

STATE OF TEXAS §
§
COUNTY OF FORT BEND §

ADDENDUM TO HUNTON SERVICES' AGREEMENT

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Hunton Services, a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WHEREAS, the parties have executed and accepted Hunton's Service Agreement (collectively the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference, for Mechanical Services and Scheduled Maintenance services (the "Services") at 3840 Bamore Road, Rosenberg, Texas; and

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

1. **Term.** The term of the Agreement is effective upon execution by the County (the "Execution Date"), and shall expire no later than 36 months from the Execution Date, unless terminated sooner pursuant to the Agreement. This Agreement will not automatically renew, but may be subsequently renewed in writing upon agreement of the parties.
2. **Scope of Services.** Hunton Services will render Services to County as described in Exhibit A, and in accordance with the requirements of Choice Partners Contract Number 19/036-MR-03, attached as Exhibit "B" and incorporated by reference.
3. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.
4. **Limit of Appropriation.** Hunton Services clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Seventy-Seven Thousand, Eight Hundred Eighty-Two and 76/100 dollars (\$77,882.76), specifically allocated to fully discharge any and all liabilities County may incur. Hunton Services does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Hunton Services may become entitled to and the total maximum sum that County may become liable to pay to Hunton Services shall not under any conditions, circumstances, or interpretations thereof exceed Seventy-Seven Thousand, Eight Hundred Eighty-Two and 76/100 dollars (\$77,882.76). In no event will the amount paid by

the County for all services under this Agreement exceed this Limit of Appropriation without an agreement executed by the parties.

5. **Public Information Act.** Hunton Services expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Hunton Services shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Hunton Services for any reason are hereby deleted.
7. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Hunton Services in any way associated with the Agreement.
8. **No Waiver of Jury Trial.** The County does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references to waiver of jury trial are hereby deleted.
9. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
 - a. Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Hunton Services verifies Hunton Services does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - b. Texas Government Code § 2252.152 Acknowledgment: By signature below, Hunton Services represents pursuant to § 2252.152 of the Texas Government Code, that Hunton Services is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under § 806.051, § 807.051, or § 2252.153.
10. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both Parties.

11. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, HUNTON SERVICES ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

12. **Personnel.** Hunton Services represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Hunton Services shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Hunton Services shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Hunton Services or agent of Hunton Services who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services for the County, Hunton Services shall comply with, and ensure that all Hunton Services Personnel comply with, all rules, regulations and policies of County that are communicated to Hunton Services, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

13. **Termination.**

13.1. Termination for Convenience. County may terminate this Agreement at any time upon thirty (30) days written notice.

13.2. Termination for Default. County may terminate the whole or any part of this Agreement for cause in the following circumstances:

- (a). If Hunton Services fails to timely perform services pursuant to this Agreement or any extension thereof granted by the County in writing;
- (b). If Hunton Services materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

13.3. If, after termination, it is determined for any reason whatsoever that Hunton Services was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with § 13.1 above.

13.4. Upon termination of this Agreement, County shall compensate Hunton Services in accordance with § 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Hunton Services' final invoice for said services will be presented to and paid by County in the same manner set forth in § 3 above.

13.5. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Hunton Services.

14. **Use of Customer Name.** Hunton Services may use County's name without County's prior written consent only in any Hunton Services's customer lists, any other use must be approved in advance by County.

15. **Independent Contractor.** In the performance of work or services hereunder, Hunton Services shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Hunton Services or, where permitted, of its subcontractors. Hunton Services and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

16. **Compliance with Laws.** Hunton Services shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Hunton Services shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

17. **Confidential Information.** Hunton Services acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Hunton Services or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Hunton Services shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Hunton Services) publicly known or is contained in a publicly available document; (b) is rightfully in Hunton Services' possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Hunton Services who can be shown to have had no access to the Confidential Information.

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

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

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

- 18. Insurance.** Prior to commencement of the Services under this Agreement, Hunton Services shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Hunton Services shall provide certified copies of insurance endorsements and/or policies if requested by County. Hunton Services shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Hunton Services shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- (a). Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than

\$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

(b). Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

(c). Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

(d). Professional Liability insurance with limits not less than \$1,000,000.

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

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

19. **Scheduled Maintenance Services.** Any Scheduled Maintenance services to be performed by Hunton Services must be scheduled at least two weeks in advance with County's Facilities Maintenance Department, or as agreed by the parties. The County's Facilities Maintenance Department may be contacted between the hours of 8:00 a.m.-5:00 p.m., excluding County holidays or other County closures, at (281) 238-3565 concerning the scheduling of these maintenance services.

20. **Successors and Assigns.**

- a. This Agreement shall be binding on the heirs, successors and assigns of the parties hereto.
- b. Hunton Services shall not assign, sublet or transfer its interest or obligations in and under this Agreement without the prior, written consent of County.
- c. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County.

21. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls.

22. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

23. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

24. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
25. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

HUNTON SERVICES

KP George
County Judge

Kris Hardin
Authorized Agent – Signature

Date

Kris Hardin
Authorized Agent- Printed Name

ATTEST:

President and General Manager
Title

Laura Richard
County Clerk

February 10, 2021
Date

REVIEWED:

Facilities Management and Planning
Department

AUDITOR'S CERTIFICATE

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

Robert Ed Sturdivant, County Auditor

Exhibit A: Hunton's Service Agreements

Exhibit B: Choice Partners Contract Number 19/036-MR-03

Exhibit A



Huntton Services

SERVICE AGREEMENT

MECHANICAL SERVICES
SCHEDULED MAINTENANCE
CHOICE PARTNERS NUMBER – 19/036-MR-03



Fort Bend County – Medical Examiner
3840 Bamore Rd
Rosenburg, TX

1/7/21

Authorized Warranty Service
TACLA009290C - MPL38267



Air Conditioning Heating Plumbing Refrigeration Ventilation Controls

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Agreement

HEATING, VENTILATION, and AIR CONDITIONING (HVAC) SCHEDULED MAINTENANCE

Hunton Services will provide complete maintenance services for the equipment listed below in *Equipment List*. All work will be performed during normal working hours unless otherwise indicated in the *Terms and Conditions* section of this agreement.

To accomplish the proper maintenance on the listed equipment, Hunton Services will utilize factory-trained technicians. The tasks outlined in the maintenance schedules will be performed in accordance with the guidelines set forth by the equipment manufacturers.

Agreement performance shall be completed and submitted to the owner or representative after each inspection. Recommendations, if any, will be listed and should be considered to reduce overall operating costs and/or improve equipment performance. Operating instruction will be provided on applicable equipment during schedule inspections.

A. Scope of Services Provided

☒ **MECHANICAL SERVICES SCHEDULED MAINTENANCE (PM)**

This agreement is for Scheduled Maintenance services to be provided for the equipment referenced herein as identified under "Equipment List" below. Scheduled Maintenance coverage provides for annual and maintenance inspections on the equipment identified in this agreement. The Scheduled Maintenance program includes 4 inspections per year: 3 scheduled inspections and 1 annual inspection per year. **(Excludes Refrigerant)**

Equipment List

| Coverage | Tag | Manuf | Model | Serial |
|----------|--------------|------------|---------------------|--------------|
| PM | AHU#1 | KCC | OAKD264E4-D1C100GJ | OA289767-1-1 |
| PM | AHU #2 | KCC | OADG015A3-DAB10JH00 | OA289767-2-1 |
| PM | AHU#3 | KCC | OAND648E4- D1C100JN | OA289787-3-1 |
| PM | EF#1 | TRANE | CSAA010UBL00 | K19G59481 |
| PM | EF#2 | TRANE | CSAA006UBL00 | K19G59463 |
| PM | EF#3 | TRANE | CSAA017UBLOO | K19G59472 |
| PM | REFRIGERTION | HEAT CRAFT | KEZA030H8HC4C2884 | 192107745 |
| PM | REFRIGERTION | HEAT CRAFT | KEZA030H8HC4C2884 | 192107744 |
| PM | REFRIGERTION | HEAT CRAFT | KEZA045LBHT4C28840 | 192107743 |
| PM | REFRIGERTION | - | - | - |
| PM | REFRIGERTION | - | - | - |
| PM | REFRIGERTION | - | - | - |

Payment Terms

1. The term of this agreement is for three (3) years. The total price for this agreement is payable in thirty-six (36) monthly payments of \$ 2,163.41, net thirty (30) days from invoice date. When authorized by Customer, authority will be given to furnish additional labor or materials that may be required for items not covered under this agreement. **(Not to exceed \$500.00 per service call without written customer approval).**
2. The agreement shall become effective upon the date of acceptance by the purchaser or by the seller, whichever is the latter and shall remain in effect for term of contract from such date and shall be deemed to be automatically renewed thereafter for continuous consecutive yearly periods unless this agreement be otherwise terminated or changed by either parties as permitted under the general conditions.
3. All work and services covered by the Agreement will be done during normal working hours between 7:30 AM and 4:00 PM, Monday through Friday, except for legal holidays. Emergency service and repairs are available on 24 hours per day, seven days per week and will be invoiced separately at the preferential service agreement rates.
4. Taxes have not been included in this quote and will be billed **extra** when applicable.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT:

Submitted by:

Neal Robichau, Service / Solution Sales
Hunton Services
5622 Luce Street
Houston, Texas 77087

CUSTOMER ACCEPTANCE

By: _____

Title: _____

Company: _____

Acceptance Date: _____

Start Date: _____

Billing Information (Please indicate where to send invoices and a contact name)

Company: _____

Attention (Name): _____

Title: _____

Address: _____

City, State, Zip: _____

Special Invoice Instructions? _____

Terms and Conditions

GENERAL:

This Service Agreement, together with all documents contained herein, shall constitute the entire Agreement between Hunton Services, hereafter referred to as "The Company" and customer and may not be modified, amended, without the express written consent of an officer of The Company.

Customer acknowledges the complexity and expense of any air conditioning and refrigeration equipment as well as the need for specially trained and qualified personnel to service and/or repair such equipment. Therefore, to reduce the risk of damage, the customer agrees not to contract any other service company to perform service on the equipment covered by a Select Service Agreement without the expressed written permission of The Company.

PAYMENT:

Service agreements are billed in advance and payment is due within 30 days of invoice date. If payments are past due, the company reserves the right to suspend all services and coverages under this agreement. The Company may cancel this agreement for delinquency and in the event collection action is taken, the company reserves the right to add a surcharge of 1½ % of the principal per month. Should legal action be required to enforce payment for monies due from the customer, the customer agrees to pay reasonable attorney's fees and court costs.

COVERAGE:

The Company shall provide the services described in this Agreement with respect to the listed Equipment with reasonable promptness in a workmanlike manner in accordance with industry standards generally applicable in the area. The Company may at its discretion either replace or repair faulty equipment.

EXCLUSIONS:

Unless specifically noted otherwise in the agreement, the following items are not covered:

- a) Any repairs or service covered by mechanical insurance.
- b) Any and all special alterations or provisions necessary to facilitate safe access to service or repair of unit, including, but not limited to, special rigging, cranes and/or rental equipment if required.
- c) Repairs for damages due to acts of God, including but not limited to fire, floods, wind

- damage, freezing, wars, vandalism, strikes, force of nature.
- d) Any loss consisting of, caused by, contributed to, or aggravated by rust, mold, mildew, fungus, wet or dry rot and any resulting loss is always excluded under this contract, however caused.
- e) Repairs for damages due to corrosion, erosion, and deterioration, including but not limited to corrosion relating to equipment installation in corrosive (marine, industrial) environments, regardless of equipment age.
- f) Any responsibility for the identification, detection, or removal/abatement of asbestos related materials.
- g) Repairs for damages due to misuse, abuse, negligence, misapplication or other causes beyond the company's control.
- h) Items not mechanically maintainable such as casings, cabinets and supports. Non-standard modifications or enclosures such as explosion-proofing, theft-proofing, etc. may require additional labor for maintenance and repairs, to be billed at the company's prevailing preferred customer service rates.
- i) Troubleshooting or repairs to controls communications wiring.
- j) Unless specifically listed, all devices not an integral part of the equipment including but not limited to any component upstream of unit's starter such as conductors, transformers, fuses, disconnects, circuit breakers, flow switches, fire/ smoke detectors, building automation/temperature control systems, high-voltage starters and/or switchgear etc.
- k) Unless specifically listed, all Variable/Adaptive Frequency Drives (VFDs/AFDs).
- l) Unless specifically listed, all control devices not an integral part of the equipment including but not limited to flow switches, smoke and fire stats, building automation systems, etc, or any damage done by these devices.
- m) Repairs or replacement of combustion chambers, burners, heat exchangers, flues, chimneys, ductwork, dampers, insulation, steam lines, water lines, gas lines, condensate lines, evaporator and condenser heat transfer surfaces, including tube, coils and chiller barrels.
- n) Repairs for damages caused by the electric utility service, electrical connection maintenance or any power related issues.
- o) Modifications or alterations of existing equipment due to requirements of governmental, regulatory, or insurance agencies.
- p) Any parts not available due to obsolescence

Terms and Conditions

LIMITED LIABILITY:

The Company shall not under any circumstances be liable for personal injury, breakage, loss or damage to the equipment or property unless such loss or damage is caused solely by the negligent acts of omission or commission by The Company's employees or subcontractors.

Neither party to this agreement shall hold the other responsible for any consequential damages such as, but not limited to, loss of revenue or loss of any use of equipment.

INDEMNIFICATION:

Both parties shall indemnify, defend, and hold each other harmless from any and all claims, actions, costs, damages, and liabilities resulting from death or bodily injury or damage to property of the other or other persons, unless such losses result from the sole negligence or misconduct of their respective employees or agents in connection with their duties pursuant to this agreement.

CONDITIONS:

The customer will provide timely and reasonable means of access to all equipment covered by this agreement and will allow the company the right to start and stop all primary equipment incidental to the mechanical system as necessary to perform its duties. Failure to do so by customer may result in loss of coverage.

This agreement assumes that the equipment listed has been properly maintained and is in operating condition at the time of acceptance of this offer. Following the first inspection, The Company shall report to the customer any deficiencies or repairs necessary to the equipment. If such repairs are not done, The Company reserves the right to adjust the coverage accordingly.

The agreement shall commence on the start date indicated by both parties and shall remain in effect for term of agreement and shall be deemed continuously renewed yearly unless either party gives written notice of termination as defined below.

CANCELLATION: Either party may cancel during the contract period by giving the other party 30 day written notice sent by certified mail. Customer agrees to pay The Company the greater of the amount of the contract balance due to date of effective cancellation or the cost for all work performed to date of cancellation billable at current Published Time & Material non- contract rates, not to exceed the balance of the annual contract amount.

SUCCESSORS:

This Contract and each provision of it shall operate to the benefit of the parties and to their respective successors in interest, legal representatives and assigns.

SEVERABILITY:

Should any of the qualifications, terms or conditions set forth heretofore and hereafter, be contrary to, prohibited by, or be held invalid under applicable laws or court of law having jurisdiction, in that event, such provisions shall be considered inapplicable and omitted, but shall not invalidate any remaining provisions.

GOVERNING LAWS:

This shall be construed as an agreement in accordance with the laws of the State of Texas. Texas State licenses TACLA009290C. Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599, www.license.state.tx.us.

AHU and Fan Scope

This program describes the basic Scheduled maintenance procedures that will be performed by HUNTON SERVICES. These procedures comply with all EPA regulations regarding maintenance and repair of air conditioning/heating & refrigeration equipment and systems.

SCHEDULED MAINTENANCE

- ☒ Inspect coil conditions.
- ☒ Lubricate fan and motor bearings as necessary.
- ☒ Inspect bearing and motor mounting.
- ☒ Log motor operating voltage and amperage.
- ☒ Tighten electrical connections as necessary.
- ☒ Inspect and adjust belt tension as necessary.
- ☒ Inspect condensate drain pan and drain line.
- ☒ Inspect drive sheaves. Tighten set screw(s) as required.
- ☒ Rotate the fan wheel and check for obstructions in the fan housing.
- ☒ Inspect unit for unusual noise or vibrations. Recommend action as necessary.

ANNUAL SERVICES

- ☒ Provide material and labor to replace belts one time per year. **(Overtime not included)**
- ☒ Provide labor and materials to replace carbon filters on units EF#1, EF#2, and EF#3 one time per year. **(Overtime not included)**

Written Report (Daily Timesheet)

- ☒ Provided to customer representative following each regular inspections or emergency call.

Condensing Unit Scope

This schedule describes the basic Scheduled maintenance procedures that will be performed by HUNTON SERVICES. These procedures comply with all EPA regulations regarding maintenance and repair of air conditioning/heating & refrigeration equipment and system.

SCHEDULED MAINTENANCE

Refrigerant System

- ☒ Visually inspect refrigerant circuit(s) for leaks.
- ☒ Inspect operation and refrigerant pressures.

Lubrication System

- ☒ Inspect oil level and pressure in compressor(s) (if applicable).
- ☒ Visually inspect oil lines for leaks if applicable.

Operating Checks

- ☒ Visually inspect condenser coils for leaks and fin deterioration.
- ☒ Inspect operation of condenser fan(s) and inspect blades.
- ☒ Adjust operating and safety controls as necessary. Record.
- ☒ Log operation of temperatures, pressures, voltages and amperages.
- ☒ Inspect operation of control circuit.
- ☒ Visual inspection of unit.
- ☒ Inspect operation of all motors.
- ☒ Inspect operation of crankcase heater(s).

Written Report (Daily Timesheet)

- ☒ Provided to customer representative following each regular inspections or emergency call.

ANNUAL SERVICES

- ☒ Clean condenser coils with fresh water 1 time per year. **(Overtime not included)** Additional cleaning will be billed to customer on a T&M basis.
- ☒ Clean and wipe control panels.
- ☒ Complete operating log and record settings.
- ☒ All Scheduled Maintenance activities.

Unitary Unit Scope

This schedule describes the basic Scheduled maintenance procedures that will be performed by HUNTON SERVICES. These procedures comply with all EPA regulations regarding maintenance and repair of air conditioning/heating & refrigeration equipment and systems.

SCHEDULED MAINTENANCE

- ☒ Visually inspect refrigerant circuit(s) for leaks.
- ☒ Inspect condition of contacts for wear, pitting, etc.
- ☒ Inspect condenser fan motor(s) and fan wheel for proper operation.
- ☒ Tighten electrical connections as necessary
- ☒ Complete operating log and record settings.
- ☒ Lubricate fan and motor bearings as necessary.
- ☒ Inspect bearing and motor mounting.
- ☒ Inspect drive sheaves. Tighten set screw(s) as required.
- ☒ Complete operating log and record settings.
- ☒ Inspect coil conditions.
- ☒ Inspect unit for unusual noise or vibration.
Recommend action as necessary.
- ☒ Inspect and adjust belt tension as necessary

ANNUAL SERVICES

- ☒ Clean condenser coils with fresh water 1 time per year. **(Overtime not included)**
- ☒ Provide material and labor to replace belts 1 time(s) per year. **(Overtime not included)**

Written Report (Daily Timesheet)

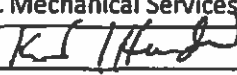
- ☒ Provided to customer representative following each regular inspection or emergency call.

Exhibit B

EXECUTION OF OFFER

The undersigned Proposer has carefully examined all instructions, requirements, specifications, terms and conditions of this RFP and the Agreement and certifies:

1. It is a reputable company regularly engaged in providing goods and/or services necessary to meet the requirements, specifications, terms and conditions of the RFP and the Agreement.
2. It has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the requirements, specifications, terms and conditions of the RFP and the Agreement. Further, if awarded, the Proposer agrees to perform the requirements, specifications, terms and conditions of the RFP and the Agreement.
3. All statements, information, and representations prepared and submitted in response to this RFP are current, complete, true, and accurate. Proposer acknowledges that HCDE will rely on such statements, information, and representations in selecting the successful Proposer(s).
4. It is not currently barred or suspended from doing business with the Federal government, any of the members represented, or any of their respective agencies.
5. It shall be bound by all statements, representations, warranties, and guarantees made in its proposal.
6. Submission of a proposal indicates the Proposer's acceptance of the evaluation technique and the Proposer's recognition that some subjective judgments may be made by HCDE and its membership as part of the evaluation.
7. That all of the requirements of this RFP and the Agreement have been read and understood. In addition, compliance with all requirements, terms and conditions will be assumed by HCDE if not otherwise noted in the proposal.
8. The individual signing below has authority to enter into this on behalf of Proposer.
9. Proposer acknowledges that the Agreement may be canceled if any conflict of interest or appearance of a conflict of interest is discovered by HCDE.
10. This Agreement is subject to purchase orders duly authorized and executed by HCDE.

| | | | |
|-------------------------------|---|-------------|--------------|
| CORPORATE NAME: | HVAC Mechanical Services of Texas Ltd, dba Hunton Services | | |
| AUTHORIZED SIGNATURE: |  | | |
| PRINT NAME: | Kris Hardin | | |
| TITLE: | Vice President of Sales | | |
| DATE: | 4/5/2019 | | |
| ADDRESS: | 5622 Luce St. | | |
| CITY, STATE, ZIP CODE: | Houston TX, 77087 | | |
| PHONE: | 713-580-8336 | FAX: | 713-645-0847 |
| EMAIL ADDRESS: | smixon@huntongroup.com | | |
| WEBSITE URL | huntonservices.com | | |

This Section to be Completed by HCDE

Contract Number: 19/036MR-03 Term of contract: 05/15/2019 to 05/14/2020

Vendor shall honor all CPC Administrative Fees for any sales resulting from this Contract whether Vendor is awarded a renewal or not.

Approved by Harris County Department of Education:


 Jesus J. Amezcua, PhD, CPA, RSTBA
 Assistant Superintendent for Business Services


 Board Approval Date

5.0 CONTRACT TERMS AND CONDITIONS

These Contract Terms and Conditions are part of the final contract in each product and/or service contract awarded as a result of this CSP and are part of the terms and conditions of each Purchase Order, Job Order, or proposal forms issued in connection with this CSP. Vendors are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED DIRECTLY BELOW EACH OF THE RESPECTIVE TERMS AND CONDITIONS.** Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by HCDE/CP and eliminated from further consideration.

CONTRACT BETWEEN HARRIS COUNTY DEPARTMENT OF EDUCATION AND HVAC Mechanical Services of Texas, Ltd dba Hunton Services (“VENDOR”) FOR IDIQ Heating, Ventilating, and Air Conditioning (HVAC)

This Contract is entered into between HCDE/CP and Vendor, having submitted a proposal in response to this CSP issued by HCDE/CP and whose proposal has been accepted and awarded by HCDE. In consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HCDE/CP and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Contract, agree as follows:

5.1. Definitions

The terms used in this Contract shall have the meanings assigned to them in **Section 1.0 Notice of Intent** of the CSP.

5.2. Use of Contract by CP members

Vendor agrees and understands that this CSP and Contract may be used to accomplish work for HCDE/CP, a local governmental entity. Vendor further agrees and understands that this CSP and Contract may also be utilized by CP members pursuant to the piggyback method, as contemplated in the U.S. Department of Agriculture Memorandum SP 35-2012, *Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.* (“SP 35-2012”). Vendor agrees and understands that CP members include “school food authorities,” as that term is used in SP 35-2012.

5.3. Contract Terms; Amendment

The terms and conditions of this Contract shall govern all procurements conducted hereunder. No pre-published terms on Vendor’s Purchase Order, acknowledgments, invoices, or other forms shall have any force or effect unless expressly agreed to by the CP member and Vendor. No amendment of this Contract shall be permitted unless and until first approved in writing by HCDE/CP and, if necessary, the CP member(s), and no such amendment shall have any effect unless and until a written amendment to this Contract is executed by the HCDE Superintendent or his designee after any necessary approvals have been obtained from the HCDE Board of Trustees. In the event that a Vendor has an existing HCDE/CP contract in the same contract title, upon award the new contract will immediately supersede the older contract.

5.4. Term of Contract; Renewal of Contract

The initial term of this Contract is for a period of one (1) year, with HCDE/CP having the option to renew the Contract for three (3) additional one-year terms, at HCDE’s sole discretion, unless otherwise specified in **Section 6.0 Scope of Proposal**. Consequently, the total term of the Contract may be for a period of **four (4)** years. The phrase “Term” in this Contract shall mean the then-current Term of the Contract, whether an initial term or a renewal term.

5.5. Termination of Contract; Survival

This Contract shall remain in effect until (1) the Contract expires by its terms or (2) the Contract is terminated by mutual consent of HCDE/CP and Vendor. All Supplemental Contracts, purchase orders, and/or orders for goods or services issued by HCDE and/or CP members and accepted by Vendor shall survive the expiration or termination of this Contract. During the term of any Supplemental Contract entered into

between Vendor and a CP member, all terms of this Contract shall continue to apply to the Supplemental Contract.

In the event of a breach or default of the Contract and/or the CSP by Vendor, HCDE/CP 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 HCDE/CP and/or CP members. HCDE/CP further reserves the right to terminate the Contract immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the CSP, this Contract, and/or a Purchase Order; (2) make any payments owed; or (3) otherwise perform in accordance with this Contract and/or the CSP. HCDE/CP also reserves the right to terminate the Contract immediately, with written notice to Vendor, if HCDE/CP believes, in its sole discretion that it is in the best interest of HCDE/CP and/or CP members to do so.

In the event that a material change to the terms of the Contract occurs, then the Contract shall be allowed to expire and shall not be renewed upon the conclusion of the Contract's term. The phrase "material change" in this paragraph shall mean a modification that substantially exceeds the terms of the original contract between HCDE/CP and Vendor. Upon the expiration of the Contract's term, HCDE/CP may issue a new CSP for the goods or services procured under the previous contract.

Vendor agrees that HCDE/CP shall not be liable for damages in the event that HCDE/CP declares Vendor to be in default or breach of this Contract and/or the CSP. Vendor further agrees that upon termination of the Contract for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or Vendor.

5.6. **Prevailing Wage Rates**

Vendor and all subcontractors of Vendor shall comply with all laws regarding prevailing wage rates, including, but not limited to, TEX. GOV'T. CODE Chapter 2258, applicable to the construction of a public work, and any related federal requirements, including the DAVIS-BACON ACT. In the event TEX. GOV'T. CODE Chapter 2258 applies to a product or service provided by Vendor to HCDE/CP or a CP member, Vendor and any subcontractor(s) shall comply with the prevailing wage rates set by HCDE/CP or the CP member.

5.7. **Change Orders**

Pursuant to TEX. EDUC. CODE § 44.0411(a), for HCDE/CP and CP members that are Texas school districts, if a change in plans or specifications is necessary after the performance of a Purchase Order or Job Order has begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the CP member may approve change orders making the changes. The total Purchase Order or Job Order price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants. The CP member may grant general authority to an administrative official to approve the change orders. A Purchase Order or Job Order with an original contract price of \$1 million or more may not be increased under TEX. EDUC. CODE § 44.0411(a) by more than 25 percent. If a change order for a Purchase Order or Job Order with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

5.8. **Compliance with Laws**

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws; minimum and maximum salary and wage statutes and regulations; prompt payment and licensing laws and regulations; anti-discrimination statutes and regulations (Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 C.F.R. Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement—Nutrition Programs and Activities); the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5); the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5); the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60); the McNamara-O'Hara Service Contract Act (41 U.S.C. 351); Section 306 of the Clean Air Act (42 U.S.C. § 1857h); Section 508 of the Clean Water Act (33 U.S.C. §

1368); Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15); the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5; the Solid Waste Disposal Act (Section 6002 as amended by the Resource Conservation and Recovery Act for procuring solid waste management services in a manner that maximizes energy and resource recovery when contract amount is in excess of \$10,000); the Education Department General Administrative Regulations (“EDGAR”) (2 C.F.R. Part 200); mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871); and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights, and those mandated by federal agencies making awards of federal funds to HCDE/CP and/or CP members, including, without limitation, the U.S. Department of Agriculture and/or Texas Department of Agriculture. Vendor understands that Vendor is ineligible to receive a contract award with HCDE/CP if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689) or is 30 days or more delinquent in paying child support (Tex. Fam. Code § 231.006). For the entire duration of this Contract, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. All permits will be acquired by Vendor and invoiced to the CP member at cost as part of the Purchase Order, unless the permits are provided by the CP member. For the entire duration of this Contract, Vendor and all subcontractors shall also comply with all requirements pertaining to local, state, or federal health and safety certifications, licensing, or regulations. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the CP member’s Purchase Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. The states of individual CP members may have regulations and laws that govern payment retention and progress payments for public projects. Vendor is responsible for being acquainted with and complying with each state’s requirements. When required or requested by HCDE/CP or a CP member, Vendor shall furnish HCDE/CP and/or the CP member with satisfactory proof of Vendor’s compliance with this provision.

5.9. **Confidentiality**

Vendor and HCDE/CP agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and HCDE/CP understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that HCDE/CP and numerous CP members are subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability HCDE/CP and CP members, their respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Vendor, HCDE, or a CP member and determined by HCDE/CP or the CP member, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

5.10. **Performance and Payment Bonds**

Vendor agrees to provide performance bonds and/or payment bonds as required by law, based on the amount or estimated amount of any Purchase Order or Job Order for a public work contract, which is defined as a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. TEX. GOV’T. CODE §§ 2253.001(4); 22269.411. Pursuant to TEX. GOV’T. CODE § 2253.021, a performance bond is required if a Purchase Order is in excess of \$100,000 for CP members that are governmental entities subject to Chapter 2253; a payment bond is required if a Purchase Order or Job Order is in excess of \$25,000 for CP members that are governmental entities subject to Chapter 2253 and are not municipalities or a joint board created under Subchapter D, Chapter 22 of the Tex. Transp. Code, and a payment bond is required if a Purchase Order or Job Order is in excess of \$50,000 for CP members that are governmental entities subject to Chapter 2253 and are municipalities or a joint board created under Subchapter D, Chapter 22 of the TEX. TRANSP. CODE.

5.11. **Title and Risk of Loss**

Whenever HCDE/CP or a CP member is purchasing (and not leasing) a product under this Contract, title and risk of loss shall pass upon the later of HCDE/CP or the CP member’s acceptance of the product or payment of the applicable invoice.

5.12. **Warranty Conditions**

All product(s) and/or service(s) provided by the Vendor under this Contract must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of HCDE's or the CP member's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all products and/or services furnished under this Contract shall conform in all respects to the terms of this Contract, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the CSP and Purchase Order. In addition, Vendor warrants that products and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the Vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Contract, the CSP, or Purchase Order.

5.13. **Criminal History Review**

Section 10.0 Attachment–SB 9 Contractor Certification: Contractor Employees (Required) and Attachment–SB 9 Contractor Certification: Subcontractor Form (If Applicable) must be submitted with packet, if applicable.

Prior to commencing any work under the Contract, if Vendor contracts with HCDE/CP to provide services, Vendor must certify, on the form provided herein, that for each covered employee of Vendor who will have direct contact with students, Vendor has obtained, as required by TEX. EDUC. CODE Section 22.0834: (a) state criminal history record information from a law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) for each covered employee of Vendor employed before January 1, 2008; and (b) national criminal history record information for each employee of Vendor employed on or after January 1, 2008. Vendor must also obtain similar certifications of compliance with TEX. EDUC. CODE, Chapter 22 requirements from any subcontractors on the form provided herein. Covered employees with disqualifying criminal history are prohibited from serving at HCDE/CP or at CP school district members' locations; Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under TEX. EDUC. CODE § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor's employees from interacting with students or entering areas used by students. Tex. Educ. Code §§ 22.0834(a-1), .08341. The criminal history record information review obligation applies only if Vendor contracts with HCDE/CP to provide services; it does not apply to a contract for the purchase of goods, products or real estate.

5.14. **Customer Support**

Vendor shall provide timely and accurate technical advice and sales support to HCDE/CP staff, and CP members. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. Vendor shall provide training to HCDE/CP staff and/or CP members regarding products and/or services supplied by Vendor, at no additional charge, if requested by HCDE/CP or a CP member.

5.15. **HCDE/CP and/or CP members' Property**

In the event of loss, damage, or destruction of any property owned by or loaned by HCDE/CP or a CP member that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify HCDE/CP or the CP member and pay to HCDE/CP or the CP member the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of HCDE's or the CP member's determination of the amount due. If Vendor fails to make

timely payment, HCDE/CP or the CP member may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by HCDE/CP or the CP member.

5.16. **Tax Exempt Status**

HCDE/CP and all CP members that are Texas governmental entities or agencies are exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE§ 151.310 for the purchase of tangible personal property. Laws of other states govern the tax status of CP members in states other than Texas. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. HCDE/CP and CP members shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.

5.17. **Other State Tax Requirements**

5.17.1. Payment of Taxes by CP members Outside of Texas – CP members outside of Texas will pay only the rate and/or amount of taxes identified in Vendor's proposal submitted in response to the CSP as appropriate to the specific CP member.

5.17.2. State and Local Transaction Privilege Taxes – The CP member is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sales of products and are the sole responsibility of Vendor, as the seller, to remit. Failure to remit taxes from HCDE/CP and/or the CP member, as the buyer, does not relieve Vendor, as the seller, from its obligation to remit taxes.

5.18. **State of Texas Franchise Tax**

By submitting a proposal in response to the CSP, Vendor certifies that Vendor is not currently delinquent in Vendor's payment of any franchise taxes or other taxes owed to the State of Texas.

5.19. **Tax Responsibilities of Vendor and Indemnification for Taxes**

Vendor is responsible for complying with the tax laws of states and the federal government. Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to Vendor's operation, any persons employed by Vendor, and all subcontractors of Vendor. Vendor shall require all subcontractors to hold HCDE/CP and the CP member harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs, including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

5.20. **IRS W-9**

To receive payment under this Contract, Vendor shall have a current I.R.S. W-9 Form on file with the CP member.

5.21. **Assignment of Contract**

Vendor may not assign this Contract or any of its rights, duties or obligations hereunder without the prior written approval of HCDE. Any attempted assignment of this Contract by Vendor shall be null and void. Any Purchase Order or Job Order made as a result of this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of HCDE/CP and, if applicable, the CP member.

5.22. **Notification of Material Change**

Vendor is required to notify HCDE/CP when any material change in operations occurs, including changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

5.23. **Performance**

Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to this Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any scope of work, Purchase Order, or Job Order under this Contract. Vendor shall use skilled, trained personnel, who shall be supervised by Vendor.

5.24. Subcontractors

If Vendor uses subcontractors in the performance of any part of this Contract, Vendor shall be fully responsible to HCDE/CP and CP members for all acts and omissions of the subcontractors. Nothing in this Contract shall create for the benefit of any such subcontractor any contractual relationship between HCDE/CP and any such subcontractor, nor shall it create any obligation on the part of HCDE/CP or CP members to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law. Vendor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractors who perform and/or provide products and services related to this Contract.

If Vendor uses subcontractors in the performance of any Purchase Order or Job Order issued as a result of a Job Order Contract awarded via this procurement solicitation, subcontractors must issue their Job Order Quotes using the same pricing method(s) outlined in the procurement solicitation and according to Texas Government Code Chapter 2269, Subchapter I, Job Order Contracts Method.

5.25. Non-Appropriation

Renewal of this Contract, if any, will be in accordance with TEX. LOCAL GOV'T. CODE § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract or obligation imposed on HCDE/CP or any CP member by this Contract, HCDE/CP and CP members shall have the right to terminate this Contract, any Supplemental Contract, Purchase Order, and/or Job Order without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of HCDE/CP or any CP member if it is determined by HCDE/CP or any CP member, at their sole discretion, that there are insufficient funds to extend this Contract, any Supplemental Contract, any Purchase Order. The parties agree that this Contract, any Supplemental Contract, any Purchase Order, and/or any Job Order are commitments of the current revenue of HCDE/CP and CP members only.

5.26. Ordering Procedures

Purchase Orders/Job Orders are issued by HCDE/CP and/or CP members to the Vendor according to this Contract and any Supplemental Contract between HCDE/CP and the CP member. CP members must send Purchase Orders/Job orders to HCDE/CP, unless otherwise stipulated by HCDE/CP. HCDE/CP may request confirmation of receipt of the Purchase Order/Job Order from Vendor.

HCDE/CP also may elect to require e-commerce functionality, in which Purchase Orders/Job Orders are sent directly to Vendor and reported by the CP member to HCDE/CP on a specified basis. The e-commerce approach must be approved by HCDE/CP prior to the start date of any Term of the Contract.

5.27. Invoices; Payments

5.27.1. Vendor shall submit invoices, in duplicate, directly to HCDE/CP or the CP member at the appropriate location(s) specified by HCDE/CP or the CP member. Each invoice shall include HCDE's or the CP member's Purchase Order/Job Order number and HCDE/CP Contract Number. All invoices shall be itemized to include the type of product(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during HCDE's or the CP member's fiscal year in which the product(s) and/or service(s) are purchased. The shipment tracking number or pertinent information for verification of HCDE's or the CP member's receipt shall be made available upon request by HCDE/CP or the CP member.

5.27.2. HCDE/CP or the CP member will make payments directly to Vendor. HCDE/CP or the CP member placing the Purchase Order/Job Order with Vendor shall alone be liable and/or responsible for

payment for product(s) and/or service(s) ordered and must be invoiced directly by Vendor. Neither HCDE/CP nor any CP member shall be liable for the indebtedness of any one CP member.

- 5.27.3. TEX. GOV'T. CODE § 2251.021 shall govern when payments are due to the Vendor. Payments are due to Vendor by HCDE/CP and any CP member whose governing body meets only once a month or less frequently, **within forty-five (45) days** after the later of the following: (1) the date HCDE/CP or the CP member receives the products and services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date HCDE/CP or the CP member receives an invoice for the products or service. For CP members whose governing bodies meet more than once a month or more often, payments are due by those CP members **within thirty (30) days** after the later of the following: (1) the date the CP member receives product(s) under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date the CP member receives an invoice for product(s) or service(s). Vendor agrees to pay any subcontractors the appropriate share of the payment received from HCDE/CP or the CP member not later than the **tenth (10th) day** after the date the Vendor receives the payment from HCDE/CP or the CP member.

The exceptions to payments made by HCDE, a CP member, and/or Vendor listed in TEX. GOV'T. CODE § 2251.002 shall apply to this Contract.

5.28. **Reporting**

The Vendor shall provide HCDE/CP with a detailed monthly report showing the total dollar volume of all sales under this Contract for the previous month in Microsoft Excel format, in the format and with the information specified by HCDE/CP. Reports are due on the **fifteenth (15) day of the month**, after the close of the previous month and shall provide information regarding Purchase Orders/Job Orders during the previous month. Vendor is responsible for collecting and compiling all sales under this Contract from all CP members and submitting **one (1)** consolidated monthly report. The monthly report shall include, at a minimum, the date of each Purchase Order/Job Order, Purchase Order/Job Order number, CP member name, city/town, and Purchase Order total dollar amount. Reports shall be submitted in an electronic format to HCDE/CP at 6005 Westview, Houston, Texas 77055, or electronically mailed to facilityreporting@choicepartners.org.

The Vendor shall provide HCDE/CP with velocity/usage reports within five (5) business days of any request by HCDE/CP for such reports.

5.29. **Pricing Changes**

All prices and discount percentages in Vendor's proposal shall be firm for the Term of this Contract. Pricing may be negotiated during the Contract renewal period. In the event Proposer's prices will be adjusted or escalated upon a renewal (if any) of the fixed-price contract awarded pursuant to this RFP, Proposer must indicate such in its proposal. Any adjustment or escalation of the fixed price(s) will be based on the CPI index and may only be made at the time of contract renewal. Vendor agrees to promptly lower the proportionate price of any product purchased through this Contract following a reduction in the price the Vendor is paying suppliers. All pricing submitted to HCDE/CP in Vendor's proposal shall include the administrative fee to be remitted to HCDE/CP by Vendor. It is Vendor's responsibility to keep all pricing up-to-date and on file with HCDE/CP. All price changes shall be presented to HCDE/CP for acceptance or rejection by HCDE/CP, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for products and/or services provided under this Contract must be approved, in writing, by HCDE/CP prior to taking effect.

The following documentation shall be provided to support a request for a price change:

- justification for change/increase
- terms and conditions
- market conditions
- manufacturers'/distributors' impact, if any

All price decreases shall be allowed for all products and/or services.

5.30. **HCDE/CP Administrative Fee**

HCDE/CP will invoice Vendor for the HCDE/CP Administrative Fee of **3%**, subject to the Administrative Incentive Clause, below. HCDE/CP reserve the right to modify the Administrative Fee at any time, upon notice to Vendor. The invoice for the Administrative Fee will be based on total sales made through this Contract. Vendor shall remit payment of the HCDE/CP Fee to HCDE/CP no later than **thirty (30) days** following the end of the month. Failure to pay the HCDE/CP Administrative Fee in a timely manner may result in Vendor breaching this Contract and may result in HCDE/CP suspending or terminating this Contract. Vendor shall honor and pay HCDE/CP the HCDE/CP Administrative Fee for any sales resulting from this Contract that occurred within **thirty (30) days** of the expiration or termination of this Contract. All rebates, discounts, and other applicable credits granted by Vendor as a result of any Supplemental Contracts entered into between Vendor and CP members shall accrue exclusively to CP member(s).

Administrative Fee Incentive Clause. The following incentives, or any other special circumstances, will be determined in the sole discretion of HCDE/CP and will be based on amounts actually billed by Vendor. Vendor's failure to abide by the Contract's terms and conditions, including, without limitation, Vendor's requirement to report sales to HCDE/CP, may result in HCDE/CP voiding the Administrative Fee Incentive, in HCDE/CP's sole discretion.

One-Year Term(s)

- **Gross sales above \$5M invoiced by Choice Partners = 2% for remainder of the then-current Contract Term**
- **Subsequent renewal 1-year Term = 2.75% and Vendor must maintain production of \$5M to keep 2.75% fee for the next subsequent renewal 1-year Term**

Individual Job Orders

- **\$2M or above = 2.5% only in the Contract Term in which they are invoiced**
- **\$1M or above = 2.75% only in the Contract Term in which they are invoiced**

5.31. **Records Retention**

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all product(s) and/or service(s) provided by the Vendor to HCDE/CP and/or CP members under this Contract. These records and accounts shall be retained by Vendor and made available for review and copying by HCDE/CP and CP members for a period of **not less than three (3) years** from the date of completion of the service(s), receipt of product(s), the date of the receipt by HCDE/CP or the CP member of Vendor's final invoice or claim for payment in connection with this Contract, or the date HCDE/CP or the CP member makes final payments and closes pending matters in connection with a federal grant, whichever is later. If an audit or a compliance review has been announced, the Vendor shall retain its records and accounts until such audit or compliance review has been completed.

When federal funds are expended by HCDE or any CP member pursuant to this Contract, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. 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.

5.32. **Right to Review, Audit and Inspect**

HCDE/CP, CP members, any federal agency that has awarded federal funds/grant(s) to HCDE/CP or a CP member, and the Comptroller General of the United States, and/or any of their authorized representatives, shall, upon written notice, have the right to audit and examine all of Vendor's records and accounts relating to this Contract and inspect any project performed by the Vendor relating to this Contract. Records subject to audit/review shall include, but are not limited to, all Purchase Orders and/or Job Orders resulting from this Contract and records which may have a bearing on matters in connection with the Vendor's work for HCDE/CP and/or CP members, and shall be open to inspection and subject to audit/review and/or

reproduction by HCDE/CP, CP member, and/or their authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

- 5.32.1. Vendor's compliance with this Contract and the requirements of the CSP.
- 5.32.2. Compliance with procurement laws, policies, and procedures, including, without limitation, reviewing/comparing pricing on invoices and the appropriate Unit Price Book for JOC work performed for HCDE/CP and/or CP members.
- 5.32.3. Compliance with provisions for computing billings to HCDE/CP and/or to CP members.
- 5.32.4. Any other matter related to this Contract.

5.33. **Indemnification**

VENDOR SHALL INDEMNIFY AND HOLD HARMLESS HCDE/CP AND EACH CP MEMBER, INCLUDING HCDE'S AND CP MEMBERS' TRUSTEES, OFFICERS, ADMINISTRATORS, EMPLOYEES, AND AGENTS, FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS CONTRACT, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. VENDOR'S OBLIGATIONS UNDER THIS CLAUSE SHALL SURVIVE ACCEPTANCE AND PAYMENT BY HCDE/CP OR THE CP MEMBER.

5.34. **Governing Law and Exclusive Venue**

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Contract. Any dispute under this Contract involving HCDE/CP must be brought exclusively in the state and federal courts located in Houston, Harris County, Texas. Any dispute not involving HCDE/CP but involving a CP member and Vendor shall be governed by the laws of the state of the CP member, without regard to its provisions on conflicts of laws, and exclusive jurisdiction and venue shall lie in the city, county, and state of the CP member.

5.35. **Multiple Contract Awards; Non-Exclusivity**

HCDE/CP reserves the right to award multiple contracts under the CSP, including multiple contracts for each product/service category. Product/Service categories are established at the sole discretion of HCDE/CP. Nothing in this Contract may be construed to imply that Vendor has the exclusive right to provide products and/or services to HCDE/CP and/or CP members. During the Term of this Contract, HCDE/CP and CP members reserve the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor. In the event that a Vendor has an existing HCDE/CP contract in the same contract title, upon award the new contract will immediately supersede the older contract.

5.36. **New Products**

New products that meet the specifications detailed in the CSP may be added to this Contract, with prior written approval from HCDE/CP. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Vendor may replace or add products to the contract if: the replacing products are equal to or superior to the original products offered or discounted in a similar degree or to a greater degree and the products meet the requirements of the CSP. No products may be added to avoid competitive procurement procedures. HCDE/CP may reject any proposed additions, without cause, in its sole discretion.

5.37. **No Substitution; Product Recall**

Any Purchase Order issued pursuant to this Contract shall conform to the specifications and descriptions identified in this Contract and the CSP. Vendor shall not deliver substitutes without prior written authorization from HCDE/CP or the CP member.

If a product recall is instituted on any good that has been furnished and delivered to HCDE/CP or any CP member, Vendor must immediately (i.e., within 24 hours but preferably sooner) notify the purchasing agent of HCDE/CP and the purchasing CP member by e-mail or in writing and must include all pertinent information relating to the recall. If Vendor is unable to contact the purchasing agent, Vendor must contact the Director of Purchasing of HCDE/CP and the purchasing CP member. Vendor will be responsible for all costs associated with replacing the recalled product, including replacement cost, shipping charges, etc. This requirement shall survive payment and acceptance of the goods.

5.38 **Penalties**

If the Vendor is unable to provide the product(s) or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Contract, the CSP, or a Supplemental Contract, HCDE/CP or the CP member may take the following action(s), in the sole discretion of HCDE/CP or the CP member, and Vendor agrees to comply with the chosen action(s):

- 5.38.1 Insist that the Vendor honor the quoted price(s) specified in Vendor's proposal or the Supplemental Contract, as applicable;
- 5.38.2 Have the Vendor pay the difference between the Vendor's price and the price of the next acceptable proposal, as determined by HCDE/CP or the CP member;
- 5.38.3 Have the Vendor pay the difference between Vendor's price and the actual purchase price of the product or service on the open market; and/or
- 5.38.4 Recommend to HCDE Board of Trustees that the Vendor no longer be given the opportunity to submit a proposal to HCDE/CP and/or that this Contract be terminated.

5.39. **Promotion of Contract Marketing Plan**

The marketing of Vendor's company, product, and/or services shall be the sole responsibility of Vendor. HCDE/CP may only supply Vendor with CP members' contact lists that contain name, address, phone numbers, and/or email addresses. Other items geared toward the joint-marketing of HCDE/CP and Vendor's company, product, and/or services shall be at HCDE/CP's sole discretion. Encouraging CP members to circumvent this Contract by purchasing directly from Vendor may result in suspension or termination of this Contract. For so long as this Contract is valid and enforceable between the parties, Vendor agrees to display the CP seal in its marketing collateral materials, such as Vendor's website and related marketing materials. Vendor shall submit all promotional materials to HCDE/CP and obtain written approval before Vendor finalizes or publishes promotional material bearing the HCDE/CP or HCDE/CP name or seal. Vendor may not release any press release or other publication regarding this Contract or HCDE/CP unless and until HCDE/CP first approves the press release or publication in writing.

5.40. **Website Support**

Vendor agrees to cooperate with HCDE/CP in publicizing contract particulars on the CP website. Vendor also agrees to work with HCDE/CP in updating and maintaining current information on Vendor activities related to the Contract on the CP website. Vendor agrees to provide an electronic version of its logo for use on the CP website upon Contract award and provide other information as reasonably requested by HCDE/CP to help ensure that the CP website is current and consistently updated.

5.41. **Safety**

Vendor, its subcontractor(s), and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Contract, including, without limitation, those promulgated by HCDE/CP, CP members, and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by HCDE/CP or CP members. Vendor shall indemnify and hold HCDE/CP and/or the CP member harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

5.42. **Workforce**

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Contract. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on HCDE/CP and CP members' property, nor may such workers be intoxicated or under the influence of alcohol or drugs on HCDE/CP and CP members' property.

5.43. **Supplemental Contracts**

A CP member and Vendor may enter into a separate, Supplemental Contract. Any Supplemental Contract developed as a result of this Contract and/or the CSP is exclusively between the CP member and Vendor and shall have no effect or impact on HCDE, any other CP member, or this Contract. Any Supplemental Contract between Vendor and a CP member is exclusively between that specific CP member and Vendor and will be subject to immediate cancellation by the CP member (without penalty to the CP member) if, in the opinion of the CP member, the quality, service, and specification requirements, and/or the terms and conditions are not maintained as stated in the Supplemental Contract. Vendor shall promptly notify HCDE/CP of any Supplemental Contract executed between Vendor and a CP member.

5.44. **Insurance**

Vendor is required to provide HCDE/CP and/or the CP member with copies of certificates of insurance, naming HCDE/CP and/or the CP member as additional insured's for Texas Workers Compensation and General Liability Insurance, **within 14 business days of contract award and prior to the commencement of any work under this Contract.** Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to HCDE/CP and/or the CP member prior to commencement of any work under this Contract. The insurance company insuring Vendor shall be licensed in the State of Texas or the state in which the CP member is located, and shall be acceptable to HCDE/CP and/or the CP member. Vendor shall give HCDE/CP or the CP member a **minimum of ten (10) days'** notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Contract to maintain coverage as specified below. Vendor shall, at all times during the Term of this Contract, maintain insurance coverage with not less than the type and requirements shown below. If the CP member has higher insurance requirements than those listed below, such may be added to the Purchase Order. Such insurance is to be provided at the sole cost of the Vendor. These requirements do not establish limits of Vendor's liability.

All policies of insurance shall waive all rights of subrogation against HCDE, CP members, and HCDE/CP and CP members' officers, employees and agents.

Upon request, certified copies of original insurance policies shall be furnished to HCDE/CP and/or to CP members.

HCDE/CP and the CP member, as requested, shall be named as an "additional insured" on insurance policies.

HCDE/CP and the CP member reserve the right to require additional insurance should HCDE/CP or the CP member deem additional insurance necessary, in their sole discretion.

- Workers Compensation (with waiver of subrogation to HCDE/CP and the CP member) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
- Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000, policy limit \$100,000 each employee.
- Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, cratering and underground damage. \$300,000 each occurrence Limit Bodily Injury and Property Damage combined. \$300,000 Products-Completed Operations Aggregate Limit \$500,000 per Job Aggregate. \$300,000 Personal and Advertising Injury Limit.

- Automobile Liability Coverage: \$300,000 Combined Liability Limits Bodily Injury and Property Damage Combined.

5.45. **Participation in HCDE/CP**

Vendor acknowledges and agrees that continued participation in the HCDE/CP cooperative purchasing program is subject to HCDE/CP's sole discretion and that Vendor may be removed from the HCDE/CP program at any time, with or without cause, in HCDE/CP's sole discretion. All work resulting from this Contract must cease immediately after completion of the final accepted Purchase Order/Job Order. Nothing in this Contract or in any other communication between HCDE/CP and Vendor may be construed as a guarantee that HCDE/CP or CP members will submit any Purchase Order/Job Order to Vendor at any time.

At a minimum, to continue participation in the HCDE/CP cooperative purchasing program, Vendor must:

- Submit detailed monthly reports of all sales activity (such report is required even if there is no sales activity for a given month);
- Timely remit Administrative Fee(s) to HCDE/CP;
- Market Choice Partners, including inclusion of CP seal on Vendor's website, development and execution of marketing plan, and participation in at least 5 of marketing events (such as trade shows and conferences) annually;
- Maintain a minimum annual sales activity of \$15,000;
- Completion of all required forms (such as Form 1295, EDGAR Certifications, etc.); and
- Maintain required insurance and submit updated certificate(s) to CP annually

5.46. **No Agency or Endorsements**

It is the intention of the parties to this Contract that Vendor is independent of HCDE/CP and CP members, is an independent contractor, and is not an employee, agent, joint venturer, or partner of HCDE/CP or any CP member. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HCDE/CP and Vendor, any CP member and Vendor, HCDE/CP and any of Vendor's agents, or any CP member and any of Vendor's agents. Vendor has no power or authority to assume or create any obligation or responsibility on behalf of HCDE/CP or any CP member, and HCDE/CP and HCE members have no power or authority to assume or create any obligation or responsibility on behalf of Vendor. This Contract shall not be construed to create or imply any partnership, agency, or joint venture, nor shall it be construed or deemed an endorsement of a specific company or product. Vendor agrees that HCDE/CP and CP members have no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

5.47. **Equal Opportunity**

It is the policy of HCDE/CP not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

5.48. **Force Majeure**

Neither HCDE, any CP member, or Vendor shall be deemed to have breached any provision of this Contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond HCDE, any CP member, or Vendor's control.

HCDE, CP 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 a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other parties in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Contract has not been terminated. Delay or failure of performance, by either party to this Contract, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. HCDE, CP members, and Vendor shall not have any claim for damages against any other party resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Contract, in the event the Vendor's performance of its obligations under this Contract is delayed or stopped by a force majeure event, HCDE/CP shall have the option to terminate this Contract. This section shall not be interpreted as to limit or otherwise modify any of HCDE's or CP members' contractual, legal, or equitable rights.

5.49. **Severability**

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.50. **Waiver**

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

5.51. **Entire Agreement**

The Contract, the CSP, Vendor's proposal submitted in response to the CSP, the attached and incorporated attachments, addendum, and/or exhibits, if any, and the Supplemental Contract, if any, contain the entire agreement of the parties relative to the purpose(s) of the Contract and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to this Contract. In the event of a conflict between this Contract and the CSP or Vendor's proposal submitted in response to the CSP, this Contract shall control. In the event of a conflict between the CSP and Vendor's proposal submitted in response to the CSP, the CSP shall control. This Contract supersedes any conflicting terms and conditions on any Purchase Order/Job Order, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Contract.

In addition to this Contract, a Supplemental Contract between Vendor and the CP member may be established to further detail the terms and conditions of the CP member's specific project. In the event of a conflict between this Contract and the Supplemental Contract, as to HCDE, this Contract shall prevail. In the event of a conflict between this Contract and the Supplemental Contract, as to the CP member, the Supplemental Contract shall prevail unless the Supplemental Contract states otherwise.

5.52. **Interpretation**

Vendor agrees that the normal rules of construction that requires that any ambiguities in this Contract are to be construed against the drafter shall not be employed in the interpretation of this Contract.

5.53. **Notice**

Any notice provided under the terms of this Contract by the parties to any other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the party at the address listed in the signature line of this Contract. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.

5.54. Captions

The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

5.55. Certifications

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

Vendor certifies and agrees that it shall not assist an employee, contractor, or agent of HCDE or of any other school district in obtaining a new job if the Vendor knows, or has probable cause to believe, that the individual engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. *See* HCDE Policy CJ (Legal) and (Local).

5.56. USDA/TDA Special Terms and Conditions

The following terms and conditions apply to all procurements and purchases involving federal School Nutrition Program funds. In the event of a conflict or inconsistency between the following terms and conditions and any provision of the Agreement, the procurement solicitation issued by HCDE, or the portion of Vendor's proposal submitted in response to HCDE's procurement solicitation that is satisfactory to HCDE, the following terms and conditions shall control.

5.57. Market Basket Analysis

HCDE/CP reserves the right, in its sole discretion, to use a "Market Basket Analysis" method, as that term is defined by applicable USDA/TDA regulations and guidance. The Market Basket Analysis sample is established to represent 75% of the total estimated value of the Contract. The most recent velocity/sales report(s) from HCDE/CP's current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, this list of [100] goods to be purchased under this procurement solicitation and any resulting Contract includes the top [60] goods purchased by dollar volume representing the 75% threshold. Prices for the remaining [40] goods listed in this procurement solicitation should also be included, though they will not be a part of the Market Basket Analysis. The Market Basket Analysis shall not be used for service or equipment contracts/procurement solicitations or for Fee-For-Service Processing contracts.

5.58. Material Change

If a material change (as the term is defined by TDA rules and regulations) to a contract entered into between HCDE/CP and Vendor occurs, then the contract will not be renewed upon the conclusion of its term. Upon the expiration of the term, HCDE/CP may issue a new RFP for the goods or services procured under the previously-existing contract. Material change for purposes of this Section 5.56.2 means a modification that substantially exceeds the terms of the original contract between HCDE/CP and Vendor.

5.59. Supplemental Contracts

Supplemental Contracts are entered into pursuant to the piggyback method delineated in the U.S. Department of Agriculture directive SP 35-2012. Should the "piggybacking" result in a material change to the Contract, HCDE/CP will proceed under Section 5.56.2 of this RFP.

5.60. New Products

During the Term of a Contract awarded under this RFP, additional purchases not included in the original RFP list and resulting awarded contract may become necessary and benefit HCDE/CP members. Vendor and HCDE/CP agree that the aggregate value of added purchases during each year of the Contract (if renewed)

shall not exceed 10% of the estimated total value of the Contract. The total value of the Contract must be agreed upon, and the dollar value listed in the Contract and each renewal term of the Contract (if any). For purposes of this section, the total value of the Contract includes all contracts awarded as a result of the procurement solicitation to all vendors. For the initial Term of a Contract awarded under this RFP, Vendor and HCDE/CP agree that the total value of the Contract shall be \$ 200 Million. Additions of new products may be included in the awarded Contract list during the renewal of the Contract through an amendment to the Contract, and the total Contract value adjusted accordingly. For each renewal term of the Contract, the total actual value of the Contract in the preceding year and the additional new product(s) made during that Term will be the basis for determining the maximum dollar amount (not to exceed 10%) of the additional new product(s) that will be allowed during the next Contract renewal term.

5.61 Bonds

Vendor shall provide all bonds, including bid guarantee, performance bond, and payment bond, as applicable under U.S. Department of Agriculture and/or Texas Department of Agriculture rules.

5.62 Use by Other Governmental Entities

In the event that HCDE/CP allows other governmental entities to “piggyback” onto any existing contract between HCDE and Vendor entered into pursuant to this procurement solicitation, Vendor agrees and understands that such other governmental entities may include “school food authorities,” as that term is used in SP 35-2012. Should the “piggybacking” result in a material change to the Agreement for purposes of USDA/TDA purchases, HCDE/CP will proceed under the foregoing section entitled “Material Changes.”

5.63 No Guarantee of Quantities

Quantities for purchases paid for with School Nutrition Program funds are subject to change for various reasons, which include, but are not limited to the following: USDA commodity allocation(s), variations in student population, production item substitution(s), changes in consumer taste or expectations, pricing, and nutrition regulatory changes.

5.64 Buy American Act

The Buy American Act, set forth in 7 C.F.R. Part 210.21(d), requires that participants in the National School Lunch Program and School Breakfast Program use the federal nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. 7 CFR Part 210.21(d) defines a “domestic commodity or product” as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. “Substantially” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Because many HCDE/CP members participate in the National School Lunch Program and School Breakfast Program, HCDE/CP requires Vendor to certify whether its products are “domestic commodities or products”, as defined by 7 C.F.R. Part 210.21(d). Accordingly, Vendor agrees to provide certification and any necessary documentation requested by HCDE/CP member that the food product was processed in the U.S. and the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to HCDE/CP members. When USDA Foods items are manufactured into processed end products, 51% of resulting food products must be of United States origin.

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved by the CP member, upon request. To be considered for an exception to the Buy American provision, Vendor may submit a good faith request for an exception, certifying that Vendor reasonably believes that:

- (a) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality (i.e., there is no alternative source that can provide a domestic product and/or there is no substitute domestic food product for this food product); and/or
- (b) the costs of a U.S. product are significantly higher than the non-domestic product (i.e., the cost difference in purchasing a domestic product is unreasonable).

Vendor further agrees to provide HCDE/CP members with documentation verifying that a domestic product is not available and the cost range is reasonable within a reasonable time upon request by HCDE/CP members.

In the event Vendor or Vendor's supplier(s) are unable or unwilling to certify compliance with the Buy American Provision, or the applicability of an exception to the Buy American provision, HCDE/CP members may decide not to purchase from Vendor and/or HCDE/CP may terminate this Contract if Vendor is incapable of fulfilling the terms and conditions of the Contract, including the Buy American requirements.

Additionally, HCDE/CP members may require country of origin on all products and invoices submitted for payment by Vendor, and Vendor agrees to comply with any such requirement.

5.65 Records Retention

When school nutrition program funds are expended by HCDE or any CP member pursuant to this Contract, Vendor certifies that it will comply with the record retention requirements promulgated by USDA/TDA. Vendor further certifies that Vendor will retain all records as required by USDA/TDA for a period of five (5) years after the end of the fiscal year to which the documentation/records pertain. Vendor further certifies that these records must be accessible to appropriate HCDE/CP member and federal or state reviewers. *See* TDA ARMS Manual, 17.107.
