



**Amendment No. 1  
to  
Contract No. GA160000047  
for  
New Central Library Furniture and Installation Services  
between  
Workplace Resource LLC  
and the  
City of Austin**

- 1.0 The City hereby amends the above referenced contract to make the following changes:
- 1.1 Revise Exhibit C to reflect increased pricing (added pages attached).
- 1.2 Increase the not-to-exceed amount of the contract to reflect the updated Exhibit C, revising Paragraph 1.5, Compensation, of the contract to read, "The Contractor shall be paid a total not-to-exceed amount of \$33,283 for the deliverables shown in Exhibit C, including all fees and expenses."

- 2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 08/19/16 – 09/30/16	\$29,119.00	\$29,119.00
Amendment No. 1: Revise Exhibit C (additional pages) 10/01/16 – 12/31/17	\$4,164.00	\$33,283.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract. This contract amendment shall become effective on the date executed by the City.

Signature & Date:

 9-26-17

Printed Name: Shea McClanahan  
Workplace Resource LLC  
1717 West 6<sup>th</sup> St.  
Suite 190  
Austin, TX 78703

Signature & Date:

 10-2-17

Roger Stricklin  
Contract Management Specialist IV  
City of Austin Purchasing Office

# Austin Central Library

DIRTT Environmental Solutions



## Why DIRT?

### DIRTT Environmental Solutions

#### Compressed Schedule

Factory assembly runs simultaneously without relying on several trades finishing before work can begin.

#### Superior Fit and Finish

Quality and consistency maintained throughout project. System is frame and tile. Tiles install at the end of the project to protect finishes. Every piece is pre-cut to fit space which means fewer cut-offs and bins. Plus, a cleaner job site with less waste and associated fees.

#### Interchangeable Graphics

Graphics can be changed out easily to update your wayfinding and branding.

#### Flexible Tile & Frame System

Our tile and frame system allow you to easily access existing power or lighting components without creating construction mayhem.

#### Ten-year warranty



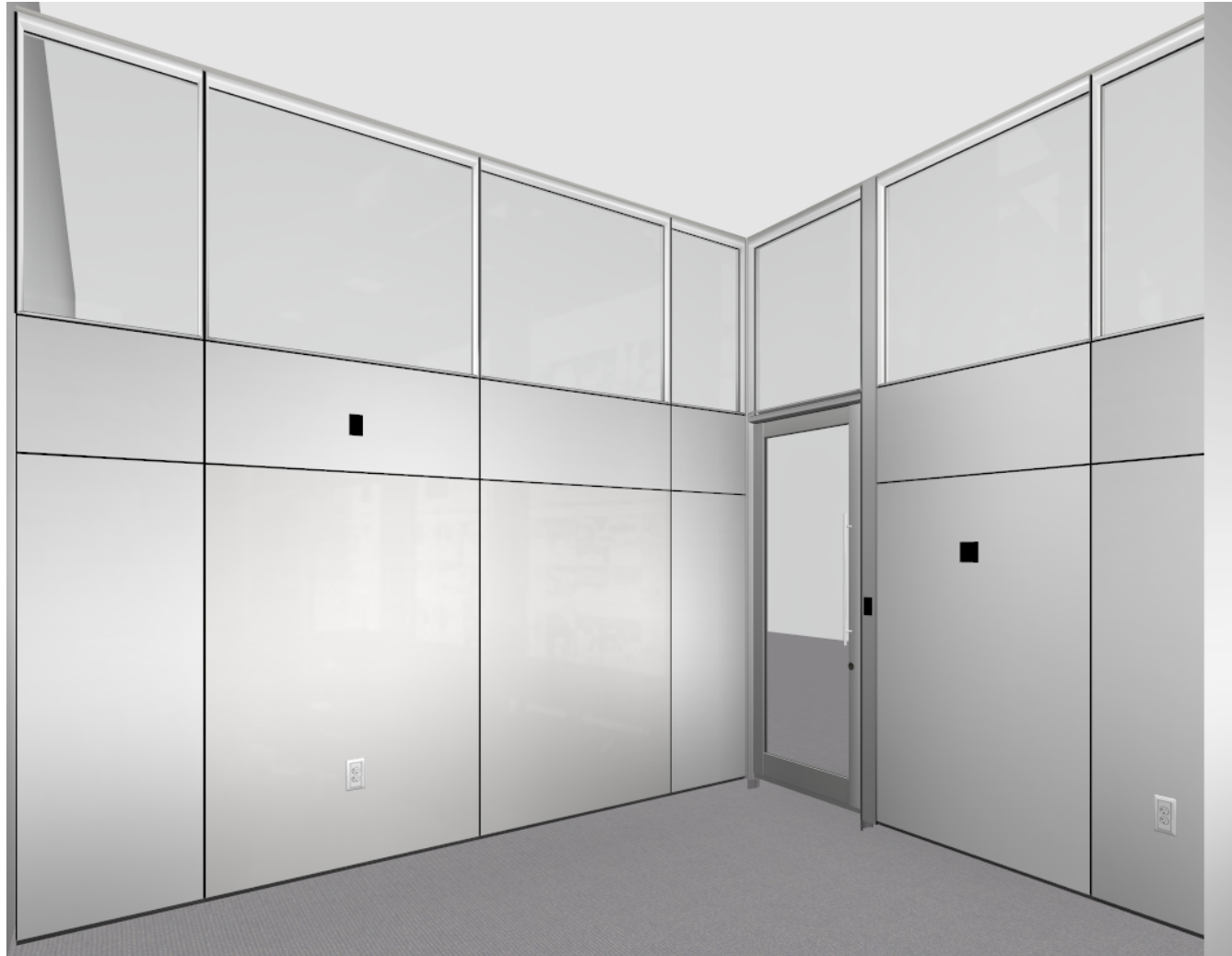
# EXHIBIT C CONTRACTOR'S PRICING

## Austin Central Library

Level 3

### Backpainted Glass Add

Option 1



WorkplaceResource DIRT



**Austin Central Library\_LV3 BPG Add Opt. 1**

Proposal Dated

**F1 - Final Proposal**

**Thursday, August 24, 2017**

Client Information		Installation Conditions	
Site Address	710 W. Cesar Chavez St.	Installation Hours	Normal Business Hours
		Delivery Hours	Normal Business Hours
City, State, Zip	Austin, TX 78703	Phasing	Single
Company Name	City Of Austin	Ship To	Warehouse
Contact Name	Heidi Tse	Offload Conditions	Dock Offload
Contact Phone	512.974.7493	Distribution	Elevator
Contact Email	<a href="mailto:heidi.tse@austintexas.gov">heidi.tse@austintexas.gov</a>		

Option 1 Pricing	
Subtotal	\$4,164.00
Grand Total	\$4,164.00

Option 1 Information	
Description	
Replace (2) MDF painted tiles with (2) Nuwhite Backpainted Glass tiles	

Freight	Included
Delivery & Installation	Included
Project Management & Design Services	Included

Notes
This document contains proprietary information for budgetary purposes only. Not for Order Entry.

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)  
AND  
Workplace Resource LLC (“Contractor”)  
for  
New Central Library Furniture and Installation Services  
MA GA160000047**

This Contract is between Workplace Resource LLC, having offices at 1717 West 6th Street, Suite 190, Austin, TX 78703 and the City, a home-rule municipality incorporated by the State of Texas, and is effective on the date signed by the City. Solicitation requirements are met by using Contractor’s Texas Multiple Award Schedule (TXMAS) Contract No. 7-56060.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 TXMAS Contract No. 7-56060
- 1.1.2 This Contract
- 1.1.3 Exhibit A, Supplemental Provisions

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 TXMAS Contract No. 7-56060 as referenced in Section 1.1.1
- 1.2.2 This Contract
- 1.2.3 Supplemental Provisions as referenced in Section 1.1.3

**1.3 Quantity.** Quantity of goods or services as described in Exhibit C.

**1.4 Term of Contract.** The Contract shall be in effect for an initial term of two (2) months, subject to the extension of the cooperative contract (as referenced in Section 1.1.1 above), and approval of the Contractor and the City Purchasing Officer or his designee.

- 1.4.1 The City reserves the right to transfer this Contract by amendment to future TXMAS contracts that supersede TXMAS Contract No. 7-56060, if the terms and conditions are favorable to the City.

**1.5 Compensation.** The Contractor shall be paid a total not-to-exceed amount of \$29,119 for the deliverables shown in Exhibit C, including all fees and expenses.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**WORKPLACE RESOURCE LLC**

Virginia Younger  
Printed Name of Authorized Person

[Signature]  
Signature

Principal  
Title:

8.15.16  
Date:

**CITY OF AUSTIN**

Roger Strickland  
Printed Name of Authorized Person

[Signature]  
Signature

Corporate Contract Administrator  
Title:

8-19-16  
Date:

- Exhibit A - Supplemental Provisions
- Exhibit B - City's Non-Discrimination Certification
- Exhibit C - Contractor's Pricing

## **EXHIBIT A**

### **SUPPLEMENTAL PROVISIONS**

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Virginia Visser; Phone: 512-472-7399; Email: [virginia.visser@wrstx.com](mailto:virginia.visser@wrstx.com). The City's Contract Manager for the engagement shall be Cynthia Jordan; Phone: 512-974-7183; Email: [Cynthia.Jordan@austintexas.gov](mailto:Cynthia.Jordan@austintexas.gov).

2. **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

3. **Workforce.**

3.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

3.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

3.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

3.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

3.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

4. **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

5. **Invoices.**

5.1 The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

5.2 **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on Contractor's invoice. Invoices received without all required information cannot be processed. All invoices must be forwarded to the City Department that placed the order and created the purchase order.

Invoices shall be mailed to the below address:

	City of Austin
Department	Public Works
Attn:	Cynthia Jordan
Address	P. O. Box 1088
City, State Zip Code	Austin, TX 78767

5.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

5.4 Federal Excise Taxes, State taxes, or City sales tax must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

6. **Payment.**

6.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

6.2 **If payment is not timely made, (per paragraph 6.1), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

6.3 If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

6.4 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

6.4.1 delivery of defective or non-conforming services by the Contractor;

6.4.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

6.4.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

6.4.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

6.4.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

6.4.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

6.4.7 failure of the Contractor to comply with any material provision of the Contract.

6.5 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

6.6 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

7. **Final Payment.** The making and acceptance of final payment will constitute:

7.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein,

(4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

7.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

8. **Contractor To Package Deliverables:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

9. **Shipment Under Reservation Prohibited:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

10. **Title & Risk of Loss:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

11. **Delivery Terms and Transportation Charges:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".

12. **Right Of Inspection And Rejection:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

13. **No Replacement Of Defective Tender:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

14. **Special Tools & Test Equipment:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

15. **Right To Audit.**

15.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

15.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

16. **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Roger Stricklin, Corporate Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Workplace Resource LLC

ATTN: Virginia Visser, Principal

1717 West 6th Street, Suite 190

Austin, Texas 78703

17. **Right to Assurance:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

18. **Stop Work Notice:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

19. **Termination For Cause:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

20. **Termination Without Cause:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

21. **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

22. **Insurance:** The following insurance requirement applies.

22.1 **General Requirements**



22.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

22.1.2 The Contractor shall provide a Certificate of Insurance with the coverages and endorsements listed herein as verification of coverage to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.

22.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

22.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

22.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

22.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

22.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

22.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

22.1.9 If insurance policies are not written for amounts specified in Paragraph 22.2, Specific Coverage Requirements herein, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

22.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

22.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

22.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

22.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.

22.1.14 The Contractor shall provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

22.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

22.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000.00 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

- 22.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- 22.2.1.2 Contractor/Subcontracted Work.
- 22.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.
- 22.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
- 22.2.1.5 Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
- 22.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

22.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the City of Austin:

- 22.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.
- 22.2.2.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage.
- 22.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

22.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall apply to the State of Texas and shall contain the following endorsements in favor of the City of Austin:

- 22.2.3.1 Waiver of Subrogation, Form WC420304, or equivalent coverage.
- 22.2.3.2 Thirty (30) calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage.

22.3 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

23. **Indemnity:**

23.1 Definitions:

23.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

23.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or

23.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

23.1.2 "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

23.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

24. **Equal Opportunity.**

24.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, or any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

24.2 **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

25. **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program:**

25.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

25.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

25.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the

service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

26. **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty or removal fees charged to the City.

27. **Warranty – Deliverables:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules and regulations, and industry codes and standards. Unless otherwise stated, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

27.1 Recycled deliverables shall be clearly identified as such.

27.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

27.3 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of the acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

27.4 If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.

27.5 If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

28. **Warranty – Services:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

28.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

28.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above

standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

28.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

29. **Warranty – Title:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

30. **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by Contractor.

31. **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 17, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or any report or deliverable required to be submitted by the Contractor to the City.

32. **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determination with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold such amounts of the cost incurred by the Contractor in providing such gratuities.

33. **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

34. **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for the employees of the City.

35. **Delays.**

35.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in Paragraph 41. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

35.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

36. **Claims:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

37. **Advertising:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

38. **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

39. **Waiver:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

40. **Assignment-Delegation:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

41. **Dispute Resolution:**

41.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

41.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in

the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

42. **Jurisdiction and Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

43. **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

44. **Survivability.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

45. **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

46. **Interested Parties Disclosure.**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

47. **Storage of Deliverables.** In the event that Contractor has completed the Exhibit C deliverables but City has elected to delay Contractor's delivery of said items beyond the Exhibit C delivery lead time, Contractor shall be compensated by City in the amount of \$230 for each month that delivery is delayed and Contractor is required to store the deliverables on its premises.

**EXHIBIT B**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*



The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 15th day of August, 2016

CONTRACTOR

Authorized Signature

Title

Workplace Resource, LLC  
V. H. V. V.  
Principal

## Austin Central Library Lv3 Add

### P3 Proposal

Proposal Dated

Friday, July 22, 2016

Pricing Request Received:

7/20/16

By:

Cynthia Jordan

Client Information		Installation Conditions	
Site Address	710 W. Cesar Chavez St.	Installation Hours	Normal Business Hours
		Delivery Hours	Normal Business Hours
City, State, Zip	Austin, TX 78703	Phasing	Single
Company Name	City of Austin	Ship To	Warehouse
Contact Name	Cynthia Jordan	Offload Conditions	Dock Offload
Contact Phone	512.974.7183	Distribution	Elevator
Contact Email	<a href="mailto:cynthia.jordan@austintexas.gov">cynthia.jordan@austintexas.gov</a>		

Pricing		
DIRTT Walls		\$19,751.06
DIRTT Power		\$445.60
Design Hours		\$1,625.00
Project Management		\$150.00
Freight: 4-5 weeks from receipt of approved PO.		\$3,550.00
Delivery & Installation		\$3,160.00
TXMAS Fee: 1.5228% per contract #TXMAS - 7-56060		\$436.76
	Grand Total	\$29,118.42

## Project Specific Information

### Description

34 LF of DIRTT Walls to 11' 11.5 CH (per hold to from main project)  
 Frame finish is clear anodized in a curvilinear profile.  
 Wall Tile Finish is Benjamin Moore OC-68 Distant Gray  
 (2) Goldie (4" stile) aluminum framed, locking barn doors (12" bar pull) - 6mm clear tempered glass insert with ADA base.  
 DIRTT modular power on DIRTT "store front" to match adjacent DIRTT store fronts.  
 Final connection of modular power to base building by others.

## Notes

This document contains proprietary information for budgetary purposes only. Not for Order Entry.

# Austin Central Library

3<sup>rd</sup> Floor Add



## Why DIRT?

### DIRTT Environmental Solutions

#### Compressed Schedule

Factory assembly runs simultaneously without relying on several trades finishing before work can begin.

#### Superior Fit and Finish

Quality and consistency maintained throughout project. System is frame and tile. Tiles install at the end of the project to protect finishes. Every piece is pre-cut to fit space which means fewer cut-offs and bins. Plus, a cleaner job site with less waste and associated fees.

#### Interchangeable Graphics

Graphics can be changed out easily to update your wayfinding and branding.

#### Flexible Tile & Frame System

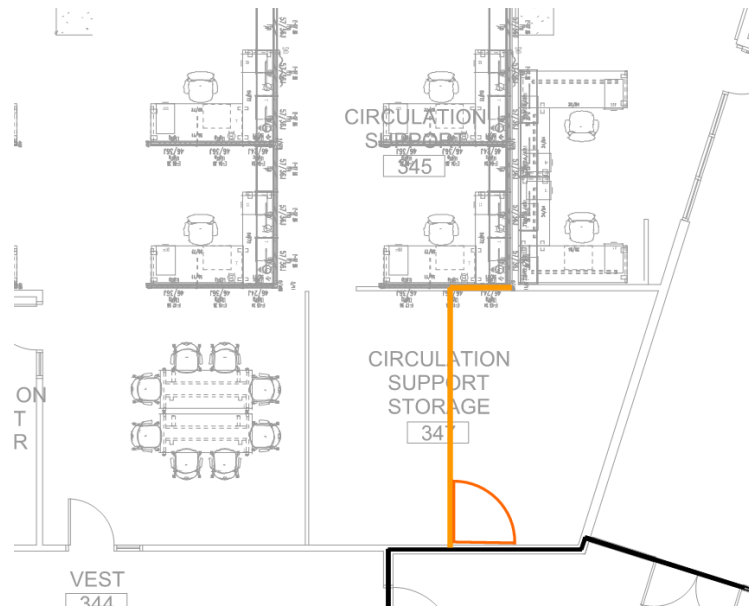
Our tile and frame system allow you to easily access existing power or lighting components without creating construction mayhem.

#### Ten-year warranty



# Austin Central Library

3<sup>rd</sup> Floor Add  
New DIRT Office





## Modular Interiors Team

We're excited to help you create your ideal workplace environment.

Please feel free to connect with our team of experts with your questions and/or comments.

**Jennifer Millar**  
DIRTT Champion

210.865.5865, cell  
jennifer.millar@wrstx.com

**Megan McCray**  
DIRTT Representative

512-618.8901, cell  
mmccray@dirtt.net

**Jason Reedy**  
DIRTT Designer

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DIRTT Designer

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DIRTT Designer

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**Dave Hastings**  
Project Manager

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210.247.3976, office  
Dave.hastings@wrstx.com

**Vince Prause**  
Project Manager

512.947.2963, cell  
vince.prause@wrstx.com

EXECUTIVE DIRECTOR  
Edward L. Johnson



CHAIRMAN  
Brenda Pejovich

COMMISSIONERS  
Stuart S. Coleman  
James S. Duncan  
Bob Jones  
Victor E. Leal  
Betty Reinbeck  
Barkley J. Stuart

## **Texas Building and Procurement Commission**

May 8, 2007

Mr. Scott Jenkins  
Dirtt Environmental Solutions, Inc.  
325 North Wells Street  
Chicago, IL 60657

RE: Contract No. TXMAS-7-56060  
Contract Period 05/08/07 through 09/30/11

Dear Mr. Jenkins:

Your company has been awarded a contract under the Texas Multiple Award Schedule (TXMAS) program. The period of the contract is shown above and will coincide with the contract period of your contract, GS-07F-0005T with the General Services Administration (GSA). As stated in your contract with the State of Texas, Terms and Conditions, you are responsible for notifying the Texas Building and Procurement Commission (TBPC) within thirty (30) calendar days of any change in the status of your contract with GSA or amendments to the Federal Schedule Contract.

All terms and conditions set forth in the document that you signed as a part of your offer to the State are made a part of this TXMAS contract. Please note that any payment due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas. Additionally, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the TBPC and the contractor to attempt to resolve all disputes arising under this contract.

As set forth in Section 8 of the Contract Terms and Conditions, a Quarterly Sales Report is required under this contract. The reporting requirement will commence for the period March-May 2007. Subsequent reports will follow the calendar quarters (i.e., June-August, September-November, and December-February).



Dirtt Environmental Solutions, Inc.  
May 8, 2007  
Page 2

In order to facilitate catalog access to TXMAS contractor catalogs, the TBPC will maintain a web page exclusive to your TXMAS contract. In addition to user instructions and informational details relating to the contractor, a universal resource locator (URL) address is required for the contractor's catalog. The catalog may be the same as the catalog used for the GSA Advantage e-procurement program, but it must have a TXMAS identifying cover and a URL, exclusive to the TXMAS program. It is requested that your catalog web address be established within fourteen (14) calendar days and provided by e-mail to the TXMAS Program Unit at [txmas@tbpc.state.tx.us](mailto:txmas@tbpc.state.tx.us). If you have any questions regarding this or any of the other requirements relating to the TXMAS program, please contact Ted Maddry at 512-463-3384.

Respectfully,



Ted R. Maddry, CTPM  
Purchasing Operations and Customer Support Manager

**STATE OF TEXAS  
TEXAS BUILDING AND PROCUREMENT COMMISSION  
TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)**

**THIS CONTRACT** is by and between the STATE OF TEXAS ("State") acting through

The TEXAS BUILDING & PROCUREMENT COMMISSION ("TBPC"), with offices at

1711 San Jacinto Boulevard, Austin, Texas 78701 and DIRTT Environmental

Solutions, Inc. ("Contractor") with offices at 325 N. Wells  
St., Chicago, IL 60657

**1. BACKGROUND:**

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The Texas Building and Procurement Commission has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a state multiple award schedule contract with the Contractor. It is recognized that prices reflected on GSA schedule contracts are most favored customer prices and are maximum prices. A State Agency or Local Government may negotiate a lower price for goods and services listed on a schedule contract. This state multiple award schedule contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

**TERMS & CONDITIONS**

**2. COMPOSITION OF CONTRACT:**

This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number GS OTF 0005T (the "Federal Schedule Contract" or "Schedule

**STATE OF TEXAS  
TEXAS BUILDING AND PROCUREMENT COMMISSION  
TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)**

Contract"), as amended by this Contract (*see paragraph 31 "ENTIRE AGREEMENT"*). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List. Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation (DFAR), Federal Information Processing Standards Publication (FIPS PUB), Federal Standards (FED-STD) and United States Code (USC) provisions, among others. By way of example, such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among others.

**3. CERTIFICATION OF ACCURACY:**

The Contractor hereby certifies that all copies of the Contractor's Authorized Schedule Price List that were submitted to the State as part of the negotiation of this Contract are true, correct, current, and complete copies of that Price List. The Contractor further represents and warrants that all future Price Lists submitted to revise this Contract will also be true, correct, current, and complete copies of the then-current Price List under the Contractor's then-current Federal Contract.

**4. FEDERAL REPRESENTATIONS:**

The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

**5. FUTURE NOTICE:**

The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. The State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor

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agrees to notify the State within thirty (30) calendar days of all changes in the status of or amendments to its Federal Schedule Contract.

**6. PARTIES TO THE CONTRACT:**

- (a) For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State.
- (b) This Contract may be relied on by any "State Agency" as defined under section 2251.001(8) of the Texas Government Code and any "Local Government" as defined under section 271.101 of the Texas Local Government Code. Whenever a Local Government relies upon this Contract to issue a purchase order, the Local Government will step into the shoes of the State under this Contract. Any order placed by a Local Government under this contract will be between the Contractor and the Local Government. The Contractor will look solely to the Local Government for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Local Government.
- (c) Nothing in this Contract requires the Contractor to accept an order from a Local Government where the Contractor reasonably believes that the Local Government is or will be unable to perform its obligations in relation to that order.

**7. SPECIFIC CHANGES TO PROVISIONS INCLUDED IN CONTRACTOR'S SCHEDULE CONTRACT:**

The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal Contract:

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- (a) All equipment will be new and all replacement parts will be new.
- (b) The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.
- (c) Payments and invoicing will be done according to the terms discussed under paragraph 12 "PAYMENT DUE DATE" and paragraph 13 "INVOICE REQUIREMENTS", below.
- (d) All shipping of equipment under warranty for repairs will be at the Contractor's expense.
- (e) All references to hours of the day will be deemed to be references to Central Standard/Daylight Time.
- (f) The State will not purchase goods or services for overseas delivery, or provide the Contractor with overseas support.
- (g) The Contractor will not offer to the State any products that are not Year 2000 compliant. All such items listed in the Contractor's Authorized Price List are deleted for purposes of the State.
- (h) As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. Therefore, the federal supply schedules for blanket purchase agreements, contractor team arrangements are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a purchasing entity may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the GSA contract schedule. The purchase of incidental, off schedule items will be treated as an open market purchase and clearly labeled on the schedule purchase order as open market (OM) items.
- (i) Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.
- (j) The contractor will provide a Universal Resource Locator (URL) address that is exclusive to the contractor's TXMAS contract and catalog. The "hot link" must allow users access to the contractor's TXMAS catalog from the TBPC website.



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- (k) In conjunction with the submission of the Contractor Quarterly Sales Report referred to in Paragraph 8 of this document, the Contractor shall remit to the State of Texas a sales rebate which will not exceed the GSA Industrial Funding Fee (IFF) that is in effect at the time of the Quarterly Sales Report submission.

**8. CONTRACTOR QUARTERLY SALES REPORT:**

- (a) The Contractor shall report to the State the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract by fiscal quarter (i.e., September-November, December- February, March- May, June- August). The dollar value of the sale shall be the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.
- (b) The Contractor shall report the quarterly dollar value of sales electronically in the on-line format provided by TBPC (See Paragraph 8(e), below). If no sales occur, the Contractor shall report "zero" sales. The report shall be submitted within thirty (30) calendar days following the completion of the reporting period.
- (c) As a component of the Contractor Quarterly Sales Report the Contractor shall remit a Sales Rebate that is authorized by the Texas Government Code, Chapter 2155.510. The Sales Rebate shall be based on the GSA Industrial Funding Fee (IFF) rate that is effective at the time of the report submission. The Sales Rebate rate that will apply to Contract Quarterly Sales Reports submitted for the fiscal quarters commencing March 2004 shall be 0.75%. This rate shall apply to all quarterly Sales Rebates until a new IFF rate is set by GSA.
- (d) The Sales Rebate remittance should be identified as "TXMAS Sales Rebate" and made payable to **TBPC**. The remittance address is: Texas Building and Procurement Commission, Attn: Fiscal Division, P.O. Box 13047, Austin, TX 78711-3047.
- (e) The Contractor shall also submit a final closeout report within one hundred and twenty (120) calendar days after the expiration or termination of this Contract. The contract shall expire upon the physical completion of the last outstanding task or delivery the final order under the Contract. The closeout report shall include all sales not shown in the final or most recent quarterly report and shall reconcile all errors and credits. If the Contractor reported all

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contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor shall report "zero" sales in the closeout report.

- (f) The Quarterly Sales Report shall be submitted electronically online at:  
<http://portal.tbpc.state.tx.us/txmas/vendor/>  
see Attachment A.
- (g) If the Contractor fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, the State may terminate or cancel this Contract in accordance with Paragraph 19 ("CANCELLATION").

**9. DISTRIBUTORS:**

- (a) The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(es), Federal Employer's Identification number (FEI) and Dun and Bradstreet (DUNS) number if available. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Director of Procurement. In doing so, the Contractor warrants that:
  - (1) The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing to be bound by the terms and conditions in this Contract.
  - (2) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
  - (3) The Contractor agrees to remain liable under this Contract for any failure of the dealer to perform and any breach of the dealer under this Contract.
  - (4) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
  - (5) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

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- (b) If the Contractor wants to designate a business entity that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. One or more distributors may be identified in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form and DUNS number. All other requirements and obligations for designating a dealer apply to designating a distributor.

**10. POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS):**

- (a) In accordance with the Texas Government Code, Sections 2161.181-182 and section 111.11 of the Texas Administrative Code (TAC), state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services, including professional and consulting services and commodities contracts. The Texas Building and Procurement Commission (TBPC) HUB Rules, 1 TAC 111.11-111.28 encourages the use of HUBs by implementing these policies through race-ethnic-and gender-neutral means.
- (b) The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study:
  - (1) 11.9% for heavy construction other than building contracts;
  - (2) 26.1% for all building construction, including general contractors and operative builders contracts;
  - (3) 57.2% for all special trade construction contracts;
  - (4) 20% for professional services contracts;
  - (5) 33% for all other services contracts; and
  - (6) 12.6% for commodities contracts.
- (c) Each state agency shall make a good faith effort to meet or exceed these goals and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year.
- (d) Contractors are urged to utilize Texas Certified HUBs as dealers or distributors whenever possible to promote full and equal business opportunities and assist state agencies in meeting the goals listed above. Instructions for generating a list of Certified Texas HUB Vendors that are registered on the Texas Centralized Master Bidder List (CMBL) for the



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commodities included in the contract schedule is attached (see Attachment B). You are also strongly encouraged to make a good faith effort within the basic terms of the GSA contract and consider engaging the service of a HUB to meet your contractual obligation in Texas. *The attached TXMAS HUB Good Faith Effort Certification must be completed and returned with this document (see Attachment C).*

**11. LIMITATION OF LIABILITY:**

THE PARTIES AGREE THAT IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

**12. PAYMENT DUE DATE:**

- (a) Except as provided for in section 2251.021(b) Texas Government Code payment by a State Agency or Local Government is due within thirty (30) calendar days after the later of:
  - (1) the date the State Agency or Local Government receives the goods under the contract;
  - (2) the date the State Agency or Local Government receives a proper invoice (see paragraph 13 "INVOICE REQUIREMENTS") for the goods or services; or
  - (3) the date the performance of the service under the contract is completed
- (b) Except as provided for in section 2251.021(b) Texas Government Code, a payment will begin to accrue interest at a rate of one percent a month on the 31<sup>st</sup> day after the later event described by subsections (a)(1) through (3). Interest stops accruing on the date the State Agency or Local Government mails (postmark) or electronically transmits the payment.

**13. INVOICE REQUIREMENTS:**

- (a) In order to receive payment, Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. To be a proper invoice, the invoice must include the following information and/or attachments:

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- (1) Name and address of the Contractor as designated in this Contract.
  - (2) The Contractor's Texas Identification Number (TIN) as designated in this Contract.
  - (3) The Contractor's invoice remittance address as designated in this Contract.
  - (4) The purchase order number authorizing the delivery of products or services.
  - (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements or if the Contractor fails to give proper notice of a price increase (*see paragraph 15 "NOTIFICATION OF PRICE INCREASE"*), the State will send the Contractor written notice with the improper invoice to the address designated for receipt of purchase orders within fifteen (15) calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice.

**14. AUDIT REQUIREMENTS:**

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

**15. NOTIFICATION OF PRICE INCREASES:**

For price increases authorized under this contract, notification of such must be given to the TBPC and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). The Contractor must give these notices no later than thirty (30) calendar days before the effective date of the price increase. This notification must

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specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

**16. NON-APPROPRIATION OF FUNDS:**

The State's funds are contingent on the availability of lawful appropriations by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing this Contract, the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments.

**17. PUBLIC INFORMATION:**

Pursuant to Texas Government Code, Chapter 552, The Public Information Act, all information in the possession of the Texas Building and Procurement Commission is subject to disclosure in accordance with the provisions of the act.

**18. TAXES:**

The State is exempt from all state and local taxes and does not agree to pay any taxes.

**19. CANCELLATION:**

The State or the Contractor may cancel this Contract without cause on thirty (30) calendar days written notice. But, in the case of any lease of goods or services or any license of software or other intangible property entered into before the effective date of the termination, the State will have the right to continue such lease or license after termination on the same terms.

**20. AUTOMATIC RENEWAL:**

This contract is automatically renewed on the date that GSA exercises the renewal option. All State of Texas terms and conditions will continue and apply to all renewal periods unless modified by mutual agreement.

**21. DELIVERIES:** Unless stated otherwise in the federal supply schedule, all deliveries will be F.O.B. Destination.

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**22. EQUAL EMPLOYMENT OPPORTUNITY:**

The Contractor will comply with all Texas laws regarding equal opportunity employment opportunity.

**23. DRUG FREE WORKPLACE:**

The Contractor will make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

**24. CONTRACTOR AFFIRMATIONS:**

- (a) The Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted contract.
- (b) Contractor hereby assigns to purchaser any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973) as amended, and the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Comm. Code Sec. 15.01, et seq. (1983).
- (c) Neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State or Federal Antitrust laws, (see item b, above)
- (d) Pursuant to Texas Family Code 231.006 (d), (relating to child support), the Contractor certifies that the individuals or business entity named in this contract is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and/or payment may be withheld if the certification is inaccurate.
- (e) Under Section 2155.004 Texas Government Code, the Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.

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- (f) The Contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.
- (g) Contractor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- (h) Contractor certifies that they are in compliance with section 669.003 of the Texas Government Code, relating to contracting with executive head of a state agency. If section 669.003 applies, vendor will complete the following information in order for the offer to be evaluated:

Name of Former executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of separation from State Agency: \_\_\_\_\_

Position with Contractor: \_\_\_\_\_

Date of Employment with Contractor: \_\_\_\_\_

**25. PUBLICITY:**

The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

**26. TRAINING REQUIREMENTS:**

The Contractor will send as a minimum one corporate representative and one dealer/distributor representative from each authorized dealer/distributor for training on TXMAS procedures prior to receiving award of a TXMAS contract. The TXMAS Unit in Austin, Texas will provide training. Training dates, location and times will be coordinated with the TXMAS Unit.

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**27. TRAVEL EXPENSES:**

Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with State of Texas Travel Allowance Guide.

**28. HEADINGS:**

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

**29. ASSIGNMENT:**

The Contractor will not assign this Contract without the written consent of the State.

**30. ORDER OF PRIORITY:**

If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.

**31. ENTIRE AGREEMENT:**

This Contract consists of the Contractor's Schedule Contract (*see paragraph 2 "COMPOSITION OF CONTRACT"*), this Contract document, the Contractor's State Offer Letter, and, if applicable, the Contractor's letter(s) designating dealers (and/or distributors), and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

**32. GOVERNING LAW:**

This Contract is governed by and will be construed under Texas law, and venue for any dispute will be in a court of competent jurisdiction in Travis County, Texas.



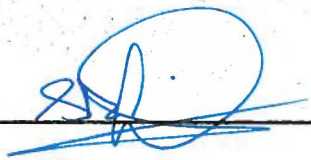
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**33. SEVERABILITY:**

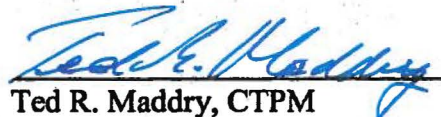
If any part of this Master Agreement shall be declared unlawful, all other provisions not affected shall remain in full force and effect.

**TO SHOW THEIR AGREEMENT**, the parties have executed this Contract on the date(s) below and unless otherwise indicated is effective as of the date of signature by the State.

THE CONTRACTOR

By:   
\_\_\_\_\_  
Scott T. Jenkins, CA

STATE OF TEXAS,  
TEXAS BUILDING & PROCUREMENT  
COMMISSION  
PROCUREMENT DIVISION

  
\_\_\_\_\_  
Ted R. Maddry, CTPM  
Purchasing Operations and Customer  
Service Manager

Title: Chief Financial officer

Date: 5-08-07

Date: March 13, 2007

To Prospective Texas Multiple Award Schedule (TXMAS) Vendors

Subject: Historically Underutilized Business (HUB)  
Good Faith Effort Certification

As addressed in the basic Contract Terms and Conditions, contractors are strongly encouraged to engage the services of Texas Certified HUBs as distributors or dealers whenever possible to promote full and equal business opportunities and to assist state agencies in meeting the goals specified in the State of Texas Disparity Study. The decision to utilize the services of a currently Certified Texas HUB must be based on a good faith effort and as a potential contractor you are required to show documented evidence that an active participatory role for a HUB entity was considered. Should you elect to use the services of a Minority Business Enterprise (MBE) or Disadvantaged Business Enterprise (DBE) that may be eligible for Texas Hub certification, arrangements can be made to expedite the application process.

Please answer the following questions by selecting the response that applies to your good faith effort decision. Check the appropriate response(s).

- YES ☐ NO ☒ 1. Are the services of a Certified Texas HUB being utilized to perform the contract referred to in the Terms and Conditions? \*\*
- YES ☐ NO ☒ 2. Are the services of a MBE/DBE or equivalent that may be eligible for Texas HUB certification being utilized to perform the contract referred to in the Terms and Conditions?
- YES ☒ NO ☐ 3. Will a Small Business, as defined by regulations of the Small Business Administration (SBA) in 13 C.F.R., Section 121.201, perform the basic contract as awarded by the General Services Administration (GSA)?
- YES ☒ NO ☐ 4. Will the contract be performed by a company, under existing agreements approved by GSA, that includes Small Business/MBE/DBE/HUB participation?

Note: This document will become an attachment to the Contract Terms and Conditions and is affirmed by the signature on the Contract Terms and Conditions.

\*\* The attached randomly selected list of Certified Texas HUBs dealing in the goods and services included in this multiple award schedule contract opportunity should be considered in the selection/decision process.