

STATE OF TEXAS           §  
   §  
 COUNTY OF FORT BEND §

**AGREEMENT FOR PURCHASE AND INSTALLATION OF MONUMNET SIGN  
 PURSUANT TO CHOICE PARTNERS COOPERATIVE CONTRACT 22/023MJ-01**

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

**WITNESSETH**

WHEREAS, County desires that Contractor provide and install a monument sign at Jones Creek Ranch Park, (hereinafter the "Services") pursuant to Choice Partners Purchasing Cooperative Contract No. 22/023MJ-01; and

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

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Section 1. Scope of Services**

Contractor shall render Services to County in accordance with Exhibit A to this Agreement.

**Section 2. Personnel**

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

### **Section 3. Compensation and Payment**

- A. Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is One Hundred Forty-Nine Thousand Eight Hundred Thirty-Two and 00/100 dollars (\$149,832.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order
- B. If the Agreement is terminated, County shall only be liable for payment for services performed and accepted before the effective date of termination and in accordance with the requirements of Section 3(D).
- C. All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- D. County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Section 4. Limit of Appropriation**

- A. Contractor 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 One Hundred Forty-Nine Thousand Eight Hundred Thirty-Two and 00/100 dollars (\$149,832.00), specifically allocated to fully discharge any and all liabilities County may incur.
- B. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Forty-Nine Thousand Eight Hundred Thirty-Two and 00/100 dollars (\$149,832.00).

### **Section 5. Time of Performance or Term**

The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from County and end no later than eighteen (18) weeks thereafter. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

## **Section 6. Termination**

- A. County may terminate this Agreement in whole or, from time to time, at any time upon thirty (30) days written notice issued by the County Purchasing Agent for County's convenience or because of the failure of the Contractor to fulfill the contract obligations. County shall terminate by delivering to Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to County all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement whether completed or in process.
- B. Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.
- C. If the termination is for failure of Contractor to fulfill the obligations under this Agreement, County may complete the work by contract or otherwise and Contractor shall be liable for any additional cost incurred by County.
- D. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.
- E. The rights and remedies of the County provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **Section 7. Modifications and Waivers**

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

## **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon

completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

**Section 9. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

**Section 10. Insurance**

- A. Prior to commencement of the Services, Contractor 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. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor 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. Contractor 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:
1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
  2. 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.
  3. 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.
  4. 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.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Contractor shall contain a waiver of

subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.

- C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. Contractor shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

**Section 11. Performance and Payment Bond**

Consultant shall post with County, not later than ten (10) days of the execution of this Agreement, a performance and payment bond in the amount of one hundred percent (100%) of the total lump sum price in such form as is satisfactory to County. The bond shall be executed by a corporate surety company duly authorized and admitted to do business in the State of Texas and licensed to issue such a bond in the State of Texas.

**Section 12. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS 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. THE PARTIES AGREE THAT THIS INDEMNIFICATION PROVISION SHALL APPLY DURING THE PERFORMANCE OF SERVICES AS WELL AS DURING THE PERORMANCE OF ANY CONTINUING OBLIGATIONS THAT MAY EXIST (IF ANY) AFTER THE EXPIRATION OF THIS AGREEMENT.**

**Section 13. Confidential and Proprietary Information**

- A. Contractor 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 Contractor 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 Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's 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 Contractor who can be shown to have had no access to the Confidential Information.

- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor 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, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor 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, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.
- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to 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. Contractor 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.
- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor 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 Contractor 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.

**Section 14. Independent Contractor**

- A. In the performance of work or services hereunder, Contractor 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 Contractor or, where permitted, of its subcontractors.
- B. Contractor 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.

**Section 15. Notices**

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County  
Attn: County Judge  
401 Jackson, 1<sup>st</sup> Floor  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: Parks Director  
301 Jackson Street, Ste. 201  
Richmond, Texas 77469

Contractor: National Signs, LLC  
2611 El Camino St.  
Houston, Texas 77054

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 15(A) and 15(B) and if the addressee has received the Notice. A Notice is deemed received as follows:
1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
  2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

**Section 16. Compliance with Laws**

Contractor 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, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 17. Performance Warranty**

- A. Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

**Section 18. Assignment and Delegation**

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights by Contractor are prohibited under this subsection, whether they are voluntarily or involuntarily, without first obtaining written consent from County.
- B. Neither party may delegate any performance under this Agreement.

- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 19. Applicable Law**

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.

**Section 20. Successors and Assigns**

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 the other party, in respect to all covenants of this Agreement.

**Section 21. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 22. 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.

**Section 23. Publicity**

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

**Section 24. 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.

**Section 25. Conflict**

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

**Section 26. Certain State Law Requirements for Contracts** For purposes of section 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Contractor hereby

verifies that Contractor and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- A. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- B. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.
- C. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code.
- D. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

**Section 27. Human Trafficking**

BY ACCEPTANCE OF CONTRACT, CONTRACTOR 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

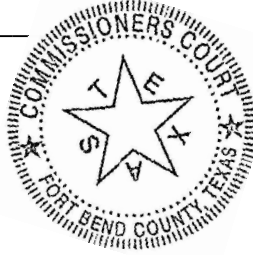
**Section 28. Entire Agreement**

This executed instrument is understood and intended to be the final expression of the parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the parties relating to the subject matter of this agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 6th day of September, 2022.

**FORT BEND COUNTY**

  
\_\_\_\_\_  
County Judge KP George  
KP George  
County Judge



ATTEST:

  
\_\_\_\_\_  
Laura Richard, County Clerk

9/06/2022  
\_\_\_\_\_  
Date

**NATIONAL SIGNS, LLC**

  
\_\_\_\_\_  
Authorized Agent- Signature

Matthew Nicolay  
\_\_\_\_\_  
Authorized Agent- Printed Name

Vice President of Sales  
\_\_\_\_\_  
Title

8/17/22  
\_\_\_\_\_  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ 149,832.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

  
\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

EXHIBIT A: Choice Partners Purchasing Cooperative Contract No. 22/023MJ-01 & National Signs, LLC Business Agreement

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# EXHIBIT A

May 3, 2022

Matthew Nicolay  
National Signs  
2611 El Camino  
Houston, TX, 77054

**Subject: Contract Award**

Dear Matthew Nicolay:

Congratulations! Harris County Department of Education (HCDE) has awarded National Signs a contract for the following commodity/service, based on the proposal submitted to HCDE Choice Partners on 2/4/2022:

Signage and Related Items Contract No. #22/023MJ

The contract is effective 4/20/2022 and will expire on 4/19/2023. The contract may be renewed annually for up to three (3) additional years, if mutually agreed to by Choice Partners and National Signs.

Your contract manager, Monique Joseph-Francis, CTSBO, will contact you in the next few weeks and set up an appointment to discuss the contract details and new vendor orientation. The partnership between National Signs and Choice Partners should be mutually beneficial for us, as well as our participating agencies.

A press release announcing the awards made this month is posted both at [www.choicepartners.org](http://www.choicepartners.org) and at [www.hcde-texas.org](http://www.hcde-texas.org). Your contract manager will send you the Choice Partners seal to add to your website and marketing materials and will request additional information so we can accurately describe your company on our website.

If you have any questions or concerns in the meantime, please feel free to call us at the office at 713-696-2122.

Sincerely,




Jeff Drury, Director  
Choice Partners  
A division of Harris County Department of Education

Enclosure: Signed Contract Page

## 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 responsible company regularly engaged in providing goods and/or services necessary to meet the requirements, specifications, terms and conditions of the RFP and the Agreement. See 2 CFR § 200.318(h).
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 responsible 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 and or CP Member.

|                               |   |             |  |
|-------------------------------|---|-------------|--|
| <b>CORPORATE NAME:</b>        | National Signs  |             |  |
| <b>AUTHORIZED SIGNATURE:</b>  |  |             |  |
| <b>PRINT NAME:</b>            | Matthew Nicolay   |             |  |
| <b>TITLE:</b>                 | Vice President of Sales   |             |  |
| <b>DATE:</b>                  | 2/1/22  |             |  |
| <b>ADDRESS:</b>               | 2611 El Camino  |             |  |
| <b>CITY, STATE, ZIP CODE:</b> | Houston, TX 77054   |             |  |
| <b>PHONE:</b>                 | 713-863-0600  | <b>FAX:</b> |  |
| <b>EMAIL ADDRESS:</b>         | matthew.nicolay@nationalsigns.com   |             |  |
| <b>WEBSITE URL</b>            | www.nationalsigns.com   |             |  |

### This Section to be Completed by HCDE

Contract Number: 22-023MJ-01 Term of contract: 4/20/2022 to 4/19/2023

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

Approved by Harris County Department of Education as a best value, responsible vendor:

Jesus Amezcua

Jesus Amezcua (Apr 22, 2022 12:50 CDT)

4/20/2022

## 5.0 CONTRACT TERMS AND CONDITIONS

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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 ("VENDOR") FOR SIGNAGE AND RELATED ITEMS

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 – Construction/public works projects only**

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”)/Uniform Guidance (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 – Construction/public works projects only**

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–Ch. 22 Contractor Certification: Contractor Employees (Required) 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 comply with all requirements relating to criminal history information required by TEX. EDUC. CODE Chapter 22. Vendor must also ensure subcontractors' compliance with TEX. EDUC. CODE, Chapter 22 requirements. 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 a "disqualifying criminal history" (as those terms are defined below). If Vendor receives information that a covered employee has a reported disqualifying criminal history, then Vendor will immediately remove the covered employee from the project/contract and notify HCDE/CP member in writing within three (3) business days. If HCDE/CP member, in its sole discretion, objects to the assignment of a covered employee for any reason, including, but not limited to, on the basis of the covered employee's criminal history record information and/or insufficient qualifications, lack of experience, and the like, based on information gathered by HCDE/CP member through the procurement and/or contracting processes, Vendor (and each subcontractor) agrees to discontinue using that covered employee to provide services on HCDE/CP member's project/contract. "Covered employees" means employees, agents or subcontractors of Vendor or a subcontractor who has or will have continuing duties related to the services to be performed on HCDE/CP member's project/contract and has or will have direct contact with HCDE/CP member's students. "Disqualifying criminal history" means: (1) For 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: (1) a conviction or other criminal history information designated by HCDE/CP member; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.08341(d), that is: conviction during the preceding 30 years (if at the time of the offense, the victim was under 18 or was enrolled in a public school) of: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b); (2) For employees of all other contracting or subcontracting entities: (1) a conviction or other criminal history information designated by Owner; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: (a) conviction of a felony offense under Title 5, Texas Penal Code if at the time of the offense, the victim was under 18; (b) conviction of or placement on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) conviction of an offense under federal law or the laws of another state that is equivalent to (a) or (b). HCDE/CP member shall be solely responsible for making the final determination of what constitutes direct contact with HCDE/CP member's students and what constitutes a disqualifying criminal history. 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 22269, 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.

5.27.4 In addition to all other rights and remedies that HCDE may have, HCDE shall have the right to setoff, against any and all amounts due to Vendor by HCDE, whether due under this Contract or any other agreement between HCDE (including any division of HCDE) and Vendor, any sums for which HCDE is entitled to under this Contract, as determined by HCDE in its sole discretion, including, without limitation, sums due by Vendor to HCDE as a result of indemnification obligations, warranty claims, and/or HCDE/CP Administrative Fee(s).

#### 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](mailto: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. For all pricing changes, including at renewal and during the Term, 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 **2%**, subject to the Administrative Incentive Clause, below. HCDE/CP reserve the right to decrease 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 = 1% for remainder of the then-current Contract Term**
- **Subsequent renewal 1-year Term = 1.75% and Vendor must maintain production of \$5M to keep 1.75% fee for the next subsequent renewal 1-year Term**

#### **Individual Job Orders**

- **\$2M or above = 1.5% only in the Contract Term in which they are invoiced**
- **\$1M or above = 1.75% 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 § 200.334. Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.334 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. HCDE/CP will base a recommendation for contract award, including whether to award a single or multiple contracts, based on the evaluation factors listed in this RFP; contracts will be awarded to proposers with a minimum score of 70 to be considered for award.<sup>7</sup> 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

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<sup>7</sup> HCDE/CP has the option to adjust (increase or decrease) the minimum score to be considered for award in the best interest of HCDE/CP and its members.

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. **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.

**5.55.1. 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.

**5.55.2 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.

**5.55.3 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.

**5.55.4 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.

**5.55.5 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.

#### **5.55.6 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.”

#### **5.55.7 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.

#### **5.55.8 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. A “domestic commodity or product” is defined 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. as provided in 7 C.F.R. 210.21(d). “Substantially” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. When USDA Foods items are manufactured into processed end products, 51% of resulting food products must be of United States origin.

**Vendor certifies that Vendor shall provide food products that meet the Buy American provision. Vendor further certifies that, in compliance with the Buy American provision, its products are “domestic commodities or products” as defined by 7 C.F.R. § 210.21(d). Vendor further certifies that the food products it supplies are processed in the U.S. and Vendor shall certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to the District.**

If Vendor is repetitively unable to provide domestic food products, HCDE/CP member may require Vendor to provide evidence that Vendor is capable of fulfilling the terms and conditions of the Contract and specifically, the Buy American provision. If HCDE/CP member determines that Vendor is not capable of fulfilling the terms and conditions of the Contract and/or specifically, the Buy American provision, HCDE/CP member may terminate its Contract with Vendor. Vendor shall provide documentation that demonstrates that food products meet the Buy American provision.

Vendor must notify the District if a delivery contains non-domestic products, so the District may approve delivery as an exception to the Buy American provision. Vendor certifies that it will adhere to the notification requirements for the Buy American provision.

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, by occurrence (i.e., delivery). Blanket exception approvals are not allowed. The District must determine that the use of a non-domestic food product is appropriate, using the USDA-prescribed questions in making the decision. *See* “Requirements for an Exception,” ARM Section 17b Buy American, at p. 19 (August 12, 2020). Vendor agrees to provide information to the District that will assist the District in this determination. The decision to purchase or accept delivery of a non-US product must

be made by the District. Vendor agrees to comply with all requirements imposed by applicable law, USDA/TDA guidance, and the District concerning Buy American provision exceptions.

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 the 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.

#### **5.55.9 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.*

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**BUSINESS AGREEMENT**

|  |  |                                       |
|--|--|---------------------------------------|
| <b>AN AGREEMENT BETWEEN NATIONAL SIGNS, LLC (SELLER) AND: FORT BEND COUNTY</b> |  | <b>(BUYER)</b>                        |
| <b>PROJECT NAME:</b> 6923/ FB COUNTY- JONES CREEK/ 7714 FM 359/ MON            |  |                                       |
| <b>AUTHORIZED REPRESENTATIVE:</b> DARREN MCCARTHY                              | <b>EMAIL:</b> DARREN.MCCARTHY@FORTBENDCOUNTYTX.GOV |                                       |
| <b>BILLING ADDRESS:</b> 301 JACKSON STREET SUITE 201   RICHMOND, TX 77469      |  |                                       |
| <b>JOB LOCATION:</b> 7714 FM 359   RICHOND, TX 77406                           |  | <b>CHOICE PARTNERS #:</b> 22/023MJ-01 |
| <b>NSL ACCOUNT EXECUTIVE:</b> KATHERINE GARRETT                                |  |                                       |

|   |                     |
|---|---------------------|
| <b>WE HEREBY SUBMIT SPECIFICATIONS AND INVESTMENT AMOUNT FOR:</b>   | <b>AMOUNT:</b>      |
| <b>SIGN TYPE A</b>  | <b>\$ 89,995.00</b> |
| (OPTION 1)- REMOVE AND DISPOSE OF EXISTING MONUMENT SIGN.MANUFACTURE AND INSTALL (1) 14'-0" X 26'-1 1/2" D/F INTERNALLY ILLUMINATED MONUMENT SIGN OVER 2'-6" TALL BURM. |                     |

- 1) CABINET TO BE ALL ALUMINUM CONSTRUCTION- .125 ALUMINUM OVER 2" ALUMINUM ANGLE FRAMING WITH ACRYLIC POLYURETHANE PAINTED FINISH.
- 2) INTERNALLY ILLUMINATED WITH WHITE LEDs.
- 3) MASONRY FEATURE TO BE ALUMINUM ANGLE FRAME WITH MASONRY CLADDING PER PRINT SPECIFICATION.
- 4) SIGN MOUNTED TO (2) 10" STD WALL PIPE AND SET IN 2'-6" X 11'-0" DEEP FOOTING. CONCRETE PEDESTAL TO BE 3" ABOVE AND BELOW GRADE, WITH 3" OUTLAY FROM SIGN.

|   |                     |
|---|---------------------|
| (OPTION 2)- PROVIDE (1) 4'-2" X 9'-11" DAKTRONICS Gt6x FULL COLOR D/F LED MESSAGE CENTER WITH 8mm 135 X 350 MATRIX AND 3'-8" X 9'-8" VIEWABLE AREA. | <b>\$ 76,485.00</b> |
|---|---------------------|

SIGN: 8.75 AMPS ON (1) 20 AMP 120 VOLT CIRCUIT -- LED DISPLAY: 46.02 AMPS ON (4) 20 AMP 120 VOLT CIRCUIT

THE PRICE OF THIS PROJECT INCREASED \$6,063.75 FROM 6/13/22 TO 8/15/22 DUE TO MARKET INFLATION.

**10% LOYALTY DISCOUNT APPLIED**

COST OF RUNNING PRIMARY ELECTRICAL TO SIGN AREA NOT INCLUDED IN THIS PROPOSAL

ELECTRICAL REQUIREMENTS: (5) 20AMP CIRCUIT PER SIGN



|   |                                 |
|---|---------------------------------|
| Permits, Engineering, Lane Closures, Shipping and related fees, if any, are additional and billed at cost plus a \$450 procurement fee. | _____<br><b>Client Initials</b> |
|---|---------------------------------|

|  |                |                      |
|--|----------------|----------------------|
| <b>ALL WORK TO COMPLY WITH NSL DRAWING #:</b> NS6923 | <b>REV:</b> KG | <b>DATED:</b> 8/9/22 |
|--|----------------|----------------------|

|   |  |                            |
|---|--|----------------------------|
| <b>We propose hereby to furnish material and labor in accordance with above Specifications for:</b> |  |                            |
| <b>INVESTMENT: \$149,832.00</b>   | <b>SALES TAX: \$0.00</b>   | <b>TOTAL: \$149,832.00</b> |
| <b>ISSUE DATE: 8/15/2022</b>  | <p align="center"><b>Investment amount to remain in effect for 30 days from the date this agreement was issued.</b></p> <p align="center"><i>Inflation Surcharge: National Signs LLC has the right to pass on any raw material or subcontracted services costs that exceed 10% of the quoted costs due to inflation during the contract period. To claim this Inflation Surcharge National Signs LLC shall provide reasonable evidence of the inflation effected costs. However, this Inflation Surcharge shall not exceed 10% of the total price of the contract.</i></p> |                            |
| _____<br><b>Client Initials</b>   |  |                            |

1. **PAYMENTS SCHEDULE.** Unless otherwise noted, buyer agrees to remit to seller 50% of the total price inclusive of permitting fees, engineering fees, and sales tax upon executing the business agreement; an additional 40% upon seller's completion of fabrication; and 10% upon seller's completion of installation. Final 10% payment is not due until all punch list items have been resolved. All payments are due upon receipt of invoice. Seller has the right to refuse or delay installation if Buyer has not paid all invoices due at the time specified for installation. Seller shall make available to buyer proof of completion of work with reasonable notice by reasonable means.

National Signs accepts payment by Automated Clearing House (ACH), credit card or electronic funds transfer (EFT).

Except where stipulated under other agreements, projects valued under \$5,000 will be paid by credit card or electronic funds transfer (EFT).

2. **WARRANTY. Labor and Workmanship.** National Signs warrants the labor and workmanship provided in its performance of the Services and any Additional Services for a period of five (5) years from the date the particular Service or Additional Service is completed.

**Parts and Specially Fabricated Materials.** National Signs provides parts and/or specially fabricated materials to the Customer in the performance of the Services. National Signs warrants all parts and specially fabricated materials including labor provided to the Customer in the performance of the Services or any Additional Services for a period of five (5) years from the date of installation. National Signs' warranty obligation with respect to such parts and specially fabricated materials shall be limited to replacement or repair of the part and/or specially fabricated material.

**Qualifications.** All of National Signs' warranty obligations as stated herein are contingent upon: (1) Customer's full and timely performance of all terms and conditions of this Agreement, including full and timely payment of Invoices; (2) Customer providing National Signs with timely written notice of its warranty claim; and (3) the Customer allowing National Signs a reasonable opportunity to inspect the warranty claim issue.

**Disclaimer of Other Warranties.** THE LIMITED WARRANTIES (ABOVE) ARE THE ONLY WARRANTIES PROVIDED BY NATIONAL SIGNS FOR THE SERVICES AND ANY ADDITIONAL SERVICES IT MAY PROVIDE TO CUSTOMER UNDER THIS AGREEMENT. THE LIMITED WARRANTIES (ABOVE) ARE MADE IN LIEU OF ALL OTHER WARRANTIES (INCLUDING ANY WARRANTY WITH RESPECT TO MERCHANTABILITY, FITNESS FOR ANY PARTICULAR USE, OR OTHERWISE) ARISING FROM THE COURSE OF DEALINGS OF THE PARTIES. AND EXCEPT FOR THE LIMITED WARRANTIES (ABOVE), NATIONAL SIGNS HEREBY DISCLAIMS, WAIVES, AND OTHERWISE EXCLUDES ALL OTHER WARRANTIES TO THE FULLEST EXTENT OF THE LAW.

3. **MARKETING APPROVAL.** Customer agrees to allow National Signs to produce and use photographs, drawings, descriptions or likenesses of product and their location in any marketing, advertising or promotional materials in all media.

4. **ELECTRICAL CONNECTIONS.** To the extent the Services and/or Additional Services performed by National Signs involves the installation of an item that requires electrical connections, all post-installation visit(s) related to electrical connectivity will be at Customer's sole expense. Moreover, it is understood and agreed Customer is to furnish all primary electrical service required, connection thereof, and/or switches or other controls at Customer's own expense. It is understood that final hookup will be completed at the time of installation provided the circuit(s) is ready. In the event that the connection is not available at the time of installation, National Signs reserves the right to assess additional charges related to a return visit for the purpose of completing the hookup. Customer further acknowledges National Signs is entitled to payment per this Agreement upon completion of the Services and/or Additional Services regardless of electrification or connection status and such payment will in no way be withheld or otherwise detained due to a lack of power or other connection.

5. **PAINTING AND PATCHWORK.** Unless specifically agreed to by the Parties, National Signs shall not be responsible to perform (or pay for) any painting, patchwork, or repair work that may be needed following any Services and/or Additional Services performed by National Signs (which involve, for example, installation work or modification work). As long as the building is not damaged following the services or additional services.

6. **ENGINEERING AND PERMITTING.** Specifications and Investment amount are based on the most current engineering and permitting information available at the time of this Agreement. Should modifications be necessary due to updated engineering or permitting studies or requirements, Seller shall have the right pass on any additional costs within the scope of this Agreement. Unless otherwise specifically agreed to in writing, Customer shall pay for and furnish all permits necessary for the performance of the Services and Additional Services under this Agreement.

7. SERVICES. During the Term of this Agreement, National Signs shall timely and fully perform all of the Services which are set forth in the Proposal (Schedule A), attached hereto and incorporated herein.

8. ADDITIONAL SERVICES. From time to time during the term of this Agreement, Customer may request National Signs to perform services or provide materials that are not set forth in Schedule A, but may be related to the Services (“Additional Services”). In the event Customer requests National Signs to perform Additional Services, National Signs may request Customer’s written authorization of the Additional Services requested and any additional compensation due to National Signs for those Additional Services. Any written authorization for Additional Services provided by any representative of Customer shall be binding on Customer. And if National Signs in fact performs Additional Services requested by Customer without written authorization, Customer shall remain obligated to National Signs for any additional compensation due for the Additional Services performed.

9. FURTHER ASSURANCES. The Parties agree to perform all further acts and to execute and deliver all further documents which may be reasonably required or necessary to carry out the provisions of this Agreement.

10. LICENSING. National Signs agrees it will maintain any licenses, registrations, certifications, and/or authorizations required (by the applicable jurisdiction) for National Signs to perform the Services or Additional Services.

11. TAXES. Unless specifically agreed to by the Parties, the prices to be paid in connection with this Agreement are exclusive of all city, state, and federal taxes. Wherever applicable, such taxes will be added to the Invoices as a separate charge to be paid by Customer.

12. DELIVERY. To the extent the Services and/or Additional Services performed by National Signs involves delivery of parts and/or specially fabricated materials (and unless otherwise specifically agreed to by the Parties), Customer shall pay the shipping charges incurred by National Signs’ regular method of shipment, i.e., rail, freight forwarders, or motor carrier to any one destination in the United States. National Signs reserves the right to control the routing for any deliveries. If Customer requests a shipping method other than National Signs’ regular method of shipment, Customer shall incur the risk of loss and any special handling charges attendant to the shipment of the parts and/or specially fabricated materials.

In the event of a delay in shipping/delivery of parts and/or specially fabricated materials, National Signs shall not be liable to Customer: (1) for any delay in the performance of the Services and/or Additional Services due to the delay in shipping/delivery; or (2) for any damages suffered by Customer as a result of any delays in shipping/delivery.

13. AVAILABILITY. Customer agrees and understands that the Services and/or Additional Services performed by National Signs pursuant to this Agreement are subject to National Signs’ ability to obtain the parts, raw materials, etc. necessary for National Signs to complete the Services and/or Additional Services. In that regard, National Signs’ performance under this Agreement is expressly subject to its current manufacturing schedules, service schedules, and other restrictions, directives, and regulations that may be in effect from time to time.

14. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, NATIONAL SIGNS AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CUSTOMER (AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, MEMBERS, PARTNERS, AFFILIATES, SUBSIDIARIES, EMPLOYEES, AND ANY PARTY ANY OF THEM HAS CONTRACTUALLY AGREED TO INDEMNIFY) FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, JUDGMENTS, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS’ FEES AND EXPENSES, ARISING FROM OR RELATED TO THIS AGREEMENT AND PERFORMANCE OF THE SERVICES AND ANY ADDITIONAL SERVICES, BUT ONLY TO THE EXTENT THE CLAIM, LIABILITY, EXPENSE, COST, DEMAND, SUIT, CAUSE OF ACTION, JUDGMENT, OR DAMAGE IS CAUSED BY OR ALLEGED TO HAVE BEEN CAUSED BY THE NEGLIGENCE, FAULT, OR STRICT LIABILITY OF NATIONAL SIGNS, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, OR SUBCONTRACTORS.

TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS NATIONAL SIGNS (AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, MEMBERS, PARTNERS, AFFILIATES, SUBSIDIARIES, EMPLOYEES, AND ANY PARTY ANY OF THEM HAS CONTRACTUALLY AGREED TO INDEMNIFY) FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, JUDGMENTS, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS’ FEES AND EXPENSES, ARISING FROM OR RELATED TO CUSTOMER’S OBLIGATIONS HEREUNDER, BUT ONLY TO THE EXTENT THE CLAIM, LIABILITY, EXPENSE, COST, DEMAND, SUIT,

**CLIENT INITIALS:**

CAUSE OF ACTION, JUDGMENT, OR DAMAGE IS CAUSED BY OR ALLEGED TO HAVE BEEN CAUSED BY THE NEGLIGENCE, FAULT, OR STRICT LIABILITY OF CUSTOMER, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, OR CONTRACTORS (OTHER THAN NATIONAL SIGNS).

The indemnity obligations set forth above shall survive termination or expiration of this Agreement and shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable under applicable workers' compensation acts, disability benefit acts, or other employee benefit acts.

15. LIENS AND RIGHT OF POSSESSION. Pursuant to Texas Property Code Sec. 53 ("Specially Fabricated Material") National Signs reserves all applicable rights, under law to file liens with regard to all plans and specially fabricated materials (including labor, reasonable overhead costs and proportionate profit margin) provided by National Signs to Customer under this Agreement, until payment in-full is received by National Signs.

All parts and/or specially fabricated materials delivered by National Signs to Customer shall be the sole property of National Signs and shall not, by reason of any connection to realty or otherwise, be deemed to be any fixture or appurtenance to realty and shall be severable therefrom. National Signs shall have the right, in addition to all others it may possess, at any time, for credit reasons or because of Customer's default or defaults, to withhold shipments, in whole or in part, to recall items in transit and retake same, and to repossess and remove all parts and/or specially fabricated materials delivered to Customer.

Indeed, Customer recognizes National Signs' entitlement to lien and consents that all parts and/or specially fabricated materials may also be recalled, retaken, or repossessed. The foregoing shall not be construed as limiting, in any manner, any of the rights or remedies available to National Signs because of any default of Customer under this Agreement or the applicable law.

16. TERMINATION. For Cause. This Agreement may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within seven (7) business days after receipt of written notice describing such failure.

For Convenience. Either Party, for convenience and without cause, may terminate this Agreement by providing ten (10) business days' written notice of termination to the other Party. If Customer elects to terminate this Agreement for convenience, Customer shall remain obligated to pay National Signs for: (1) any of the Services and Additional Services performed by National Signs prior to the effective date of the termination for convenience; and (2) all reasonable costs of closing out the Services or Additional Services.

17. ACCEPTANCE. Customer's acceptance of the terms of this Agreement shall be deemed effective upon the Effective Date. Any other offers or proposals made by Customer or National Signs that in any way modify or alter the terms of this Agreement are hereby rejected. The terms and conditions of this Agreement shall supersede any provisions, terms, and conditions contained on any confirmation order, or other writing Customer may give or receive, and the rights of the Parties shall be governed exclusively by the provisions, terms, and conditions hereof.

18. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflicts of law (the "Applicable Law").

19. DISPUTE RESOLUTION. National Signs and Customer agree that either Party may elect (at its sole and absolute discretion) to resolve all controversies, claims, or matters in question relating to or arising out of this Agreement (herein referred to collectively as a ("Dispute") either: (1) through binding arbitration; or (2) through litigation.

Regardless of the forum elected to resolve the Dispute, the Parties shall first attempt to resolve any Dispute through informal discussions. If the Dispute is not resolved through those discussions, then the Dispute shall be submitted to non-binding mediation upon written demand of either Party. The venue for any mediation under this provision shall lie exclusively in Harris County, TX. A mediator shall be selected by agreement of the Parties within thirty (30) calendar days from the date the demand for mediation is received by the other Party. If an agreement regarding mediator selection cannot be reached within the time period sated herein, either Party may apply to a court of competent jurisdiction sitting in Harris County, TX to appoint a mediator. The mediation shall occur within sixty (60) calendar days from the date the demand for mediation is received by the other Party. The Parties shall share equally the mediator's fee and any associated costs of the mediation. Participation in mediation shall be a condition precedent to any action to resolve a Dispute.

In the event either Party elects to resolve the Dispute via litigation, the venue for any lawsuit filed shall lie exclusively in the courts of competent jurisdiction sitting in Harris County, TX. The other Party expressly consents to the personal and subject matter jurisdiction of the courts of Harris County, TX for all lawsuits brought to resolve any Dispute arising out of or related to this Agreement.

In the event either Party elects to resolve the Dispute via arbitration, the Dispute shall be submitted to the American Arbitration Association (“AAA”) for binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The Parties will share equally all filing fees and administrative costs of the arbitration, however, any award rendered may equitably reallocate those fees and costs. The arbitration shall be governed by Texas law and the U.S. Arbitration Act. The venue for any arbitration under this provision shall lie exclusively in Harris County, TX. The award of the arbitrator(s) shall be rendered in accordance with the AAA Rules then in effect. In rendering the award, the arbitrator(s) shall state the reasons therefor, including any computations of actual damages or offsets, if applicable. The Parties agree to abide by and fully perform in accordance with any award rendered by the arbitrator(s). If the non-prevailing Party fails to comply with all aspects of the award within thirty (30) calendar days following issuance of the award, then the prevailing Party shall be entitled to seek enforcement of the award in any court of competent jurisdiction sitting in Harris County, TX. The Parties stipulate and agree that Harris County, TX is and shall maintain the sole appropriate venue and jurisdiction for the filing and adjudication of the resolution of such dispute. If such enforcement becomes necessary, the prevailing Party in such proceeding shall recover its necessary and reasonable attorney’s fees, in addition to any other relief to which that Party is entitled.

20. **WAIVER OF JURY TRIAL.** The Parties expressly agree that all Disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Even if the Dispute is to be resolved via litigation, the Parties expressly, voluntarily, and unequivocally waive any right they may have to a jury trial in connection with all Disputes arising from or related to this Agreement.

21. **ENTIRE AGREEMENT / WAIVER OF RELIANCE.** This Agreement contains the entire agreement between the Parties. It supersedes any and all prior agreements, arrangements, or understandings between the Parties on all subjects in any way related to the Agreement. No oral understandings, statements, promises, or inducements other than those stated in this Agreement exist, and neither National Signs or Customer are relying in any way on any understandings, explanations, promises or inducements other than those conferred in this Agreement. Unless explicitly referenced, no other writings or conversations shall be considered part of this Agreement, shall be incorporated into this Agreement, or have been relied on by either Party. This Agreement is not subject to oral modification, oral waiver, or oral supplementation. This Agreement, however, is subject to modification, waiver or addition only by means of a writing signed by authorized representatives of both Parties.

22. **WAIVER OF CONSEQUENTIAL DAMAGES / LIMITATION OF LIABILITY.** The Parties hereby waive all rights to indirect, incidental, special, punitive, exemplary, or consequential damages, whether or not they may be foreseeable as of the Effective Date of this Agreement, arising from any matter arising from, relating to, or in connection with this Agreement or the Parties’ performance under this Agreement. National Signs’ maximum liability to Customer under any circumstance whatsoever, whether in contract, tort, strict liability, fraud, negligence, warranty, or any claim of any type whatsoever and regardless of whether arising before, during or after the term of the Agreement, shall not exceed the amounts paid by Customer to National Signs for the Services and Additional Services performed under the Agreement.

23. **NON-WAIVER.** No delay or omission to exercise any right, power, or remedy of National Signs in response to any breach or default under this Agreement shall impair any right, power, or remedy of National Signs, nor shall it be construed to be a waiver of any breach or default. No waiver by National Signs of a breach or default by Customer shall be deemed to be a waiver of any other breach or default. Any waiver or consent or approval of National Signs of any breach or default or any waiver on the part of National Signs of any term or condition of this Agreement must be in writing and shall be effective only to the extent set forth in the writing. All remedies, either under this Agreement or by law or equity, or otherwise provided to National Signs, shall be cumulative and not alternative.

24. **FORCE MAJURE.** Any delay or failure by National Signs in the performance of the Services or any Additional Services shall not constitute a default or a breach of this Agreement or give rise to any claim for damages if: (1) the delay or failure is caused by an event or occurrence beyond the control and without the fault or negligence of National Signs; and (2) National Signs is unable to prevent the delay or failure through the exercise of reasonable diligence. The following non-exhaustive list of events shall be deemed to be beyond the control of any Party, including National Signs: acts of nature, acts of the public enemy; expropriation or confiscation of facilities by governmental or military authorities, changes in laws, war, acts of terrorism, rebellion, sabotage, riots, floods, severe weather, hurricanes, fires, explosions, or other catastrophes.

**CLIENT INITIALS:**

25. **ATTORNEY'S FEES, COSTS, ETC.** With respect to any Dispute that resolved either via arbitration or litigation, the prevailing party in that matter shall be awarded its reasonable and necessary attorneys' fees and expenses, all arbitrator's costs and expenses (if applicable), all arbitration fees (if applicable), all reasonable expert witness and consulting fees, and all other damages and/or relief allowed by law.

26. **STANDARD OF CARE.** National Signs shall perform, supervise, and direct the Services and Additional Services: (a) in accordance with prevailing industry standards established by those engaged in business similar to that of National Signs; (b) in a good and workmanlike manner and consistent with the skill, care, and diligence ordinarily provided by those engaged in business similar to that of National Signs; and (c) in accordance with all applicable laws, codes, ordinances, and regulations.

27. **SAFETY.** National Signs will be responsible for its own activities during its performance of the Services and any Additional Services. National Signs will be responsible for the safety of its employees and contractors. National Signs shall comply with its safety program and any reasonable safety rules established or required by Customer. If at any time Customer directs National Signs to perform a task which would be in violation of National Signs' safety program or would present an unreasonable danger to anyone, National Signs may decline Customer's directive without recourse.

28. **INSURANCE.** At all times during the performance of the Services and any Additional Services, National Signs agrees to maintain appropriate levels of insurance including: commercial general liability, auto liability, and workers' compensation. Upon Customers' written request, National Signs will provide documentation evidencing its insurance coverage. If Customer requests or requires National Signs procure insurance coverage which is beyond or exceeds National Signs' normal insurance program, then Customer agrees to pay the increased costs attendant to that additional insurance coverage.

29. **TRADEMARKS, PATENTS, ETC.** Except as otherwise agreed in writing, Customer shall be responsible for and shall pay any royalties and/or licensing fees which may be due in connection with the Services or Additional Services, and with respect to any materials that may be provided by National Signs to Customer in connection with the Services or Additional Services. Customer shall defend all suits or claims of any patent, copyright, trademark, or other proprietary right that may be brought against National Signs arising out of the Services or Additional Services performed under this Agreement.

30. **INDEPENDENT CONTRACTOR.** National Signs hereby agrees to perform the Services, as well as any Additional Services requested by Customer and agreed-to by National Signs. National Signs represents, and Customer agrees, that: (a) National Signs is an independent contractor and will not be deemed or considered to be acting as a servant, agent, or employee of Customer; (b) National Signs will be solely responsible for all payments to its employees, suppliers, and subcontractors (including compliance with tax, workers compensation, and other employer related laws or obligations); and (c) National Signs' personnel shall be solely directed and supervised by National Signs.

31. **ASSIGNMENT AND SUBCONTRACTING.** This Agreement may not be assigned by either Party without the prior written consent of the other Party. Any attempted assignment of this Agreement without prior written consent shall be void and of no force and effect.

National Signs may, in its discretion, utilize subcontractors or other independent contractors in connection with performing the Services and any Additional Services under this Agreement. If utilized, National Signs will require its subcontractors or other independent contractors to be bound to the terms of this Agreement, including insurance obligations by National Signs.

32. **NOTICES.** Unless otherwise specified, all notices and communications in accordance with or related to this Agreement shall be between authorized representatives of the Parties who are designated in writing by the Parties. Notices shall be in writing and may be served either personally on the authorized representative of the receiving Party, or by courier, express delivery, or certified mail to the address shown on the face of this Agreement or as otherwise authorized by proper notice. Notices shall be effective only when received. The requirement of written notice may not be waived and such written notices are a condition precedent to the exercise of all rights and remedies under this Agreement.

33. **ACCEPTANCE OF THE AGREEMENT.** This Agreement will become binding on the Parties when executed by an authorized representative of the Parties. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes. A copy of the signed Agreement may serve as the original document, and such copies may be transmitted via e-mail.

**CLIENT INITIALS:**





34. CUSTOMER’S AUTHORITY. Customer’s authorized representative represents and warrants that he/she has full authority and legal right to execute, deliver, and perform this Agreement and Customer has duly authorized such action. Customer’s execution of, delivery, and performance of this Agreement shall not contravene any applicable law, regulation or judgment or the articles of incorporation, bylaws, or partnership agreement of Customer and shall not constitute a default under any agreement to which Customer is a party.

35. CONFORMITY WITH APPLICABLE LAW / SEVERABILITY. The terms and provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and the intent of the Parties. The Applicable Law affecting the legality, validity, or enforceability of any provision of this Agreement is made a part of such provision and will operate to amend such provision to the minimum extent necessary to bring the provision into conformity with the Applicable Law and cause the provision, as modified, to continue in full force and effect. Further, if any provision of this Agreement is deemed to be illegal or unenforceable under (and only if the provision cannot be conformed to the Applicable Law) then such provision shall be deemed severed and removed from this Agreement and the balance of this Agreement will be reformed to carry out the Parties’ intent to maximum extent practicable under the Applicable Law.

| Client Authorized Representative |      | National Signs, LLC Authorized Representative |      |
|----------------------------------|------|---|------|
| _____                            |      | _____   |      |
| Print                            |      | Print   |      |
| _____                            |      | _____   |      |
| Signature                        | Date | Signature                                     | Date |

**National Signs, LLC License #18011**

**Regulated by the Texas Department of Licensing and Regulation P.O. Box 12151 Austin, Texas 78711**

**Telephone: (512) 463-6599 Toll-Free (In Texas): (800) 803-9202 Online-<http://www.license.state.tx.us/Complaints>**

# FORT BEND COUNTY - JONES CREEK RANCH

7714 FM 359 RD RICHMOND, TX 77406  
EXTERIOR SIGN PACKAGE



P:\-- NEW CLIENT FILES --\F\FORT BEND COUNTY\JONES CREEK RANCH- 6923



**SIGN TYPE A** QTY: 1  
**OPTION 1**

**SCOPE OF WORK:**

- REMOVE & DISPOSE OF EXISTING SIGN
- FABRICATE & INSTALL D/F, ILLUMINATED MONUMENT SIGN

**SIGN BODY:**

- MAIN ID CABINET: ALL ALUMINUM CONSTRUCTION, PAINTED P1

**REVERSE ILLUMINATED CHANNEL LETTERS**

- FACES: .125" ALUMINUM; FINISH P5
- RETURNS: 4" DEEP, .063 ALUMINUM; FINISH P5
- BACKS: .150" POLYCARBONATE; DIFFUSER VINYL APPLIED
- ILLUMINATION: WHITE LEDs
- POWER SUPPLIES: REMOTE-HOUSED IN CABINET
- STANDOFFS: MOUNTED ONTO FACE OF CABINET W/ 2" STANDOFFS, FINISH P1

**SECONDARY CABINET: ALL ALUMINUM CONSTRUCTION, FINISH P2**

**LED DISPLAY**

- 80 x 200, FULL COLOR (15.85mm PIXEL PITCH)
- CABINET SIZE: 4'-8" HIGH x 10'-8" WIDE
- VIEWING SIZE: 4'-2" HIGH x 10'-5" WIDE
- COMMUNICATIONS: CELLULAR MODEM

**REVEAL: ALL ALUMINUM CONSTRUCTION, 6" X 2" DEEP, FINISH P3**

**SIDE COLUMN BASE: ALUMINUM FRAMING WITH 1/2" THICK DUROCK WITH MASONRY APPLIED. MASONRY SUPPLIED & INSTALLED BY NATIONAL SIGNS. MASONRY: ELDORADO STONE, STACKED STONE, SANTA FE**

**D/F ILLUMINATED ROUND LOGO CABINET:**

- REMOVABLE FACES: .125" THICK ALUMINUM, FINISH P4
- FILLER: REMOVABLE FILLER W/ COUNTER SUNK SCREWS AT TOP, FINISH P4
- LOGO: ROUTED INTO FACE & BACKED W/ 3/4" CLEAR ACRYLIC. 1/2" TO EXTEND PAST FACE (SAND EDGES). 2ND SURFACE VINYL DIFFUSER APPLIED. 1ST SURFACE V1 APPLIED
- OUTER RING COPY: ROUTED & BACKED WITH 3/16" 7328 WHITE ACRYLIC
- DOTTED OUTLINE: V2 OVERLAY OVER 7328 3/16" ACRYLIC
- MOUNTING: MOUNT VERTICAL SQUARE TUBE SUPPORTS FROM ROUND CABINET (FINISH P6) TO 6" SQUARE TUBE HORIZONTAL SUPPORT (FINISH P6) W/ DECORATIVE "STRAPS" (FINISH P6) FULLY WELDED & GOING THROUGH 1" SQUARE VERTICAL SUPPORT STRUCTURE OF 2" ALUMINUM ANGLE FRAMING CLADDED BY .125" THICK ALUMINUM, FINISH P6
- DECORATIVE TIMBER BOLD HEAD: CENTER MOUNTED TO WHERE THE 6" SQ & 12" SQ MEMBERS MEET, FINISH P4

**CONCRETE PAD:**

- 3" ABOVE & 3" BELOW GRADE
- SUPPORT(S) PER ENGINEERING REQUIREMENTS

**FINISH SCHEDULE**

**PAINT COLORS**

- P1: 313 BRONZE
- P2: MP 11949 CLAY BALL (FINE STUCCO FINISH)
- P3: MP 07008 WOOD ASH
- P4: MP BLACK
- P5: MP WHITE
- P6: MP WOOD FAUX FINISH:  
BASE: PANTONE 732C  
GRAIN: MP 13799  
CLEAR COAT: SATIN CLEAR

**VINYL COLORS**

- V1: DPTM LOGO
- V2: 220-12 - OPAQUE BLACK

APPROVED BY: \_\_\_\_\_



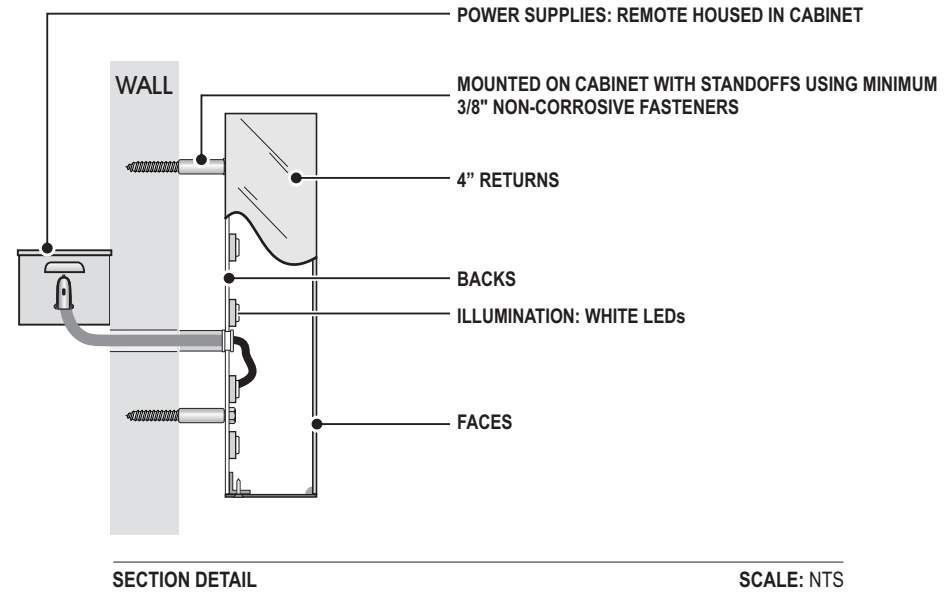
**EXISTING CONDITIONS**  
**SIGN ELEVATION** SCALE: 1/8" = 1'-0"



**UPDATED CONDITIONS - NIGHT VIEW**  
**SIGN ELEVATION** SCALE: 1/8" = 1'-0"



**UPDATED CONDITIONS** SCALE: 3/16" = 1'-0"



| REVISIONS |  |  |
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| SIGNATURES                                |             |
|---|-------------|
| <b>CLIENT APPROVAL</b><br>SIGNED: _____   | DATE: _____ |
| <b>LANDLORD APPROVAL</b><br>SIGNED: _____ | DATE: _____ |
| <b>SALES APPROVAL</b><br>SIGNED: _____    | DATE: _____ |

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**UL INSTALLATION REQUIREMENTS**  
THIS SIGN IS INTENDED TO BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 600 OF THE NATIONAL ELECTRICAL CODE AND/OR OTHER APPLICABLE LOCAL CODES. THIS INCLUDES PROPER GROUNDING AND BONDING OF THE SIGN.

**120 VOLT ELECTRICAL SERVICE**

| ELECTRICAL LOAD:   | SIGN | LED DISPLAY |
|--------------------|------|-------------|
| 20 AMP CIRCUIT(S): |      |             |

PROVIDE PRIMARY ELECTRICAL WITHIN 6' OF STREET END OF SIGN  
PROVIDE PRIMARY ELECTRICAL AT CENTER OF SIGN  
CLIENT TO PROVIDE ALL PRIMARY ELECTRICAL SERVICES TO THE SIGN UNLESS OTHERWISE SPECIFIED



SIGN ELEVATION - SIDE A

SCALE: 3/8" = 1'-0"

PROJECT: FORT BEND COUNTY/JONES CREEK RANCH  
LOCATION: 7714 FM 359 RD  
CITY/STATE: RICHMOND, TX 77406  
DATE: 05.16.22  
SALES / PM: KATHERINE GARRETT  
DESIGNER: CHRISTIN DUHON  
DRAWING#: 6923-00

| REVISIONS |  |  |
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| SIGNATURES                         |             |
|------------------------------------|-------------|
| CLIENT APPROVAL<br>SIGNED: _____   | DATE: _____ |
| LANDLORD APPROVAL<br>SIGNED: _____ | DATE: _____ |
| SALES APPROVAL<br>SIGNED: _____    | DATE: _____ |

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**120 VOLT ELECTRICAL SERVICE**

|                    |      |             |
|--------------------|------|-------------|
| ELECTRICAL LOAD:   | SIGN | LED DISPLAY |
| 20 AMP CIRCUIT(S): |      |             |

PROVIDE PRIMARY ELECTRICAL WITHIN 6' OF STREET END OF SIGN  
PROVIDE PRIMARY ELECTRICAL AT CENTER OF SIGN  
CLIENT TO PROVIDE ALL PRIMARY ELECTRICAL SERVICES TO THE SIGN UNLESS OTHERWISE SPECIFIED



SIGN ELEVATION - SIDE B

SCALE: 3/8" = 1'-0"

PROJECT: FORT BEND COUNTY/JONES CREEK RANCH  
LOCATION: 7714 FM 359 RD  
CITY/STATE: RICHMOND, TX 77406  
DATE: 05.16.22  
SALES / PM: KATHERINE GARRETT  
DESIGNER: CHRISTIN DUHON  
DRAWING#: 6923-00

| REVISIONS |  |  |
|-----------|--|--|
|           |  |  |
|           |  |  |
|           |  |  |
|           |  |  |
|           |  |  |

| SIGNATURES                         |             |
|------------------------------------|-------------|
| CLIENT APPROVAL<br>SIGNED: _____   | DATE: _____ |
| LANDLORD APPROVAL<br>SIGNED: _____ | DATE: _____ |
| SALES APPROVAL<br>SIGNED: _____    | DATE: _____ |

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**UL INSTALLATION REQUIREMENTS**  
THIS SIGN IS INTENDED TO BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 600 OF THE NATIONAL ELECTRICAL CODE AND/OR OTHER APPLICABLE LOCAL CODES. THIS INCLUDES PROPER GROUNDING AND BONDING OF THE SIGN.

**120 VOLT ELECTRICAL SERVICE**

|                    |      |             |
|--------------------|------|-------------|
| ELECTRICAL LOAD:   | SIGN | LED DISPLAY |
| 20 AMP CIRCUIT(S): |      |             |

PROVIDE PRIMARY ELECTRICAL WITHIN 6' OF STREET END OF SIGN  
PROVIDE PRIMARY ELECTRICAL AT CENTER OF SIGN  
CLIENT TO PROVIDE ALL PRIMARY ELECTRICAL SERVICES TO THE SIGN UNLESS OTHERWISE SPECIFIED

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

National Signs  
Houston, TX United States

**Certificate Number:**  
2022-923289

**Date Filed:**  
08/17/2022

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

**Date Acknowledged:**  
09/06/2022

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

26733  
22-Parks-101130

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) |              |
|---|--------------------------|--|---------------------------------------|--------------|
|   |                          |  | Controlling                           | Intermediary |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |

**5 Check only if there is NO Interested Party.**

### 6 UNSWORN DECLARATION

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)