

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

**AGREEMENT FOR PROFESSIONAL MECHANICAL TESTING
AND BALANCING SERVICES
JUSTICE CENTER**

THIS AGREEMENT is made and entered into by and between FORT BEND COUNTY, TEXAS, a public body corporate and politic of the State of Texas, acting by and through the Fort Bend County Commissioners Court (hereinafter referred to as "County") and SYSTEMS COMMISSIONING, INC., (hereinafter referred to as "Contractor,") authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, County desires that Contractor to provide professional air and hydronic testing adjusting and balancing at the Fort Bend County Justice Center located in Fort Bend County, Texas, hereinafter referred to as the "Project," and perform certain professional services in connection with the Project; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services; and,

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, LOCAL GOVERNMENT CODE.

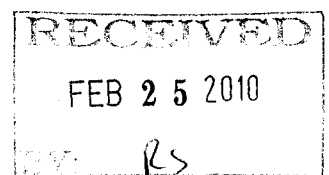
NOW, THEREFORE, County and Contractor, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
CHARACTER AND EXTENT OF SERVICES**

- 1.01 Contractor shall provide the services described in Exhibit A, Contractor's proposal dated February 4, 2010, attached hereto and incorporated by reference as if set forth herein verbatim for all purposes.
- 1.02 Contractor agrees to complete the services called for in this section within ninety (90) calendar days from the date of this Agreement.

**SECTION II
CONTRACTOR'S COMPENSATION**

- 2.01 For and in consideration of the services rendered by Contractor, and subject to the limit of appropriation under Section VI, County shall pay to Contractor an amount not to exceed \$147,918.00, including reimbursable expenses, if any.
- 2.02 Contractor shall submit invoices to County and County shall pay each invoice within thirty (30) days after the County Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by Contractor to the point indicated by such invoice or of receipt or acceptance by the County of the services covered by such statement.



SECTION III TERMINATION

- 3.01 County may terminate this Agreement at any time by providing ten (10) days written notice to Contractor.
- 3.02 Upon receipt of such notice, Contractor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 3.03 Within thirty (30) days after receipt of notice of termination, Contractor shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 3.04 County shall then pay Contractor that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 3.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION IV INSURANCE

- 4.01 Contractor shall furnish certificates of insurance to County evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Contractor, name of insurance company, policy number, term of coverage and limits of coverage. Contractor shall cause its insurance companies to provide County with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. Contractor shall obtain such insurance 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 in accordance with the laws of the State of Texas, or state or hire/location of Services, and Employers' Liability coverage with a limit of not less than \$1,000,000 each employee for Occupational Disease, \$1,000,000 policy limit for Occupational Disease; and Employer's Liability of \$1,000,000 each accident.
- B. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$2,000,000	general aggregate limit
\$1,000,000	each occurrence
\$1,000,000	aggregate Products, combined single limit
\$1,000,000	aggregate Personal Injury/Advertising Liability

\$ 100,000 Fire Legal Liability

- C. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 - D. If coverage required is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under this contract is completed.
- 4.02 County and the County Commissioners shall be named as additional insureds to all coverages required above, except for paragraph "A". All policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and County Commissioners.

SECTION V
NOTICE

- 5.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or Contractor at the addresses set forth below.
- 5.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 5.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Contractor:

Systems Commissioning, Inc.
5550 Airline Drive
Houston, Texas 77076
713-696-5493 – fax

B. If to County notice must be sent to both the Fort Bend County Purchasing Agent and County Project Manager:

Fort Bend County Purchasing Department
Gilbert D. Jalomo, Jr., CPPB
4520 Reading Road, Suite A
Rosenberg, Texas 77471

Facilities Management and Planning Department
Don Brady, Director
301 Jackson
Richmond, Texas 77469

- 5.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION VI LIMIT OF APPROPRIATION

- 7.01 Prior to the execution of this Agreement, Contractor has been advised by County, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that County shall have available the total maximum sum of \$147,918.00, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 7.02 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$147,918.00.

SECTION VII SUCCESSORS AND ASSIGNS

- 7.01 County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.
- 7.02 Neither County nor Contractor shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 7.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION VIII PUBLIC CONTACT

- 8.01 Contact with any media outlet, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County.
- 8.02 Under no circumstances, whatsoever, shall Contractor release any material or information developed in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION IX COMPLIANCE AND STANDARDS

Contractor shall render the services hereunder in accordance with generally accepted standards of Contractors practicing in the Greater Houston Metropolitan Area applicable thereto and shall use that customary degree of care and skill commensurate with the profession similar to the Project to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Contractor's performance.

SECTION X
OWNERSHIP OF DOCUMENTS

- 10.01 County shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by the Contractor and his Contractors (deliverables).
- 10.02 No reuse fees or royalty payments will be paid to Contractor in connection with future reuse or adaptation of designs derived under this contract.
- 10.03 Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.
- 10.04 Contractor is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, or from duplicating the appearance of the Project depicted in the deliverables for any without the prior express written permission of County.
- 10.05 The documents referenced in this Section are not intended or presented by Contractor to be suitable for reuse by County or others on extensions of this Project or on other unrelated projects.
- 10.06 Any adaptation or use by County of such documents on extension of this Project or other unrelated projects shall be at County's sole risk.

SECTION XI
INDEMNIFICATION

- 11.01 CONTRACTOR SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SUBCONTRACTORS, CONSULTANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.
- 11.02 CONTRACTOR SHALL ALSO SAVE HARMLESS COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON COUNTY AS THE RESULT OF SUCH ACTIVITIES BY THE CONTRACTOR, ITS AGENTS, SUBCONTRACTORS, CONSULTANTS OR EMPLOYEES.

SECTION XII
MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XIII
MISCELLANEOUS

- 13.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 13.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 13.03 Contractor agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Contractor and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 13.04 If there is a conflict between this Agreement and Exhibit "A," the provisions of this Agreement shall prevail.

SECTION XIV
CLEAN-UP

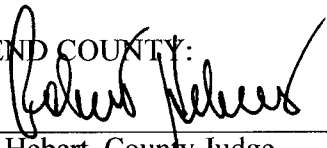
- 14.01 Contractor shall at all times keep its work area in a neat, clean and safe condition and remove from County's premises and the vicinity thereof and properly dispose of all debris and rubbish caused by Contractor's operations. Upon completion of the services provided under this Agreement, Contractor shall promptly return unused materials furnished by County, if any, and remove from County's premises all of Contractor's equipment, material, scaffolding and like items, leaving County's premises and the vicinity clean, safe and ready for use.
- 14.02 In the event Contractor shall fail to maintain its work area as described above and in a manner satisfactory to County, or to effect such clean-up or removal immediately after receipt of written notice to do so, County shall have the right without further notice to Contractor to perform such cleanup and remove such items on behalf of and at the risk of and at the expense of Contractor. County may store items removed at a place of its choosing on behalf of Contractor and at Contractor's risk and expense. County shall promptly notify Contractor of such place of storage. County may further deduct from any final payment owed to Contractor for the cost of any clean-up performed by County in which Contractor failed to perform.

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SECTION XV
EXECUTION


This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:

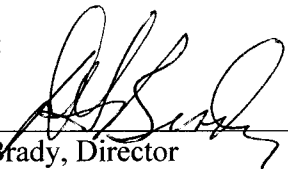

Robert E. Hebert, County Judge

3-2-2010
Date

Attest:


Dianne Wilson, County Clerk

APPROVED:

By: 
Don Brady, Director
County Facilities Management
& Planning Department

2/24/10
Date

CONTRACTOR: SYSTEMS COMMISSIONING, INC.


Signature

2-24-2010
Date

Printed Name: **MARK WOOD**
VICE PRESIDENT

Title:

MER:Systems Commissioning.PSA.Justice Center.3729(02182010)

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$147,918.00 to accomplish and pay the obligation of the Fort Bend County under this Agreement.


Ed Sturdivant, Fort Bend County Auditor

Exhibit A: February 4, 2010 Proposal from Contractor

EXHIBIT A



SYSTEMS COMMISSIONING INC.

DATE: February 4, 2010

PROPOSAL TO: Fort Bend County

ATTENTION: Don Brady

PROJECT: Fort Bend County Justice Center

LOCATION: Richmond, Texas

We propose to furnish the necessary labor to perform Air and Hydronic Testing, Adjusting and Balancing on the above project in accordance with the following:

1. Specification Section:01815
2. Drawings: Mechanical (dated 06/09/09)
3. Attached list of inclusions and exclusions and General and Special Conditions as applicable.

We acknowledge receipt of addenda: N/A

TOTAL AMOUNT OF BASE BID: \$147,918.00

ALTERNATE BIDS: N/A

Purchaser agrees to pay expenses incurred if system is not ready when balancing firm is required to be on site.

THIS PROPOSAL EXPIRES 30 DAYS FROM THE DATE ABOVE.


SYSTEMS COMMISSIONING, INC.

Accepted by: _____
Date: _____

BP#6010

Air Conditioning License TACLA 017399C
Dept. of Licensing & Regulations
P.O. BOX 12157
Austin, Texas 78711
(800) 803-9202



5550 Airline Dr. • Houston, Texas 77076-4998 • Office: 713-696-5450 FAX: (713) 696-5493

An EMCOR Company





SYSTEMS COMMISSIONING INC.

SCI BP# 6010

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PROJECT: Fort Bend County Justice Center

LOCATION: Richmond, Texas

Our proposal includes the following items:

1. A general review of the plans and specifications, bringing to your firm's attention any peculiarities that may be found.
2. Four job inspections prior to balancing to verify conformance and completeness of system.
3. Provide a system balanced according to NEBB Procedural Standards 7th Edition, 2005.
4. Provide up to 40 man-hours to witness duct leakage testing performed by the mechanical contractor. The mechanical contractor needs to have enough duct ready to witness that will take a full work day of 8 hours.
5. Upon completion of balancing, a typewritten report of recorded data will be furnished on NEBB forms.

Our proposal does not include the following items:

1. Testing or cleaning of duct systems.
2. Specification Section 01815-1.4 B-1d Opposite season adjustments of system.
3. Cost of bond or builders risk premium.
4. Cost of sanitary facilities, construction power, or drinking water.
5. Payment for hoisting facilities or operator.
6. Overtime.
7. Electrical work.
8. Cost of operation of any portion of plant or system including filter changes for convenience or beneficial use of others.
9. Removal or repair of ceiling tile and sheetrock.
10. Taxes.
11. Any lifts or scaffolds needed to obtain access.
12. Specification Section 01815-1.4 C-10 Chemical Water Treatments Certify.
13. Specification Section 01815-1.4 C-17a, b & c Sound Levels Report.
14. Sheaves and belts nor labor to change sheaves or belts.
15. Cost of hardware or software for balancing purposes.
16. Rebalance of deficiency items.
17. Specification Section 01815-1.4 C- 18a, b, c, d & e Vibration Testing.
18. Specification Section 01815- 3.1D Provide additional balancing devices.



5550 Airline Dr. • Houston, Texas 77076-4998 • Office: 713-696-5450 FAX: (713) 696-5493

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