- i. <u>Insurer Qualifications</u>. Without limiting any obligations or liabilities of the Professional, the Professional shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A-VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at NBU's option.
- ii. No Representation of Coverage Adequacy. By requiring insurance, NBU does not represent that coverage and limits will be adequate to protect the Professional. NBU reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve the Professional from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.
- iv. <u>Coverage Term</u>. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by NBU, unless specified otherwise in this Agreement.
- v. <u>Primary Insurance</u>. The Professional's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of NBU as an Additional Insured.
- vi. <u>Claims Made</u>. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.

- vii. Waiver. All policies (except for Professional Liability, if applicable), including Workers' Compensation insurance, will contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by the Professional. The Professional shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. <u>Policy Deductibles and/or Self-Insured Retentions</u>. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to NBU. The Professional shall be solely responsible for any such deductible or self-insured retention amount.
- ix. <u>Use of Subcontractors</u>. The Professional shall not use subcontractors for all or any work under this Agreement without the prior written consent of NBU in its sole discretion. If any work under this Agreement is subcontracted in any way, the Professional shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting NBU and the Professional. The Professional shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- Evidence of Insurance. Prior to the Effective Date of this Agreement, the X. Professional shall provide suitable evidence of insurance to NBU, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU Confidential information such as the policy premium may be redacted from the documents evidencing each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. NBU will rely upon the requested information, including, but not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language as evidence of coverage but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be the Professional's responsibility to forward renewal certificates and evidence of insurance to NBU five (5) days prior to the expiration date.
- (B) <u>Required Insurance Coverage</u>. Any of the coverage set forth below may be waived by NBU in its sole discretion, but any such waiver must be signed by an authorized representative of NBU on or before the Effective Date of this Agreement.
 - i. <u>Commercial General Liability</u>. The Professional shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage.

The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- ii. <u>Auto Liability</u>. The Professional shall maintain Automobile Liability insurance with a limit of \$1,000,000 combined single limit on the Professional's owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by the Professional under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, NBU, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- iii. Professional Liability. The Professional shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Professional, or anyone employed by the Professional, or anyone for whose negligent acts, mistakes, errors and omissions the Professional is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and the Professional shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.
- iv. Workers' Compensation and Employer's Liability Insurance. The Professional shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- (C) <u>Cancellation and Expiration Notice</u>. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to NBU.

Section 11. Termination.

- (A) For NBU's Convenience. This Agreement is for the convenience of NBU and, as such, may be terminated by NBU for any reason upon thirty (30) days' written notice by NBU to the Professional. Upon termination for convenience, the Professional will be paid for the Services performed to the termination date less any offsets to which NBU may be entitled under the terms of this Agreement. By written notice to NBU, the Professional may suspend work if the Professional reasonably determines that working conditions at the site (outside the Professional's control) are unsafe, or in violation of applicable laws, or in the event NBU has not made timely payment in accordance with this Agreement, or for other circumstances not caused by the Professional that are materially interfering with the normal progress of the work. The Professional's suspension of work hereunder shall be without prejudice to any other remedy of the Professional at law or equity.
- For Cause. If either party violates any provision or fails to perform any obligation of this (B) Agreement and such party fails to cure its nonperformance within thirty (30) days after written notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting party will have such additional period of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (i) provides written notice to the non-defaulting party and (ii) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event will any such cure period exceed ninety (90) days. Only one notice of nonperformance will be required during the term of this Agreement and in the event of a second breach or violation, the nondefaulting party may immediately terminate this Agreement without notice to the defaulting party. In the event of any termination for cause by NBU, payment will be made by NBU to the Professional for the undisputed portion of its fee due as of the termination date less any offsets to which NBU may be entitled under the terms of this Agreement.
- (C) <u>Non-Collusion</u>. The Professional represents and warrants that the Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to NBU under this Agreement. If NBU determines that the Professional gave, made, promised, paid or offered any gift, bonus, commission, money, or other consideration to NBU or any of its officers, agents, or employees to secure this Agreement, NBU may elect to cancel this Agreement by written notice to the Professional. The Professional further agrees that the Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from NBU pursuant to this Agreement) for any of the Services performed by the Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Professional, the Professional shall immediately report that fact to NBU and, NBU, at its sole option, may elect to cancel this Agreement by written notice to the Professional.

(D) Agreement Subject to Appropriation. This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by NBU shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. NBU shall be the sole judge and authority in determining the availability of funds under this Agreement and NBU shall keep the Professional fully informed as to the availability of funds for the Agreement. The obligation of NBU to make any payment pursuant to this Agreement is a current expense of NBU, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of NBU. If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and NBU and the Professional shall be relieved of any subsequent obligation under this Agreement.

Section 12. Miscellaneous.

- (A) <u>Independent Contractor</u>. The Professional acknowledges that the Professional is an independent contractor of NBU and is not an employee, agent, official or representative of NBU. The Professional shall not represent, either expressly or through implication, that the Professional is an employee, agent, official or representative of NBU. Income taxes, self-employment taxes, social security taxes and the like shall be the sole responsibility of the Professional.
- (B) <u>Governing Law; Venue</u>. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.
- (C) <u>Compliance with Laws</u>. The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish satisfactory proof of compliance to NBU.
- (D) <u>Amendments</u>. This Agreement may only be amended, modified, or supplemented by a written amendment signed by persons duly authorized to enter into contracts on behalf of NBU and the Professional.
- (E) <u>Provisions Required by Law</u>. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall promptly be physically amended to make such insertion or correction.
- (F) <u>Severability</u>. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and this Agreement

shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- (G) Entire Agreement; Interpretation; Parol Evidence. This Agreement and the related Exhibits constitute the entire agreement of the parties with respect to the subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded thereby. No representations, inducements or oral agreements have been made by any of the parties except as expressly set forth in this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement.
- (H) <u>No Assignment</u>. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void.
- (I) <u>Subcontractors</u>. The Professional shall not transfer any portion of the work related to the Services under this Agreement to any subcontractor without the prior written consent of NBU, which consent shall not be unreasonably withheld. The approval or acquiescence of NBU in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Professional.
- (J) Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (K) <u>Attorneys' Fees</u>. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which will be deemed to have accrued on the commencement of such action.
- (L) <u>Liens</u>. All materials or services provided under this Agreement shall be free of all liens and, if NBU requests, a formal release of all liens shall be delivered to NBU.

(M) Offset.

i. <u>Offset for Damages</u>. In addition to all other remedies at law or equity, NBU may offset from any money due to the Professional any amount the Professional owes to NBU for damages resulting from breach or deficiencies in performance or breach

of any obligation under this Agreement, including but not limited to all costs, expenses, fines, fees, and charges associated with obtaining performance from alternative sources, shipping, handling, materials, equipment rental, travel expenses and associated costs.

- ii. Offset for Delinquent Fees or Taxes. NBU may offset from any money due to the Professional any amount the Professional owes to NBU for delinquent fees, including any interest or penalties.
- (N) <u>Notices</u>. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to NBU:

New Braunfels Utilities Attn: Director of Business Planning 263 Main Plaza New Braunfels, TX 78130

With copy to:

Purchasing Manager New Braunfels Utilities 355 FM 306 New Braunfels, TX 78130

If to the Professional:

GHD Consulting Inc. Attn: Christopher Benjamin 11451 Katy Fwy, Suite 400 Houston, TX 770079

or at such other address, and to the attention of such other person or officer, as any party may designate by providing thirty (30) days' prior written notice of such change to the other party in the manner set forth in this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and

not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- (O) <u>Confidentiality of Records</u>. The Professional shall establish and maintain procedures and controls that are acceptable to NBU for the purpose of ensuring that information contained in its records or obtained from NBU or from others in carrying out the Professional's obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Professional's duties under this Agreement. Persons requesting such information should be referred to NBU. The Professional also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Professional as needed for the performance of duties under this Agreement.
- (P) <u>Right to Audit</u>. NBU shall have the right to examine and audit the books and records of the Professional with regard to the Services, or any subsequent changes, at any reasonable time. Such books and records shall be maintained in accordance with generally accepted principles of accounting and shall be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.
- (Q) <u>Paragraph Headings</u>; <u>Construction</u>. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.
- (R) <u>Binding Effect</u>. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
- (S) <u>Gender</u>. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- (T) <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- (U) <u>Exhibits</u>. Except as specified in Subsection (V) of this Section, all exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- (V) <u>Conflicting Terms</u>. In the case of any conflicts between the terms of this Agreement and the Exhibits, the statements in the body of this Agreement shall govern. The Exhibits are intended to detail the technical scope of services, fee schedule, and the term of the contract only and shall not dictate Agreement terms.

- (W) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
- (X) <u>No Third-Party Beneficiaries</u>. This Agreement is for the sole benefit of the parties hereto and their respective assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (Y) <u>Non-Exclusive Contract</u>. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of NBU. NBU reserves the right to obtain like goods and services from another source when necessary.

Section 13. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances that are beyond the reasonable control of such party (which circumstances may include, without limitation, acts of God, war, acts of civil disobedience, epidemic, pandemic, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados), labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. In no event will any delay or failure of performance caused by any force majeure condition extend this Agreement beyond its stated Term unless both parties agree in writing to such extension in an amendment to this Agreement. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

Section 14. <u>Dispute Resolution</u>. In accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code, as amended, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties shall first attempt to resolve the dispute by taking the steps described in this Section. <u>First</u>, the dissatisfied party shall deliver to the other party a written notice substantially describing the nature of the dispute, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. <u>Second</u>, if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give five (5) days' written notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in

person, in an effort to resolve the dispute. <u>Third</u>, if those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 15. <u>Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire</u>. The Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, as amended.

Section 16. <u>Information Technology</u>

- Limited Access. If necessary for the fulfillment of the Agreement, NBU may provide the (A) Professional with non-exclusive, limited access to NBU's information technology infrastructure. The Professional understands and agrees to abide by NBU policies, standards, regulations and restrictions regarding access and usage of NBU's information technology infrastructure. The Professional shall reasonably enforce such policies, standards, regulations and restrictions with all the Professional's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement. The Professional's employees, agents and subcontractors must receive prior, written approval from NBU before being granted access to NBU's information technology infrastructure and data and NBU, in its sole determination, shall determine accessibility and limitations thereto. The Professional agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Professional. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.
- (B) <u>Data Confidentiality</u>. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Professional in connection with this Agreement is confidential, proprietary information owned by NBU. Except as specifically provided in this Agreement, the Professional shall not intentionally disclose data generated in the performance of the Services to any third party without the prior, written consent of NBU.
- (C) <u>Data Security</u>. Personal identifying information, financial account information, or restricted NBU information, whether electronic format or hard copy, is confidential and must be secured and protected at all times to avoid unauthorized access. At a minimum, the Professional must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- (D) <u>Compromised Security</u>. In the event that data collected or obtained by the Professional in connection with this Agreement is believed to have been compromised or in the event of a Security Incident, as defined by Section 2054.603 of the Texas Government Code, the Professional shall notify NBU within twenty-four (24) hours of discovery of such compromise or Security Incident. To the Extent Permitted by Section 271.904 of the Texas Local Government Code, as amended, the Professional shall indemnify and hold NBU Harmless from any Claims resulting from an act of negligence, intentional tort, intellectual

PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, ANY TIER OF SUBCONTRACTOR, OR ANY ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.

(E) <u>Survival</u>. The obligations of the Professional under this Section shall survive the termination of this Agreement.

Section 17. <u>Prohibition on Contracts with Companies Boycotting Israel</u>. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 18. <u>Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited.</u> The Professional represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Professional and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 19. <u>Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia</u>. If the Professional is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Professional represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in the Professional is not held or controlled by:
 - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended ("designated country"); or
 - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. "Affiliate," with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

Section 20. <u>Prohibition on Contracts with Companies Boycotting Energy Companies.</u> The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2276 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott energy companies" has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 21. <u>Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries</u>. The Professional hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "discriminate against a firearm entity

or firearm trade association" has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Professional understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

Section 22. <u>Texas Public Information Act</u>. The Professional recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within this Agreement, the Professional agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights in Section 12(P).

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

The Professional must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Professional on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Professional; or
- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Professional agrees that the Agreement can be terminated if the Professional knowingly or intentionally fails to comply with a requirement of that subchapter.

Section 23. <u>Electronic Signatures</u>. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the day of, 2023.
NBU:
NEW BRAUNFELS UTILITIES, a Texas municipally owned utility
By:
Name: Ryan Kelso Title: Interim Chief Executive Officer
PROFESSIONAL:
GHD INC., DBA GHD Consulting Inc., a California corporation authorized to transact business in the State of Texas
By: Name: Christopher Benjamin Title: Principal

Exhibit A

Services

The Professional shall provide all labor, material, and equipment necessary to provide program management, asset management, engineering related services, and other professional support services (collectively the "Services") for the Five-Year Asset Management Plan Creation and Implementation Program (the "Project").

Background

New Braunfels Utilities ("NBU") provides electric, water, and wastewater services. NBU is commencing a multi-year, phased implementation of an Asset Management ("AM") program to develop and implement leading AM principles and practices focused on improving NBU's overall efficiencies and effectiveness in delivering services to its customers. AM practices include managing all phases of the asset lifecycle over numerous disciplines for each of the following NBU service departments (each a "department" and collectively referenced herein as the "departments" or "NBU departments"):

- 1. Fleet & Facilities;
- 2. Water Operations;
- 3. Water Treatment and Compliance;
- 4. Electric Operations;
- 5. Substation;
- 6. Information Technology; and
- 7. Systems Control.

Phase 1 of the program was completed in 2020 and included the development of the Strategic Asset Management Plan ("SAMP") or "Roadmap."

The Project will be completed over a three-year period. The general goals and objectives of the Project are presented below.

The Professional will guide NBU in the planning and development of an AM program by providing the following services:

a. utilize lessons learned (e.g. knowledge gained regarding implementation challenges) from other similar agencies/utilities facing similar issues to New Braunfels Utilities in

- developing an asset management program;
- b. achieve consensus among a diverse group of internal stakeholders (operations, engineering, fleet, facilities, water utility, sewer utility, electric utility, information technology, strategic planning, etc.) in developing an asset management program;
- c. provide detailed recommendations for a five-year plan to fully establish an AM program based on industry standards and NBU input for the NBU departments;
- d. develop and create appropriate metrics and analytics to support NBU's AM program;
- e. revise NBU's current Strategic Asset Management Plan and Roadmap, which NBU will provide upon request, as needed to support the new three-year plan recommendation and AM plan implementation;
- f. create AM databases within Geographic Information System ("GIS") and Asset Management System ("AMS"). NBU currently uses Cityworks for asset management as well as for a work order system;
- g. create a working AMS based on detailed recommendations developed in 1.c above;
- h. Provide assistance and training in maintaining NBU AMS after creation;
- Provide NBU with standardized training documents, workflows, standard operating procedures, and step-by-step guides related to asset management practices for each related department;
- j. Conduct asset management-related training for all NBU departments. At a minimum, the training should include education and training on planning best practices, as well as how to do the following:
 - 1. Maintain the AMS per department;
 - 2. Input new assets (as determined by NBU staff in each NBU department as they are created;
 - Run reports regularly based on industry standards for Water, Sewer, and Electric Utilities, as well as Fleet & Facilities, Substation, Information Technology, Systems Control, and all other NBU support services as requested by NBU; and
 - 4. Automate work order creation within NBU's AMS.
- k. Provide advice and guidance on industry standards and best appropriate practices in specific areas of asset management, such as asset condition/performance assessment,

risk analysis, capital improvement project ("CIP") planning, tactical asset management plan ("TAMP") development, maintenance practices and other related asset management practices.

SERVICES

The following tables summarize the tasks included in the Services and the implementation schedule.

Table 1 – Summary of Tasks

Task No.	Task Name
Task 1	Program Management
Task 2	Computerized Maintenance Management System and Data Audit/Gap Assessment
Task 3	Update Strategic Asset Management Plan with Department Roadmaps
Task 4	Asset Data and Information Standards
Task 5	Business Process Mapping
Task 6	Levels of Service Framework
Task 7	Surface Water Treatment Plant Tactical Asset Management Plan
Task 8	Fleet Tactical Asset Management Plan Update
Task 9	Water Linear Tactical Asset Management Plan
Task 10	Asset Condition Assessment Protocols
Task 11	Asset Management Technical Support

Table 2 – Estimated Implementation Schedule

Task	Subtask Description	Estimated Start Date	Estimated Completion Date
1	Program Management	1/1/24	12/31/26
2	Computerized Maintenance Management Plan and Data Audit/Gap Assessment	1/1/24	12/31/24
3	Update Strategic Asset Management Plan with Department Roadmaps	1/1/24	12/31/24

Table 2 – Estimated Implementation Schedule (continued)

Task	Subtask Description	Estimated Start Date	Estimated Completion Date
4	Asset Data and Information Standards	1/1/24	12/31/25
5	Business Process Mapping	5/1/24	4/30/25
6	Levels of Service Framework	5/1/24	4/30/25
7	Surface Water Treatment Plant Tactical Asset Management Plan	10/31/24	10/31/25
8	Fleet Tactical Asset Management Plan Update	10/31/24	10/31/25
9	Water Linear Tactical Asset Management Plan	10/31/25	4/30/26
10	Asset Condition Assessment Protocols	10/31/24	10/31/26
11	Asset Management Technical Support	1/1/24	12/31/26

The following is a detailed description and work breakdown structure for each task included in the Services.

1. TASK 1 – PROGRAM MANAGEMENT

The Professional shall provide the following project management services described herein.

1.1. SCHEDULE

The Professional shall develop a baseline schedule ("Baseline Schedule") for the Project based on Exhibit A within 120 days after the Effective Date of the Agreement, to include specific dates on which each Deliverable is due from the Professional. The Baseline Schedule shall be provided to the NBU Project Manager via email, and upon approval and acceptance by NBU, the deadlines established in the Baseline Schedule will be a substantive part of this Agreement. The Professional will prepare updated schedules for the Project which will be provided on a monthly basis on or before the 25th day of each month for NBU to monitor progress and each of which is subject to

acceptance and approval by NBU. The Professional shall commence work on the Services on the date referenced in Table 2, and notwithstanding any other provision of this Agreement to the contrary, all Services will be completed on or before December 31, 2026, unless otherwise specified herein. Each task will be completed according to the schedule in Table 2 of this Exhibit A.

1.2. QUALITY CONTROL

The Professional shall develop a quality assurance/quality control program for the Project, which shall be included in a Project Work Plan and provided to NBU's Project Manager via email within 30 days of the Effective Date.

1.3. PROGRESS REPORTS

The Professional shall provide NBU with electronic monthly project progress reports and submit written invoices on or before the 25th day of each month for the previous month's effort. Progress reports shall be provided to the NBU Reliability and Resiliency Manager via email.

1.4. MEETING AGENDA/MINUTES

The Professional shall provide meeting agenda one (1) day prior to meetings, and provide a copy of the documented meeting minutes and action item logs to NBU's Project Manager within one (1) week after meetings.

1.5. PROJECT CONTROLS

The Professional shall manage Project integration, scope, schedule, cost, quality, staff resources, sub-consultants, communications, risk analysis and management, and procurements as NBU directs, including, but not limited to, the following:

- **1.5.1.** Assign a senior advisor to oversee quality assurance;
- **1.5.2.** Develop cost estimates using recent bid tabs from similar projects or vendor prices;
- **1.5.3.** Use Microsoft Project or similar to manage the schedule; and
- **1.5.4.** Coordinate communication with sub consultants through emails and meetings.

1.6. BIWEEKLY PROGRESS MEETINGS

The Professional shall conduct 1-hr bi-weekly progress meetings throughout the Project for a total of 65 (sixty-five) meetings over 30 (thirty) months.

2. TASK 2 – COMPUTERIZED MAINTEANCE MANAGEMENT PLAN AND DATA AUDIT/GAP ASSESSMENT

- a. The Professional shall evaluate the extent to which assets are maintained based on leading practices and at a minimum, compliance with manufacturer's guidelines.
- b. The Professional shall evaluate the extent to which Cityworks has been configured and the supporting GIS (asset records) have been developed.
- c. The Professional shall evaluate the extent to which Cityworks has been configured and the supporting GIS (asset records) and whether to implement additional asset management applications, such as Operational Insights, Cityworks application for risk analysis.
- d. The Professional shall review Cityworks activity data and evaluate the extent to which assets are being maintained adequately in accordance with maintenance plans and warranty requirements.
- e. The Professional shall develop and present recommendations to address significant opportunity gaps that are identified.

The Professional shall summarize the recommendations as to NBU as a whole, and the following identified departments: Fleet & Facilities, Water Operations, Water Treatment and Compliance, Electrical Operations, Substations, Information Technology, and Systems Control.

2.1. CONDUCT SITE VISIT/PERFORM AUDIT / CITYWORKS AUDIT

The Professional will spend one week onsite to meet with NBU personnel over a series of workshops and perform the Cityworks data audit. Additional meetings over the course of the week may be needed based on the mutual evaluation of task needs. The week onsite will be spent reviewing the maintenance plans/documents provided by NBU (a subset of critical assets at NBU) and comparing the requirements of maintenance plans with the configuration of Cityworks. The Professional will conduct a meeting at the conclusion of the site visit to summarize site activities completed.

2.1.1. WORKSHOP NO. 1

The Professional will conduct a workshop at the beginning of the week onsite for the audit. The workshop's purpose is to understand which groups are using Cityworks, and of those groups using the software, how extensively it is used. While the Professional will perform an overall audit of Cityworks, NBU will ask each department to identify up to three critical assets to provide a sample subset of data the Professional can then use to perform a more thorough review. The review will include asset configuration, work order template configuration (reactive and preventative), dashboards, and reporting mechanisms.

- 2.1.1.1 The Professional will work with NBU to identify up to three critical assets per department (Fleet & Facilities, Water Operations, Water Treatment and Compliance, Electric Operations, Substation, Information Technology, and Systems Control) that NBU considers representative for purposes of this evaluation.
- 2.1.1.2 After the workshop, NBU will provide the Professional with operations and maintenance ("O&M") manuals and warranty documents for the identified critical assets.

2.1.2. WORKSHOP NO. 2

The Professional will conduct workshop No. 2 at the end of the last day of the onsite audit week. The purpose of the workshop is to provide NBU with a review of the work completed while onsite, discuss some of the findings, highlights, next steps, and provide a timeline.

2.2. REVIEW GIS DATA MODEL

Cityworks relies on the GIS for its asset register. The Professional will review the GIS data and its data model will be included in the onsite work. This review will examine content and structure as it relates to:

- a. the existing features, objects, fields, domains, and relationship classes; and
- b. the completeness of the asset register to accurately manage work activities within Cityworks and therefore properly track asset management fields such as condition and remaining useful life.

As part of this evaluation, the Professional will provide guidance on horizontal and vertical data structure (e.g. hierarchy, naming convention) in the GIS for use in Cityworks as well as how to

build the geodatabase and provide a framework. The framework will be provided to NBU in MSExcel, and included as part of the final Gap Assessment Report deliverable. Assistance with populating the missing information falls under Task 11.

2.3. PREPARE GAP ASSESSMENT

The Professional will perform an evaluation of the information obtained from subtask 2.1 and subtask 2.2 and summarize observations, identify opportunity gaps, and provide recommendations in the following areas (collectively "Gap Assessment"):

- a. Cityworks configuration and its capability to support best-in-class maintenance practices and asset management;
- b. GIS/geodatabase development including the nature of the asset records, schema, and field standardization to support asset management;
- c. NBU's preventive maintenance programs as reflected in Cityworks;
- d. potential maintenance dashboards and the opportunity to support NBU in achieving best-in-class maintenance practices;
- e. clarity around roles and responsibilities with respect to maintenance planning, tracking, and reporting; and
- f. an implementation strategy for recommendations.

A draft report incorporating the current conditions and future state will be prepared and provided to NBU for review and comment. The report will identify findings for NBU, and then identify findings by the following departments: Fleet & Facilities, Water Operations, Water Treatment and Compliance, Electric Operations, Substation, Information Technology, and Systems Control.

2.4. PRESENTATION TO NBU OF OUTCOMES AND RECOMMENDATIONS

The Professional will conduct a two-hour summary presentation of the draft report and present via MS Teams to key stakeholders at NBU on the task findings, conclusions, opportunity gaps, recommendations, and implementation strategy. The Professional will incorporate NBU's review comments on the draft report and provide a final report. The information in the assessment will support the roadmap development for the SAMP developed in Task 3.

2.5. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

2.5.1 Two 2-hr workshops, including agendas and materials.

- 2.5.2 Draft and Final CMMS and GIS Gap Assessment.
- 2.5.3 Conduct a two-hour remote CMMS Gap Assessment Findings Presentation.

3. TASK 3 - UPDATE STRATEGIC ASSET MANAGEMENT PLAN WITH DEPARTMENT ROADMAPS

The Professional will review and update the SAMP dated March 2020, update the overall 2020 SAMP Roadmap, and develop individual Department Level Roadmaps that roll-up into the overall Roadmap for the following NBU departments:

- a. Fleet & Facilities;
- b. Water Operations;
- c. Water Treatment and Compliance;
- d. Electric Operations;
- e. Substation;
- f. Information Technology; and
- g. Systems Control

3.1. ROADMAP DEVELOPMENT WORKSHOPS

The Professional will conduct up to two 2- to 4-hour workshops per department (total of 7 departments). The first workshop will review and update the results of the 2019 AM Practices Gap Assessment to gain input into NBU department priorities, and gain input into the overall AM Implementation program. The second workshop will be to review and gain input into the Draft Departmental Roadmaps and prioritize implementation tasks.

The Professional will update the 2020 SAMP to an overall 2024 SAMP and will include an NBU enterprise-wide AM implementation strategy and roadmap. Roadmaps will be comprised of implementation tasks specific for each department, and will include:

- a. current state Where are we now?
- b. future state Where do we want to be when this project is complete and why?
- c. best appropriate practice for NBU What is the industry standard? What are NBU's gaps?
- d. detailed implementation plan and roadmap to fill the gaps and create a functioning AM Program;
- e. internal and external resource and staff requirements for each implementation task; and
- f. identification of roadmap deliverables and outcomes.

3.2. PRESENTATION OF FINAL ROADMAPS

The Professional will conduct two 1-hour presentations of the Final 2024 SAMP Roadmap and Departmental Roadmaps for key stakeholders.

3.3. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

- 3.4.1 Eight 2- to 4-hour Roadmap Development Workshops (one for each department), including presentation material, agenda, and minutes.
- 3.4.2 Eight 2- to 4-hour Draft Roadmap Review Workshops (one for each department), including presentation material, agenda, and minutes.
- 3.4.3 Draft and Final 2024 NBU SAMP Roadmap.
- 3.4.4 Draft and Final 2024 Department Roadmaps for each department.
- 3.4.5 Two 1-hour presentations of the Final 2024 SAMP Roadmap and Department Roadmaps, including presentation material, agenda, and minutes.

4. TASK 4 - ASSET DATA AND INFORMATION STANDARDS

4.1. DATA STANDARD AND INFORMATION REQUIREMENTS DOCUMENT

The Professional will develop a Data Standards and Information Requirements Document that includes specific and common to all requirements for each of the following four areas: Electric, Water, Wastewater, and Fleet & Facilities. The standards will:

- a. define the protocol for asset definition and required attributes including primary, secondary, and tertiary data attributes;
- b. define the protocol for the asset hierarchy structure that is consistently followed for service group and asset type;
- c. establish a review process and review frequency;
- d. define organization-wide asset management terminology to ensure a common understanding;
- e. define the protocol for asset data related to asset condition (based on 2021 AM Framework);
- f. define the protocols for asset data related to asset performance, reliability, and utilization (based on the 2021 AM Framework);
- g. define the protocol for asset data related to consequence of failure and risk (based on 2021

AM Framework);

- h. define the protocol for asset data related to management strategy groups (based on the 2021 AM Framework);
- i. define how asset information will be updated to increase the level of trust in the accuracy and the frequency of the data audits; and
- **j.** define the process for attaching external materials (drawings, O&M, safety procedures, etc.) to the assets and for updating that information.

4.2. CITYWORKS CONFIGURATION DOCUMENT

The Professional will develop a Configuration Guide for Cityworks based on the data standards developed in subtask 4.1. The Configuration Guide will include the following sections and include configuration recommendations/requirements needed to implement the data standards:

- a. Business Process Designs/Procedures (developed in subtask 5.2)
- b. Reporting Key Performance Indicators ("KPI" or "KPIs")
 - 1. Reports/KPI
 - 2. Saved searches
 - 3. Inbox Setup
 - 4. Cityworks Analytics
- c. Technical Profile
 - 1. System Architecture
 - 2. Server Architecture
 - 3. Cityworks Databases
 - 4. Application Names and URLs
- d. Cityworks Configuration
 - 1. Domains & Employees
 - 2. Plugins
 - i. Operational Insights
 - ii. Workload
- e. Materials
- f. Equipment
- g. Contractors

h. Assets & ArcGIS

- 1. Asset Management Attribute Requirements and Configuration
- 2. GIS Services
- 3. Preferences
- i. Service Requests
- i. Work Orders
- k. Inspections
- 1. Security
 - 1. Service Requests
 - 2. Work Order
 - 3. Inspection
 - 4. Auditing
- m. Server Setup
 - 1. Server Roles
 - 2. Site Setup
 - 3. Work Management Screen Changes
- n. Mobile Considerations
- o. Crew Considerations

Once the draft Configuration Guide has been completed, the Professional will review it with NBU and, if necessary, make changes to meet NBU's overall needs. Although the guide will exist as a living document that may change during the implementation and testing, it will serve as the roadmap for the overall Cityworks AM setup.

4.3. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

- 4.3.1 Up to eight 4-hour workshops, including presentation, agenda, and handout materials.
- 4.3.2 Draft and Final Data and Information Standards.
- 4.3.3 Draft and Final Configuration Guide.

5. TASK 5 - BUSINESS PROCESS MAPPING

5.1. EXISTING PROCESS MAP DEVELOPMENT

The Professional will conduct interviews with NBU stakeholders to gain understanding of

current, or existing business processes. Stakeholder interviews will include a cross-section of staff from select end-user staff to management to help assess what the staff perceive as the strengths, weaknesses, and business process gaps, and allow for identification of potential system architectural improvements and intended future uses for Cityworks.

Interviews will cover the following topics:

- a. work practices and business processes (that do or do not utilize existing technology at NBU);
- b. technology/information systems usage, plans, practices, and integration;
- c. organizational structure, roles/responsibilities, and succession planning;
- d. staff levels and workload demands;
- e. financial management;
- f. performance measurement and management; and
- g. functional area interrelationships.

Interviews will be in person (onsite) to facilitate up to 5 days (8-hrs per day) of existing workflow mapping sessions, broken down by departments, with the goal of meeting with a cross-section of staff during those meetings. Table 2 is a summary of the proposed sessions:

Table 3 – Business Process Mapping Summary

Day	Department	Estimated Number of Workflows
Day 1	Water Operations	10
Day 2	Water Treatment & Compliance / Systems Control	13
Day 3	Fleet & Facilities	12
Day 4	Electric Operations / Substation	10
Day 5	GIS/IT/AM	15
Total		60

Over the 5-day work session, the Professional will produce up to 60 existing workflows (MS Visio and PDF), with MS Word annotation. The draft workflows will be provided to NBU for review. The Professional will incorporate comments into the draft existing workflows and use to

produce the proposed workflows for subtask 5.2. Previously discussed GIS updates and IT requested processes will be documented during the Day 5 mapping session.

5.2. PROPOSED PROCESS MAP DEVELOPMENT

Upon completion of subtask 5.1, the Professional will collate the information gathered during the existing workflow sessions and identify points of ineffectiveness, non-compliance, deficiency, inefficiency (e.g., paper-based processes), or frustration (e.g., delay, insufficient information, negative result impact, bottlenecks, and communication challenges). The Professional will subsequently conduct a performance gap analysis against the initial existing workflows. This analysis is based on comparing current NBU productivity to generally accepted industry-leading practices.

The Professional will identify improvement recommendations by streamlining or eliminating activities, improving coordination, adding potential software integrations/customizations/modules, and/or reinforcement/shifts in organizational responsibility, as appropriate. The improvement recommendations will serve to focus discussion on the key elements of improvement. The Professional will prepare draft proposed workflows to serve as base workflows during workshops. The Professional will conduct three (3) days of onsite half-day workshops (total of 6) to review the proposed workflows with NBU staff and receive feedback. Final proposed workflows and annotation documentation will be provided to NBU in MS Visio, MS Word, and PDF formats.

5.3. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

- 5.3.1 Up to five 8-hour (on-site) workshops for existing Workflow development, conducted by two of the Professional's Cityworks and GIS Implementation team members.
- 5.3.2 Draft existing Workflows in MSVisio, and accompanying annotation documentation in MSWord.
- 5.3.3 Allowance for up to six 4-hour workshops (on-site) for proposed Workflow Review and Feedback, conducted by two of the Professional's Cityworks and GIS Implementation team members.
- 5.3.4 Final proposed Workflows in MSVisio and accompanying annotation documentation in MSWord. The Workflows and annotation documentation will both be provided in pdf.

6. TASK 6 - LEVELS OF SERVICE FRAMEWORK

6.1. REVIEW EXISTING KPIS AND IDENTIFY NEW KPIS

The Professional will conduct up to eight 2-hr interviews with department stakeholders to identify and review existing KPIs. For each KPI, the Professional will identify data and information required to support and update the KPI. The Professional will compare the results of the interviews with industry best practices and make recommendations for adding and modifying KPIs.

6.2. DRAFT AND FINAL LEVEL OF SERVICE FRAMEWORK TECHNICAL MEMO

The Professional will develop a Draft Level of Service ("LOS") Framework Technical Memorandum ("Draft LOS TM"). The Draft LOS TM will include a summary of the existing and proposed KPIs and the following:

- a. KPI type, definition, attribute data and formulas;
- b. ownership;
- c. Target and Goal values;
- d. threshold values for determining compliance versus non-compliance;
- e. alignment to the 2021 AM Framework LOS Value Statements; and
- f. KPI and LOS roll-up methodology for Dashboard Reporting.

The Professional will present the Draft LOS TM in a 1.5-hr workshop to obtain comments and input from NBU staff. The Professional will incorporate comments and develop a final LOS technical memorandum ("TM").

6.3. LOS REPORTING DASHBOARD

The Professional will develop a LOS Reporting Dashboard based on the final LOS TM. The dashboard will be developed in PowerBI. The Professional will document the logic used in the dashboard and will provide a data map and associated data library. NBU will host the LOS Reporting Dashboard once the task is complete.

6.4. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

6.4.1 Conduct eight 2-hr interviews (virtual) with Department stakeholders to review existing KPIs, including agenda, meeting materials, and minutes.

- 6.4.2 Draft and Final LOS Framework Technical Memo.
- 6.4.3 LOS Reporting Dashboard (in PowerBI).

7. TASK 7 – SURFACE WATER TREATMENT PLANT TACTICAL ASSET MANAGEMENT PLAN

7.1. DEVELOP TAMP ASSET REGISTER

The Professional will develop the Asset Register that will be used to develop the TAMP. The Asset Register will be based on existing asset data, record drawings, O&M manuals, and staff knowledge. Missing assets and asset data attributes will be identified by NBU and the Professional.

7.2. ASSIGN CONDITION AND PERFORMANCE SCORES

Based on the draft Asset Register, the Professional will interview NBU staff and assign initial condition and performance scores. Condition and Performance scores will be reviewed with staff during the COF scoring workshop (Subtask 7.3). A group of assets will be selected for in-field condition assessment based on criticality and initial risk profile.

7.3. ASSIGN CONSEQUENCE OF FAILURE (COF) WORKSHOP

Using the consequence of failure ("COF") scoring matrix developed in the 2021 AM Framework, the Professional will develop initial assignments of COF scopes for assets. The Professional will facilitate up to one three-hour workshop to review and confirm COF scores.

7.4. ASSIGN MANAGEMENT STRATEGY GROUPS WORKSHOP

A Management Strategy Group (singular "MSG" or plural "MSGs") defines default attributes for an asset and provides a set of inputs to the investment modeling process via three treatment options: (1) replacement, (2) rehabilitation, and (3) operations and maintenance. The Professional will develop the initial MSG information for assets. The Professional will conduct one 2-hour workshop to review assigned MSGs to assets in the asset register.

For each MSG, the following will be included, when applicable:

- a. asset attributes install date, size units, physical effective life, and replacement cost;
- b. replacement management strategies;
- c. rehabilitation management strategies; and

d. maintenance management strategies.

Asset valuation will be based on the estimated replacement cost of the assets in today's costs. Replacement costs will be based on similar bid tabs from the region (if available), RS Means cost estimating guides, staff knowledge, and manufacturers' quotes for special/unique assets. Replacement and rehabilitation cost estimates will be assigned to assets using MSGs.

After the MSG workshop, there may be additional information for NBU to collect and provide to the Professional for the completion of MSGs. During the workshop, the Professional will define the information needed in order to complete the MSGs. Task 11 will be used to collect additional information if required.

7.5. DEVELOP RISK MITIGATION STRATEGIES AND CALCULATE RISK

The Professional will develop a Business Risk Exposure ("BRE") profile for the SWTP assets and identify risk mitigation strategies. The Professional will also identify and recommend risk mitigation strategies, descriptions, and adjustment factors.

7.6. LEVELS OF SERVICE

The Professional will identify existing and future Levels of Service ("LOS") performance measures for the SWTP assets. The Professional will identify and recommend any additional LOS performance measures and KPIs based on best practices.

7.7. DEVELOP CAPITAL AND O&M INVESTMENT STRATEGIES

The Professional will use a decision support system ("DSS") to model different management strategies for estimating future investment cost requirements. The Professional will model different management strategies to support the development of capital and O&M investment recommendations and develop short and long-term investment needs.

7.8. DEVELOP TACTICAL ASSET MANAGEMENT PLAN

The Professional will develop a Draft and Final TAMP to include the following sections as applicable:

- a. Introduction;
- b. Description of System/Department;
- c. Levels of Service and KPIs;

- d. State of the Assets:
 - 1. Inventory, Condition and Remaining Life;
- e. Business Risk Exposure;
- f. Infrastructure Improvement Plan:
 - 1. Operation and Maintenance Strategies and Practices;
 - 2. Capital Rehabilitation and Replacement Strategies;
 - 3. CIP Investment Prioritization and Future Planning; and
- g. Appendices.

7.9. TAMP TEMPLATE AND REPORTING DASHBOARD

The Professional will develop a TAMP Template and Reporting Dashboard. The template will be developed as a set of instructions and procedure/protocol to be used in developing TAMPs for departments and asset classes. The reporting dashboard will be based on the template and developed in PowerBI (or equivalent). The Professional will document the logic used in the dashboard and will provide a data map and associated data library. NBU will host the TAMP Reporting Dashboard once the task is complete.

7.10. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

- 7.10.1 Agenda and materials for three 3-hour subject matter expert ("SME") engagement workshops to obtain input for COF, condition, MSGs, and overall review of the asset register.
- 7.10.2 Draft and Final TAMP
- 7.10.3 Agenda, minutes, and materials for 2-hour Draft TAMP review meeting
- 7.10.4 Draft and Final Tactical Asset Management Plan Template
- 7.10.5 SWTP TAMP Reporting Dashboard (PowerBI or equivalent)

8. TASK 8 - FLEET TACTICAL ASSET MANAGEMENT PLAN UPDATE

8.1. DEVELOP FLEET TAMP ASSET REGISTER

The Professional will review the existing Asset Register that will be used to develop the TAMP. The Asset Register will be based on existing asset data and staff knowledge. Missing assets and asset data attributes will be identified by NBU and the Professional.

8.2. ASSIGN CONDITION AND PERFORMANCE SCORES

Based on the draft Asset Register, the Professional will interview NBU staff and assign initial condition and performance scores. Condition and Performance scores will be reviewed with staff during the COF scoring workshop.

8.3. ASSIGN CONSEQUENCE OF FAILURE ("COF") WORKSHOP

Using the COF scoring matrix developed in the 2021 AM Framework, the Professional will develop initial assignments of COF scores for Fleet assets. The Professional will facilitate up to one 2-hour workshop to review and confirm COF scores.

8.4. ASSIGN MANAGEMENT STRATEGY GROUPS WORKSHOP

The Professional will develop the initial MSG information for assets, and conduct one 2-hour workshop to review assigned MSGs to assets in the asset register.

For each MSG, the following will be included, when applicable:

- a. asset attributes install date, size units, physical effective life, and replacement cost;
- b. replacement management strategies;
- c. rehabilitation management strategies; and
- d. maintenance management strategies.

Asset valuation will be based on the estimated replacement cost of the assets in today's costs. Replacement costs will be based on similar bid tabs from the region (if available), RS Means cost estimating guides, staff knowledge, and manufacturers' quotes for special/unique assets. Replacement and rehabilitation cost estimates will be assigned to assets using MSGs.

During the workshop, the Professional will define the information needed in order to complete the MSGs.

8.5. DEVELOP RISK MITIGATION STRATEGIES AND CALCULATE RISK

The Professional will develop a Business Risk Exposure ("BRE") profile for the Fleet assets and identify risk mitigation strategies, identify any high-risk assets, and identify and recommend risk mitigation strategies, descriptions, and adjustment factors.

8.6. LEVELS OF SERVICE

The Professional will identify existing and future LOS performance measures for the Fleet assets.

Task 6 will be an input into this subtask.

8.7. DEVELOP CAPITAL AND O&M INVESTMENT STRATEGIES

The Professional will use a DSS to model different management strategies for estimating future investment cost requirements. The Professional will model different management strategies to support the development of capital and O&M investment recommendations and develop short and long-term investment needs.

8.8. DEVELOP TACTICAL ASSET MANAGEMENT PLAN

The Professional will develop a Draft and Final TAMP for the Fleet assets, to include the following sections, as applicable:

- a. Introduction;
- b. Description of System/Department;
- c. Levels of Service and KPIs;
- d. State of the Assets:
 - 1. Inventory, Condition, and Remaining Life;
- e. Business Risk Exposure;
- f. Infrastructure Improvement Plan:
 - 1. Operation and Maintenance Strategies and Practices;
 - 2. Capital Rehabilitation and Replacement Strategies;
 - 3. CIP Investment Prioritization and Future Planning; and
- g. Appendices.

8.9. FLEET TAMP REPORTING DASHBOARD

The Professional will develop a Fleet TAMP Reporting Dashboard. The reporting dashboard will be based on the template and developed in PowerBI (or equivalent). The Professional will document the logic used in the dashboard and will provide a data map and associated data library. NBU will host the Fleet TAMP Reporting Dashboard once the task is complete.

8.10. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

8.10.1 Agenda and materials for two 2-hour SME engagement workshops to obtain input for COF, condition, MSGs, and overall review of the asset register.

- 8.10.2 Draft and Final Fleet TAMP.
- 8.10.3 Agenda, minutes, and materials for 2-hour Draft Fleet TAMP review meeting.
- 8.10.4 Fleet TAMP Reporting Dashboard (PowerBI or equivalent).

9. TASK 9 - WATER LINEAR TACTICAL ASSET MANAGEMENT PLAN

9.1. DEVELOP WATER LINEAR ASSET REGISTER

The Professional will review the existing Asset Register that will be used to develop the TAMP. The Asset Register will be based on existing asset data and staff knowledge. Missing assets and asset data attributes will be identified by NBU and the Professional. Task 11 will be used if any additional data and information is required, including any field data collection.

9.2. ASSIGN CONDITION AND PERFORMANCE SCORES

Based on the draft Asset Register, the Professional will interview NBU staff and assign initial condition and performance scores. Condition and Performance scores will be reviewed with staff during the COF scoring workshop.

9.3. ASSIGN CONSEQUENCE OF FAILURE (COF) WORKSHOP

Using the COF scoring matrix developed in the 2021 AM Framework, the Professional will develop initial assignments of COF scores and facilitate up to one 2-hour workshop to review and confirm COF scores.

9.4. ASSIGN MANAGEMENT STRATEGY GROUPS WORKSHOP

The Professional will develop the initial MSG information for assets, and conduct one 2-hour workshop to review assigned MSGs to assets in the asset register.

For each MSG, the following will be included, when applicable:

- a. asset attributes install date, size units, physical effective life, and replacement cost;
- b. replacement management strategies;
- c. rehabilitation management strategies; and
- d. maintenance management strategies.

Asset valuation will be based on the estimated replacement cost of the assets in today's costs.

Replacement costs will be based on similar bid tabs from the region (if available), RS Means cost estimating guides, staff knowledge, and manufacturers' quotes for special/unique assets. Replacement and rehabilitation cost estimates will be assigned to assets using MSGs.

After the MSG workshop, there may be additional information for NBU to collect and provide to the Professional for the completion of MSGs. During the workshop, the Professional will define the information needed in order to complete the MSGs.

9.5. DEVELOP RISK MITIGATION STRATEGIES AND CALCULATE RISK

The Professional will develop a BRE profile for the Water Linear assets and identify risk mitigation strategies. The Professional will identify any high risk assets, and identify and recommend risk mitigation strategies, descriptions, and adjustment factors.

9.6. LEVELS OF SERVICE

The Professional will identify existing and future LOS performance measures for the Water Linear assets. Task 6 will be an input into this subtask.

9.7. DEVELOP CAPITAL AND O&M INVESTMENT STRATEGIES

The Professional will use a DSS to model different management strategies for estimating future investment cost requirements. The Professional will model different management strategies to support the development of capital and O&M investment recommendations and develop short and long term investment needs.

9.8. DEVELOP TACTICAL ASSET MANAGEMENT PLAN

The Professional will develop a Draft and Final TAMP for the Water Linear assets, to include the following sections, as applicable:

- a. Introduction;
- b. Description of System/Department;
- c. Levels of Service and KPIs;
- d. State of the Assets:
 - 1. Inventory, Condition and Remaining Life;
- e. BRE
- f. Infrastructure Improvement Plan:

- 1. Operation and Maintenance Strategies and Practices;
- 2. Capital Rehabilitation and Replacement Strategies;
- 3. CIP Investment Prioritization and Future Planning; and
- g. Appendices.

9.9. WATER LINEAR TAMP REPORTING DASHBOARD

The Professional will develop a Water Linear TAMP Reporting Dashboard. The reporting dashboard will be based on the template and developed in PowerBI (or equivalent). The Professional will document the logic used in the dashboard and will provide a data map and associated data library. NBU will host the Water Linear TAMP Reporting Dashboard once the task is complete.

9.10. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

- 9.10.1 Agenda and materials for two 2-hour SME engagement workshops to obtain input for COF, condition, MSGs, and overall review of the asset register.
- 9.10.2 Draft and Final Water Linear TAMP.
- 9.10.3 Agenda, minutes, and materials for 2-hour Draft Water Linear TAMP review meeting.
- 9.10.4 Water Linear TAMP Reporting Dashboard (PowerBI or Equivalent).

10. TASK 10 - ASSET CONDITION ASSESSMENT PROTOCOLS

10.1. REVIEW EXISTING CONDITION ASSESSMENT PRACTICES

The Professional will review existing condition and performance assessment approaches, protocols, and procedures used by NBU. The Professional will compare existing practices to industry practices and make recommendations for improvements. The Professional will conduct two 1-hr engagement sessions with department SMEs to review existing condition and performance assessment processes.

10.2. DEVELOP CONDITION ASSESSMENT PROTOCOLS

The Professional shall develop condition assessment protocol technical memorandums (TMs) for the following asset groups:

- a. Facilities and Vertical Water and Wastewater Assets; and
- b. Linear Water and Wastewater Assets.

The Professional will develop draft and final Condition Assessment Protocol TMs for each of the two areas listed above. Condition Assessment Protocol Documents shall include:

- c. identification of existing industry standards;
- d. condition and performance scoring process;
- e. useful life tables;
- f. Standard Operating Procedure for condition and performance scoring (Level 1, 2 and 3); and
- g. Business Process Mapping (developed under Task 5).

10.3. DELIVERABLES. The Professional shall provide the following deliverables to NBU:

- 10.3.1 Two 1-hr Condition Assessment SME Engagement Workshops.
- 10.3.2 Draft and Final Condition Assessment Protocol TMs (total of two), including Water and Wastewater Facilities and Water and Wastewater Linear.

TASK 11 – ASSET MANAGEMENT TECHNICAL SUPPORT

The Professional shall provide technical support for the development of the asset register. This will be an ongoing support task throughout the AM Program implementation.

Asset Management Technical Support will include:

- a. review of record drawings, O&M manuals, spreadsheets, and other data and information sources;
- b. population of asset management required data as defined in Task 3 Data Standards and Information task from a variety of sources including staff workshops, on-site data collection, record drawings, O&M manuals, etc.;
- c. assist with field data collection or data verification efforts for the asset register.
- d. develop asset hierarchies, asset classes management strategy groups and other asset organizational structure attributes;
- e. asset attribute information including replacement costs, O&M costs, AM data as defined in the 2021 AM Framework;
- f. other asset register development and data population technical support identified during

Phase 1 implementation;

- g. assist with Cityworks upgrades;
- h. technical reviews of asset management-related software;
- i. assessments for asset management-related projects;
- j. cost estimates for asset management-related activities;
- k. develop of asset-related data in support of asset management;
- 1. performance and condition assessments;
- m. CIP process implementation support and execution;
- n. Water Engineering services;
- o. Sewer Engineering services; and
- p. Electric Engineering services.

Exhibit B

Compensation

NBU shall pay the Professional for the Services during the term of this Agreement in an amount not to exceed \$1,304,771.60.

	Level of Effort Cost Summary				
Five-Year Asset Management Plan Creation and Implementation Program					
Task	Subtask Description	Total			
1	Program Management	\$124,762.80			
2	Computerized Maintenance Management System and Data Audit/Gap Assessment	\$78,481.40			
3	Update Strategic Asset Management Plan with Department Roadmaps	\$131,186.40			
4	Asset Data and Information Standards	\$92,232.20			
5	Business Process Mapping	\$80,394.80			
6	Levels of Service Framework	\$86,506.20			
7	Surface Water Treatment Plant Tactical Asset Management Plan	\$185,057.60			
8	Fleet Tactical Asset Management Plan Update	\$61,476.00			
9	Water Linear Tactical Asset Management Plan	\$196,443.60			
10	Asset Condition Assessment Protocols	\$81,677.40			
11	Asset Management Technical Support	\$152,378.20			
	Maximum Reimbursable Expenses	\$34,175.00			
	Total	\$1,304,771.60			

For purposes of this Agreement, "Reimbursable Expenses" are defined as those reasonable and necessary out-of-pocket expenses for travel, hotel rooms, and meals actually incurred by the Professional to perform the Services, which will not exceed the amount set out in this Exhibit. NBU will look to the Domestic Maximum Per Diem Rates for Comal County, Texas recognized by the IRS, published by the General Services Administration at www.gsa.gov. All requests for reimbursement must be supported by documentation satisfactory to NBU in its reasonable determination.



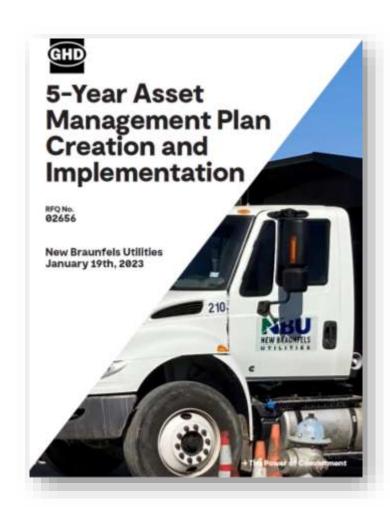
5-Year Asset Management Plan and Implementation Program

Jessica Green

Reliability & Resiliency Manager

Presentation Agenda

- What is asset management?
- Why is it important to NBU?
- Where are we on our current roadmap?
- Years 1 to year 3 proposed project scope and outlook
- Five-year outlook
- Next Steps
- Questions





What is Asset Management?

US EPA Asset Management Framework

- 1. What is the **current state** of my assets?
- 2. What is my required **level of service** (LOS)?
- 3. Which assets are critical to sustained performance?
- 4. What are my best Operations and Maintenance (O&M) and Capital Improvement Project (CIP) investment strategies?
- 5. What is my best long-term **funding strategy**?







Balance between Levels of Service (LOS), Cost of Service (COS), and Acceptable Risk





Why is it important to NBU?

- Reduce Risk
- Better Services
- Optimize Costs
- Increase the Reliability and Resiliency of our Infrastructure
- Invest in our People

Doing the Right Work at the Right Time, for the Right Reasons, and at the Right Cost.

AM Policy

Vision

New Braunfels Utilities (NBU) will develop and implement an Asset Management (AM) Program that will guide the planning, development, operation, and maintenance of its assets in an effective and sustainable manner to continually provide excellent levels of service.

Core Values

Safety, Integrify, Team and Stewardship

Mission

To manage our assets in a way that ensures sound stewardship of the NBU's resources, while delivering essential services valued by customers, protecting the environment, and providing for the health and safety of the public and the NBU workforce.

Asset Management Policy

NBU will manage its infrastructure assets in a strategic and enterprise-wide manner through an integrated business approach and cross-functional collaboration that relies on well-devised processes, knowledgeable staff, sufficient resources, and communications with stakeholders to deliver established levels of service. This Policy will be implemented through the AM Program, which will optimize asset value throughout the asset life cycle.

The AM Program will support delivery of NBU's Vision, Mission and Strategic Goals consistent with NBU's Strategic Plan. The Strategic Plan is being updated this year and this document may be modified accordingly NBU will create and maintain clear links between the broader organization's objectives, policies and strategies and the daily activities associated with managing the NBU's assets.

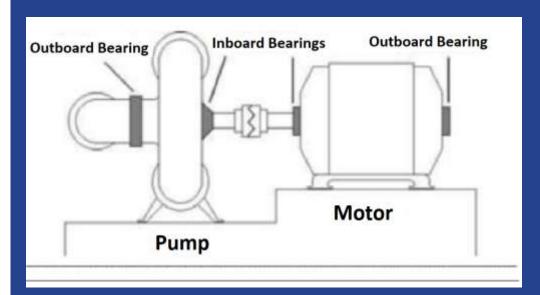
NBU is committed to the following principles for managing all assets:

- CUSTOMER-FOCUSED by implementing a Customer-Facing Levels of Service (LOS) framework for both infernal and external customers, that will act as a clear linkage between the AM Policy, organizational goals, customer expectations and infernal performance measures:
- WHOLE LIFE-CYCLE BASED by considering asset resource and financial requirements from planning, design, construction/acquisition and commissioning, through operation, maintenance and renewal, to retirement and disposal on all assets across the enterprise.
- SUSTAINABLE AND FORWARD-LOOKING by considering community, social, environmental, and financial aspects in present and future service commitments.
- TRANSPARENT AND DATA DRIVEN by using formal, consistent, scalable, and repeatable approaches.
- ENTERPRISE -VIEW by managing assets as interrelated components in a unified system rather than as stand-alone assets.
- FLEXIBLE AND INNOVATIVE by continually improving asset management processes and procedures
 using innovative tools, techniques, and solutions.
- MAINTAIN ORGANIZATIONAL RELIABILITY AND RESILIENCE by understanding consequences of asset failure and implementing appropriate documented maintenance processes and schedules to reduce likelihood of asset failure and manage our business risk exposure.
- REGULATORY DRIVEN by ensuring a minimum of compliance with laws, regulations, permits, and other legal requirements.
- PRIORITY-DRIVEN by implementing a Triple Bottom Line (Social, Financial and Environmental) risk-based decision-making framework.
- MANAGED RISK by directing resources and priorities to achieve established levels of service while minimizing life cycle costs at an acceptable level of risk.

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Why is AM so Important?









Where are we on our current roadmap?

- 2020 Strategic Asset Management Plan
 - Asset Management Policy & AM Framework -
 - Tactical Asset Management Plans –
 - CIP Planning Process –
 - AM Training & Communication Plan –
 - Asset Data Standards & Systems –
 - Decision Support System –
 - Maintenance Master Plans & Performance Management –

Three Year Outlook

- Cityworks/GIS Data Audit and Gap Assessment
- Update Strategic Asset Management Plan (SAMP) with Departmental Roadmaps – Total of 8 Roadmaps
 - Fleet, Facilities, Electric Operations, Substations, Water Operations, Water Treatment and Compliance, Information Technology, Systems Control
- Asset Data and Information Standards



Three Year Outlook (cont.)

- AM Business Process Mapping
 - Facilities/Fleet, Electrical Operations/Substations, Water Operations, Water Treatment and Compliance/System Control, GIS/IT/AM
- AM Levels of Service (LOS) Implementation & Dashboard
- Tactical Asset Management Plans (TAMP)
 - Surface Water Treatment Plant TAMP
 - Fleet TAMP
 - Water Linear TAMP



Three Year Outlook (cont.)

Condition Assessment Protocols

Engineering & Technical Support



Five Year Outlook

- Fully built-out Asset Data Systems
- Reliability Centered Maintenance Planning
- Data-driven Infrastructure Planning
- AM Governance, Staff Education and Communication Plans
- Achieve Data Standardization & Data Reliability
- Enhanced Asset Performance Monitoring and Reporting
- AM LOS Dashboard & KPI Reports





Next Steps?

- If approved, we will:
 - Formalize the NBU AM Core Project Team
 - Identify department SME teams for roadmaps
 - Project kick-off meeting in January
 - Look forward to sharing our progress



Questions?



Meeting Date: December 14, 2023 Agenda Type: Action Item

From: Adam Willard, P.E. Reviewed by: Michael Short, P.E.

Chief Engineer of Water Director of Water Services and

Systems Compliance

Submitted by: Michael Short, P.E. **Approved by:** Ryan Kelso

Director of Water Services Interim Chief Executive Officer

and Compliance

RECOMMENDED ACTION: Discuss and Consider Authorizing the Interim CEO or His Designee

to Negotiate and Execute a Construction Contract with Landmark Structures I, L.P. for the Construction of the Conrads Elevated

Storage Tank Project

BACKGROUND

On August 23, 2023, New Braunfels Utilities ("NBU") issued a request for bids for the Conrads Elevated Storage Tank Project, previously known as the Goodwin Lane Elevated Storage Tank Project, which includes (i) construction of a 2.0 million gallon ("MG") elevated storage tank ("EST") including an access road, site lighting, a tank mixing system, fencing, and a tank logo; (ii) approximately 80 linear feet ("LF") of 16-inch water main by open-cut between Conrads Lane and the Conrads EST; (iii) clearing and grubbing; (iv) traffic control; (v) storm water pollution prevention; (vi) site restoration; and (viii) all other appurtenances necessary to complete the Project (the "Project"). The Project will provide additional elevated storage capacity to serve future growth in the Kohlenberg Pressure Zone.

On September 18, 2023, NBU received two (2) bids for the Project during the public bidding process. The project team evaluated the bids and recommends the selection of Landmark Structures I, L.P. ("Landmark") for the Project. Landmark was the lowest responsible bidder and submitted a base bid of \$7,336,000.

NBU staff requests that the Board of Trustees approve the Construction Contract Agreement (the "Agreement") with Landmark for the Project.

This item is being presented to the Board because the total amount of the Contract exceeds \$250,000.

FINANCIAL IMPACT

The total financial impact of the Agreement with Landmark for the Project is \$7,336,000. The Project is budgeted within the fiscal year 2024 NBU Board approved Capital Improvements Projects Budget. Due to the project being pushed back a full year, construction will go into fiscal year 2025. The costs for this project will be updated within the proposed fiscal year 2025 through fiscal year 2029 Capital Improvements Projects Budget. Anticipating the need for project change orders, a contract contingency of \$400,000, approximately 5% of the total contract amount, will be added to the project construction budget. The total Contract amount plus contingency is \$7,736,000.

LINK TO STRATEGIC PLAN

Infrastructure and Technology

EXHIBITS

- 1. Construction Contract with Landmark
- 2. Letter of Recommendation from Freese and Nichols, Inc.
- 3. Bid Tab (RFB #23-0013)

В	id Tab
<u>Bidder</u>	Total Cost
Landmark Structures I, L.P.	\$7,336,000
Caldwell Tank, Inc.	\$11,137,000

THIS AGREEMENT (the "Agreement" or the "Contract") is between NEW BRAUNFELS UTILITIES, a Texas municipally owned utility ("NBU"), and LANDMARK STRUCTURES I, L.P., a Texas limited partnership (the "Contractor").

NBU and the Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 The Contractor shall complete all Work as specified or indicated in the Contract Documents as listed below:

Contract Agreement and the related Exhibits;

Standard General Conditions of the Contract;

Special Conditions;

Technical Specifications;

Payment Bond:

Performance Bond;

Design Drawings produced by Freese and Nichols, Inc. dated May 18, 2023; and Technical Specifications produced by Freese and Nichols, Inc. dated May 19, 2023.

1.02 The Work is generally described as follows:

The Project is anticipated to include some or all of the following items within its scope: (i) construction of a 2.0 million gallon ("MG") elevated storage tank ("EST") including an access road, site lighting, a tank mixing system, fencing, and a tank logo; (ii) approximately 80 linear feet ("LF") of 16-inch water main by open-cut between Conrads Lane and the Conrads EST; (iii) clearing and grubbing; (iv) traffic control; (v) storm water pollution prevention; (vi) site restoration; and (viii) all other appurtenances necessary to complete the Project.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Conrads Elevated Storage Tank

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

Ryan Opgenorth, P.E. Freese and Nichols, Inc. 10431 Morado Circle Suite 300 Austin, TX 78759 (512) 617-3100

(the "Engineer"), who is to act as NBU's representative, assume all duties and responsibilities, and have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

- A. Time limits stated in the Contract Documents are of the essence of the Contract. In all aspects of the Work, including any time limits for Milestones, Substantial Completion, and Final Completion, time is of the essence of the Contract. Additionally, time limits stated in the Project Schedule are of the essence. By executing this Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- **4.02** Days to Achieve Substantial Completion and Final Payment
- A. The Work shall be substantially complete within <u>Five Hundred and Ten (510) calendar days from the Notice to Proceed date</u> and ready for final payment in accordance with Section 14.07 of the General Conditions within 30 calendar days after the substantially complete date.

4.03 Liquidated Damages

A. The Contractor and NBU recognize that time is of the essence of this Agreement and that NBU will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by NBU if the Work is not completed on time. Accordingly, instead of requiring any such proof, NBU and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to NBU **Nine Hundred Dollars (\$900)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by NBU, the Contractor shall pay to NBU **Nine Hundred Dollars (\$900)** per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 *Special Damages*

A. In addition to the amount provided for in liquidated damages, the Contractor shall reimburse NBU (1) for any fines or penalties imposed on NBU as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, the Contractor shall reimburse NBU for the actual costs reasonably incurred by NBU for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

- **5.01** NBU shall pay the Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in the Contractor's Bid Form, attached hereto as Exhibit B.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. The Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Engineer as provided in the General Conditions.
- **6.02** Progress Payments; Retainage
- A. NBU shall make progress payments on account of the Contract Price on the basis of the Contractor's Applications for Payment within 30 days of NBU's acceptance of the payment application:
 - 1. Prior to Substantial Completion, NBU shall make progress payments in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the Engineer may determine or NBU may withhold, including but not limited to liquidated damages, in accordance with Section 14.02 of the General Conditions:
 - a. 95% (percent) of Work completed; and
 - b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Section 14.07 of the General Conditions, NBU shall pay the remainder of the Contract Price, including any retainage held, as recommended by the Engineer as provided in said Section 14.07 of the General Conditions.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

- 7.01 To induce NBU to enter into this Agreement, the Contractor makes the following representations:
- A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. The Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site that may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- E. The Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. The Contractor is aware of the general nature of work to be performed by NBU and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. The Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all

- additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the Standard General Conditions of the Contract.

8.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically, but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Should an assignment occur, the terms of this provision survive and control any further assignment by an assignee.

8.03 Successors and Assigns

A. NBU and the Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon NBU and the Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 *Governing Law*

A. The Contract shall be governed by the law of the State of Texas without regard to its conflict of law principles.

8.06 *Venue*

A. This Agreement is entered into and performed in Comal County, Texas, and the Contractor and NBU agree that exclusive and mandatory venue for any legal action related to this Agreement shall be in the District Courts of Comal County, Texas.

8.07 Prohibition on Contracts with Companies Boycotting Israel

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter

2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Contractor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

8.08 Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited

A. The Contractor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf, https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

- B. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Contractor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.
- **8.09** Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia
- A. If the Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas under this Agreement, the Contractor represents the following:
 - 1. it is not owned by or the majority of stock or other ownership interest in the Contractor is not held or controlled by:
 - a. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the Texas Government Code, as amended ("designated country"); or
 - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
 - 2. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.
- B. The foregoing representation is made solely to comply with Chapter 2275 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment

facility. "Affiliate," with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

8.10 *Prohibition on Contracts with Companies Boycotting Energy Companies*

- A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2276 of the Texas Government Code, as amended.
- B. The foregoing verification is made solely to comply with Section 2276.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott energy companies" has the meaning used in Section 809.001 of the Texas Government Code, as amended. The Contractor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.
- **8.11** Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries
- A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.
- B. The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. The Contractor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

8.12 Texas Public Information Act

- A. The Contractor recognizes that this Project is publicly owned, and NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to NBU's audit rights.
- B. This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

C. The Contractor must

- 1. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement;
- 2. promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of NBU; and
- 3. on completion of the Agreement, either:

Item 2.

Bidding Requirements, Contracts Forms & Conditions of the Contract CONTRACT AGREEMENT

a.provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of the Contractor; or

b.preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

8.13 *Electronic Signatures*

A. Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this Agreement, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this Agreement.

ARTICLE 9 - INSURANCE

9.01 Evidence of the Contractor's Insurance

A. Before any Work at the Site may commence, Contractor shall deliver to NBU the certificates of insurance and policy endorsements pages for all insurance policies required to be provided by the Contractor in accordance with the Insurance Rider that is Exhibit A to this Agreement.

Exhibit A – Insurance Rider

Exhibit B - Contractor's Bid Form

IN WITNESS WHEREOF, NBU and the Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to NBU and the Contractor. All portions of the Contract Documents have been signed or identified by NBU and the Contractor or on their behalf.

This Agreement will be effective on,	(which is the Effective Date of the Agreement).
NBU: NEW BRAUNFELS UTILITIES, a Texas municipally owned utility	LANDMARK STRUCTURES I, L.P.: a Texas limited partnership
By:	Ву:
Printed Name: Ryan Kelso	Printed Name: Christopher Lamon
Title: Interim CEO	Title: CEO of Landmark Structures Management LLC
[CORPORATE SEAL]	[CORPORATE SEAL]
Attest:	Attest: Sanita Sankag
Title:	Title: Linda E. Santiago - Pre-Construction Coordinat
Address for giving notices:	Address for giving notices:
	Landmark Structures I, LP
	1665 Harmon Road
	Ft. Worth, Texas 76177
(If NBU is a corporation, attached evidence of authority to sign. If NBU is a public body, attach evidence of authority to sign and resolution or other	License No.: N/A (Where Applicable)
documents authorizing execution of NBU- Contractor Agreement.)	(
	Agent for service or process:
	Christopher Lamon
	(If the Contractor is a corporation or a partnership, attach evidence or authority to sign.)

END OF DOCUMENT

CONTRACT AGREEMENT

Exhibit A to Contract Agreement Owner's Insurance Requirements of Contractor

1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial	Amounts of coverage shall be no less than:	■ Current ISO edition of CG 00 01
General Liability	• \$1,000,000 Per Occurrence	 Additional insured status shall be provided in
(Occurrence	• \$2,000,000 General Aggregate	favor of Owner Parties on a combination of
Basis)	■ \$2,000,000 Products/Completed	ISO forms CG 20 10 10 01 and CG 20 37
	Operations Aggregate	10101 or an equivalent.
	■ \$1,000,000 Personal And Advertising	 This coverage shall be endorsed to provide
	Injury	primary and non-contributing liability
	Designated Construction Project(s)	coverage. It is the intent of the parties to this
	General Aggregate Limit	Agreement that all insurance coverage required
		herein shall be primary to and will not seek
		contribution from any other insurance held by
		Owner Parties, with Owner Parties' insurance
		being excess, secondary and non-contributing.
		 Stop Gap coverage shall be provided if any
		work is to be performed in a monopolistic
		workers' compensation state.
		■ The following exclusions/limitations (or their
		equivalent(s), are prohibited:
		 Contractual Liability Limitation CG 21 39
		 Amendment of Insured Contract Definition
		CG 24 26
		 Exclusion-Damage to Work Performed by
		Subcontractors On Your Behalf, CG 22 94
		or CG 22 95
		 Any Classification limitation
		 Any Construction Defect Completed
		Operations exclusion
		o Any endorsement modifying the Employer's
		Liability exclusion or deleting exception to it
		 Any endorsement modifying or deleting
		Explosion, Collapse or Underground
		coverage
		 Any Habitational or Residential exclusion
		applicable to the Work
		o Any "Insured vs. Insured" exclusion except
		Named Insured vs. Named Insured
		 Any Punitive, Exemplary or Multiplied
		Damages exclusion
		 Any Subsidence exclusion
Business Auto	Amount of coverage shall be no less than:	■ Current ISO edition of CA 00 01
Liability	• \$1,000,000 Combined Single Limit	 Arising out of any auto (Symbol 1), including
		armed himdendana armed

Liability

* \$1,000,000 Combined Single Limit

Workers'

Amounts of coverage shall be no less than:

* Current 150 cultion of CA 00 of

Arising out of any auto (Symbol 1), including owned, hired and non-owned

The State in which work is to be performed

Item 2.

Bidding Requirements, Contracts Forms & Conditions of the Contra CONTRACT AGREEMENT

		CONTRACT AGREEMENT
Compensation and Employer's Liability	 Statutory Limits \$1,000,000 Each Accident and Disease Alternate Employer endorsement 	must listed under Item 3.A. on the Information Page Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted. Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.
Excess Liability (Occurrence Basis)	Amounts of coverage shall be no less than: \$5,000,000 Each Occurrence	 Coverage shall "follow form" over underlying policies listed herein.
Professional Liability	Amounts of coverage shall be no less than: \$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$	 Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement. This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors habitational or residential operations mold and/or microbial matter and/or fungus and/or biological substance Any retroactive date must be effective prior to beginning of services for the Owner. Policies written on a Claims Made basis shall have an extended reporting period of at least two years beyond termination of the Agreement. Contractor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.

	Bidding Requirements.	Contracts Forms & Conditions of the Contra, CONTRACT AGREEMEN
Contractors	Amounts of coverage shall be no less than:	* The policy must insure contractual liability,
Pollution Liability	*- \$1,000,000 Each Claim	name Owner Parties as an Additional Insured
Ž	- If a combined Contractor's Pollution	and be primary and noncontributory to all
	Liability and Professional Liability policy is	coverage available to the Additional Insured.
	utilized, the limits shall be \$3,000,000 Each	- This insurance is not permitted to include any
	Claim.	type of exclusion or limitation of coverage
	- The policy must provide coverage for:	applicable to claims arising from:
		o Insured vs. insured actions. However
	operations (on-going and completed) as	exclusion for claims made between insured
	described within the scope of work for	within the same economic family are
	this Agreement	acceptable.
	○ loss arising from pollutants including but	
	not limited to fungus, bacteria, biological	physically injured
	substances, mold, microbial matter,	 materials supplied or handled by the name
	asbestos, lead, silica and contaminated	insured. However, exclusions for the sale
	drywall	and manufacture of products are allowed.
	• third party liability for bodily injury,	Exclusionary language pertaining to
	property damage, clean up expenses, and	materials supplied by the insured shall be
		**
	defense arising from the operations;	reviewed by the certificate holder for
		approval.
	Resources damages	o property damage to the work performed by
	o contractual liability	the contractor
	o claims arising from non-owned disposal	o faulty workmanship as it relates to clean u
	sites utilized in the performance of this	costs
	Agreement.	o work performed by subcontractors
		- If coverage is provided on a Claims Made
		basis, coverage will at least be retroactive to
		the earlier of the date of this Agreement or the
		commencement of contractor services relation
		to the Work.
		The policy will offer an extended discovery
		extended reporting clause of at least three (3
		years.
		- Completed Operations coverage shall be
		maintained through the purchase of renewal
		policies to protect the insured and additional
		insured for at least two (2) years after the
		property owner accepts the project or this
		contract is terminated. The purchase of an
		extended discovery period or an extended
		reporting period on a Claims Made policy or
		the purchase of occurrence based Contractor
		Environmental Insurance will not be sufficie
		to meet the terms of this provision.
Builders Risk	■ Coverage shall be provided in an amount	■ Insureds shall include Owner Parties, Genera
	equal at all times to the full contract value,	Contractor, all Loss Payees and Mortgagees,
	including change orders, and cost of debris	and subcontractors of all tiers in the Work as
	removal for any single occurrence	Insureds

Insureds.

• Such insurance shall cover:

o all structure(s) under construction,

and roadways, bridges, glass,

including retaining walls, paved surfaces

foundation(s), footings, underground pipes

removal for any single occurrence.

• Coverage shall be at least as broad as an

unmodified ISO Special form, shall be

shall be primary to any other insurance

coverage available to the named insured

provided on a completed-value basis, and

CONTRACT AGREEMENT

		CONTRACT AGREEMENT
parties, with that other insurance excess, secondary and non-cont The policy must provide covera Agreed Value	ributing.	and wiring, excavations, grading, backfilling or filling; o all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;
 Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Debris removal additional limit 	\$1,000,000 \$5,000,000	 all property including materials and supplies on site for installation; all property including materials and supplies at other locations but intended for use at the site; all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and other Work at the site identified in the
 Earthquake and Earthquake Sprinkler Leakage Flood Freezing Mechanical breakdown including hot & cold testing Ordinance or law Pollutant clean-up and removal Preservation of property Theft Deductible shall not exceed All Risks of Direct Damage, Per Occurrence, except Named Storm 	\$5,000,000 Included Included \$1,000,000 \$ 25,000 Included Included \$10,000 2% subject to \$50,000 minimum \$100,000	Agreement to which this Exhibit is attached. No protective safeguard warranty shall be permitted. The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; occupancy, in whole or in part; the date on which release of substantial completion is executed; or the date on which the insurable interests of Contractor in the Covered Property has ceased.
 Earthquake and Earthquake Sprinkler Leakage, Per Occurrence Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V 	\$100,000	A waiver of subrogation provision shall be provided in favor of all insureds listed above.

2. General Insurance Requirements

A. <u>Definitions</u>. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include the Builder and its subcontractors of any tier.

CONTRACT AGREEMENT

iii. "Owner Parties" means (a) New Braunfels Utilities (collectively referred to as "Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Contract Documents.

B. Policies.

i. Contractor shall maintain such Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall maintain such General Liability insurance in identical coverage, form and amount, including required endorsements, for at least ten (10) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.

ii. All policies must:

- a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
- b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
- c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
- d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- iv. The Owner shall have the right to prohibit the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

C. Limits, Deductibles and Retentions

i. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk.

D. Evidence of Insurance.

The Contractor shall furnish evidence of insurance to NBU that confirms all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to NBU. Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
 - a. Owner as certificate holder at Owner's mailing address;
 - b. Insured's name, which must match that on this Agreement;

CONTRACT AGREEMENT

- c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
- d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
- e. Additional Insured status in favor of Owner Parties;
- f. Amount of any deductible or self-insured retention in excess of \$25,000;
- g. Designated Construction Project(s) General Aggregate Limit;
- h. Primary and non-contributory status;
- i. Waivers of subrogation; and
- j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
 - a. General Liability Additional insured endorsement(s);
 - b. General Liability Schedule of Forms and Endorsements page(s); and
 - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

E. Contractor Insurance Representations to Owner Parties

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance and offset all costs and expenses from the Contract Sum. Owner's exercise of this right shall not relieve or excuse Contractor from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Contract Agreement.

F. Insurance Requirements of Contractor's Subcontractors

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self-insure this risk, it is expressly

Item 2.

Bidding Requirements, Contracts Forms & Conditions of the Contra

CONTRACT AGREEMENT

agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

G. <u>Use of the Owners Equipment</u>

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use.

H. Release and Waiver

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.

Item 2.

CONTRACT AGREEMENT

Exhibit B - Contractor's Bid Form

Rev. 09.01.2023 Page 16 Contract Agreement

Exhibit B to Contract Agreement

Bidding Requirements, Contract Forms & Conditions of the Contract BID FORM

New Braunfels Utilities 355 FM 306 New Braunfels, TX 78130

PROJECT: Conrads Elevated Storage Tank

- The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement
 with New Braunfels Utilities ("NBU") in the form included in the Contract Documents to perform
 and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and
 within the Contract Time indicated in this Bid and in accordance with the other terms and conditions
 of the Contract Documents.
- 2. BIDDER accepts all the terms and conditions of the Request for Bid, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to RFB: evaluation for ninety (90) days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other Documents required by the Bidding Requirements within ten (10) days after the date of NBU's Notice of Award.
- 3. In submitting this bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - a) BIDDER has examined copies of all the Bidding Documents and of all addenda.
 - b) BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
 - c) BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies that pertain to the subsurface of physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of Work as BIDDER considers necessary for the performance or finishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.02 of the Standard General Conditions of the Contract; and no additional examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by BIDDER for such purposes.
 - d) BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumed responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by the BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.04 of the Standard General Conditions of the Contract.
 - e) BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
 - f) BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable by BIDDER.
 - g) The Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has no solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over NBU.

Exhibit B to Contract Agreement Bidding Requirements, Contract Forms & Conditions of the Contract

BID FORM

4. BIDDER will complete the Work for the following prices:

Water Adjustments

SPECIFICATION NO.	DESCRIPTION		QUANTITY	UNIT COST,	TOTAL, \$		
A-01	Mobilization: Not to exceed 5% of Bid Items		1	20,000	20,000		
Conrads Elevated Storage Tank: Furnish and install one (1) 2.0 MG composite elevated water storage tank, complete with all tank piping and appurtenances, yard piping and appurtenances, interior floors and improvements, safety, security, disinfection, excavation / earthwork, electrical / instrumentation, site grading and drainage improvements, access road, fencing and all other work not identified in other bid items, complete as specified and indicated on the drawings.		LS	1	7,236,000	7,236,000		
NBU Item 509 Trench Safety		LF	80	25	2,000		
NBU Item 510 24-inch Water Line Tie-in		EA	1 5,000		5,000		
NBU Item 600 SWPPP and Erosion and Sediment Controls		LS	1	15,000	15,000		
NBU Item 703 Traffic Controls		LS	1	2,000	2,000		
NBU Item 13321	Offsite Fiber Extension	LS	1	56,000	56,000		

TOTAL BASE BID \$ 7,336,000

5. BIDDER agrees that the Work will be substantially complete and ready for final payment in accordance with Section 14.07 of the Standard General Conditions of the Contract within the Calendar days indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to liquidated damages and special damages in the event of failure to complete the Work on time.

Exhibit B to Contract Agreement Bidding Requirements, Contract Forms & Conditions of the Contract BID FORM

- 6. The following documents are attached to and made a condition of this Bid:
 - a) Required Bid security of five percent (5%) of the Bidder's maximum base bid price and in the form of approved Bid Bond.
 - b) List of BIDDER's primary Subcontractors and Suppliers for the Work. Any changes in the Subcontractor and Supplier list shall require additional approval by OWNER prior to contract execution.
- 7. Communication concerning this Bid shall be addressed to:

New Braunfels Utilities

Purchasing Manager

355 FM 306

New Braunfels, TX 78130 Phone: 830-608-8867

Email: Purchasing@NBUTexas.com

- 8. The terms used in this Bid that are defined in the Standard General Conditions of the Contract included as part of the Contract Documents have the meanings assigned to them in the Standard General Conditions of the Contract.
- 9 The undersigned acknowledges receipt of the following addenda:

Addendum No. 1 dated 9/12/2	23 Received
Addendum No. 2 dated	Received
Addendum No. 3 dated	Received

Secretary, *if bidder is a corporation

(Seal)

Copy of Corporate Resolution and minutes with certificate of officer of bidder as to authority of signatory to bind bidder is to be signed and dated no earlier than one week before bid date, and attached to this document Landmark Structures I, LP

Company Name of Bidder

Authorized Signature

September 18, 2023

Date

Christopher Lamon, CEO of Landmark Structures

Management LLC

Printed Name of Authorized Signature

1665 Harmon Road

Fort Worth, Texas 76177

Address

(817) 230-2070

Telephone Number/Fax Number

END OF DOCUMENT



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September 20, 2022

FNI Project No. NBU20679

Adam Willard Chief Engineer of Water Systems New Braunfels Utilities 355 FM 306 New Braunfels, Texas, 78130

Re: Conrads Elevated Storage Tank

Dear Mr. Willard:

On Monday, September 18, 2023, at 3:00 PM, two (2) general contractors' bids were received, opened, and publicly read aloud in an Avaya Cloud Office Video meeting for the above-referenced project. The bids received are as follows, in order from lowest to highest:

Contractor	Base Bid Amount
Landmark Structures I, LP	\$7,336,000
Caldwell Tank, Inc.	\$11,137,000

Freese and Nichols, Inc. (FNI) opinion of probable construction cost was \$8,536,000.

The lowest bid received was from Landmark Structures I, LP. FNI checked for feedback internally and externally regarding references and experiences with this Contractor. Based on feedback from those discussions, FNI believes Landmark Structures I, LP is qualified to perform the work on this project. FNI recommends Landmark Structures I, LP. be awarded the construction contract of \$7,336,000.

If you have any questions regarding this matter, please feel free to contact us.

Sincerely,

Freese and Nichols, Inc. Ryan Opgenorth, PE

Attachments: Bid Tabulation

Attachment A - Detailed Tabulation of Bids Received

Project	Conrads Elevated Storage Tank	Project Numb	er	Landm	Landmark Structures I, LP		Caldwell Tanks, Inc.									
Owner New Braunfels Utilities		NBU20679	NBU20679		1665 Harmon Road		4000 T D			AVERAGE		ENGINEER'S ESTIMATE			DIFFERENCE	
Construction Manager								4000 Tower Road								
Design Professional Freese and Nichols, Inc.			Fort Worth, TX 76177		WOILII, 1X /61//		Louisville, KY 40219									
Item No.	Description	Quantity	Units	Unit Cost	Extended Amount	Note	Unit Cost	Extended Amount No	te Unit Cost	Extended Amount	Note	Unit Cost	Extended Amount No	te Per	centage Note	
Items in Base Offer (excluding Allowances) per Section 01 29 01 Measurment and Basis		s for Payment														
GENERAL																
A-01	Mobilization	1	LS	20,000.00	20,000.00		525,000.00	525,000.00	272,500	00 272,500.00		248,599.00	248,599.00		9.61%	
A-02	Conrads Elevated Storage Tank	1	LS	7,236,000.00	7,236,000.00		10,113,600.00	10,113,600.00	8,674,800	.00 8,674,800.00		8,186,921.00	8,186,921.00		5.96%	
NBU Item 509	Trench Safety	80) LF	25.00	2,000.00		130.00	10,400.00	77	50 6,200.00		6.00	480.00		1191.67%	
NBU Item 510	24-inch Water Line Tie-in	1	. EA	5,000.00	5,000.00		106,000.00	106,000.00	55,500	00 55,500.00		10,000.00	10,000.00		455.00%	
NBU Item 600	SWPPP and Erosion and Sediment Controls	1	LS	15,000.00	15,000.00		16,000.00	16,000.00	15,500	00 15,500.00		30,000.00	30,000.00		-48.33%	
NBU Item 703	Traffic Controls	1	LS	2,000.00	2,000.00		15,000.00	15,000.00	8,500	.00 8,500.00		5,000.00	5,000.00		70.00%	
NBU Item 13321	Offsite Fiber Extension	1	LS	56,000.00	56,000.00		351,000.00	351,000.00	203,500	00 203,500.00		55,000.00	55,000.00		270.00%	
A Total Base Bid Items Amount (Sum of Extended Amounts for each Base Bid		se Bid Line Item)			\$ 7,336,000.00	_		\$ 11,137,000.00		\$ 9,236,500.00			\$ 8,536,000.00		8.21%	

Tabulation of Offers Received