



Amendment No. 3
To
Contract No. NS160000057
For
Movable Partition Wall Services
Between
Hufcor, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 16, 2020 through November 15, 2021. One option will remain.
- 2.0 The total contract amount is increased by \$50,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/16/2016 – 11/15/2019	\$150,000.00	\$150,000.00
Amendment No. 1: Option 1 – Extension 11/16/2019 – 11/15/2020	\$50,000.00	\$200,000.00
Amendment No. 2: Adding Austin Police Department 04/23/2020	\$0.00	\$200,000.00
Amendment No. 3: Option 2 – Extension 11/16/2020 -11/15/2021	\$50,000.00	\$250,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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 SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

DocuSigned by:
Sign/Date Patrick May 10/27/2020
7D9B68619DF5436...
Printed Name: _____
Authorized Representative General Manager

Hufcor, Inc.
2101 Kennedy Road
Janesville, Wisconsin 53545
(972) 986-7400
pmay@hufcor.com

Matthew Duree
Sign/Date: _____
Digitally signed by
Matthew Duree
Date: 2020.11.09
08:37:56 -06'00'

Matthew Duree
Procurement Manager
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 2
To
Contract No. NS160000057
For
Movable Partition Wall Services
Between
Hufcor, Inc.
and the
City of Austin

1.0 The City hereby amends the above referenced contract to add Austin Police Department as an authorized department on this contract.

1.1 The Contract Manager for Austin Police Department is:
Jerome T. Guerrero
Phone: 512-974-5273
Email: Jerome.Guerrero@austintexas.gov.

1.2 The invoice address for Austin Police Department is:
City of Austin
Austin Police Department
Attn: Accounts Payable
Address: P.O. Box 1629
Austin, TX 78767-1629
Email: APDAccountsPayable@austintexas.gov

2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/16/2016 – 11/15/2019	\$150,000.00	\$150,000.00
Amendment No. 1: Option 1 – Extension 11/16/2019 – 11/15/2020	\$50,000.00	\$200,000.00
Amendment No. 2: Adding Austin Police Department	\$0.00	\$200,000.00

3.0 MBE/WBE goals do not apply to this contract.

4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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 SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

DocuSigned by:
Sign/Date: Patrick May 4/23/2020

Printed Name: Patrick May
Authorized Representative

Hufcor, Inc.
2101 Kennedy Road
Janesville, Wisconsin 53545
(972) 986-7400
lskelton@hufcor.com

Sign/Date: Jo Gutierrez Digitally signed by Jo Gutierrez
Date: 2020.04.23 11:13:03 -05'00'

Jo Gutierrez
Procurement Specialist III

City of Austin
Purchasing Office
124 W. 8th Street
Austin, Texas 78701



Amendment No. 1
To
Contract No. NS160000057
For
Movable Partition Wall Services
Between
Hufcor, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 16, 2019 through November 15, 2020. Two options will remain.
- 2.0 The total contract amount is increased by \$50,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/16/2016 – 11/15/2019	\$150,000.00	\$150,000.00
Amendment No. 1: Option 1 – Extension 11/16/2019 – 11/15/2020	\$50,000.00	\$200,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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 SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

DocuSigned by:

Sign/Date: Patrick May 10/22/2019

7D9B68619DF5436

Printed Name: Patrick May
Authorized Representative

Hufcor, Inc.
2101 Kennedy Road
Janesville, Wisconsin 53545
(972) 986-7400
lshelton@hufcor.com

Sign/Date: [Signature]

Matthew Duree
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

10-30-19

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Hufcor, Inc.
For
Movable Partition Wall Services
MA NS160000057**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Hufcor, Inc. ("Contractor"), having offices at 7801 North Shepherd Drive, Suite 106, Houston, Texas 77088.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Kelly Rowe, Phone: (210) 488-3919, Email Address: krowe@hufcor.com. Alternate Contractor points of contact shall be Randy Wheeler, Phone: (832) 405-9062, Email Address: rwheeler@hufcor.com, Chase Hackenberg, Phone: (972) 890-5832, Email Address: chackenberg@hufcor.com and Jason Edmundson, Phone: (972) 841-0859, Email Address: jedmundson@hufcor.com. The City's Contract Manager for the engagement shall be Bryan Helford, (512) 404-4311, Email Address: bryan.helford@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform those tasks described in Exhibit C, Scope of Work.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** In consideration for the services to be performed under this Contract per Exhibit C, Scope of Work, the Contractor shall be paid an amount not to exceed \$150,000 for all fees and expenses during the initial contract term, and an amount not to exceed \$50,000 per extension option for up to three (3) extension options, for a total contract amount not to exceed \$300,000 for all fees and expenses.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order 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.

3.2.2 Invoices shall contain 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 the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Convention Center
Attn:	Accounts Payable
Address	500 East Cesar Chavez
City, State, Zip Code	Austin, TX 78701

3.2.3 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.4 Invoices shall include the following attached documentation:

3.2.4.1 Itemized parts with the Contractors' cost and percentage of mark-up

3.2.4.2 Date repair service performed

3.2.4.3 Labor-hours expended

3.2.4.4 The original corresponding service ticket(s)

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

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

3.3 Payment.

3.3.1 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.

3.3.2 If payment is not timely made, (per this paragraph), 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.

3.3.3 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:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 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;

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

3.3.3.4 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;

3.3.3.5 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;

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

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

3.3.4 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.

3.3.5 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.

3.4 **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 nor removal fees charged to the City.

3.5 **Final Payment and Close-Out.**

3.5.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.5.2 The making and acceptance of final payment will constitute:

3.5.2.1 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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to three additional 12-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in this paragraph.

4.2 **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.

4.3 **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 the "Right to Assurance paragraph herein, (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 in any report or deliverable required to be submitted by Contractor to the City.

4.4 **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.

4.5 **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.

4.6 **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, including false, doctored, or altered service tickets, shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 **General Requirements.**

5.1.1.1 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.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 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.

5.1.1.4 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.

5.1.1.5 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.

5.1.1.6 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.

5.1.1.7 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

5.1.1.8 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.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, 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.

5.1.1.10 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.

5.1.1.11 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.

5.1.1.12 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.

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

5.1.1.14 The Contractor shall endeavor to 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.

5.1.2 **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.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **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:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **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 contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **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.

5.2 **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.

5.3 **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.

5.4 **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.

5.5 **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.

5.6 **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.

5.7 **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.

5.8 **Equal Opportunity.**

5.8.1 **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, nor 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.

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

5.9 **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 the Contractor.

5.10 **Delays.**

5.10.1 The Contractor understands and agrees that events held at ACCD take precedence over any other schedule(s) agreed to by the City and the Contractor. Accordingly, the City may be required to delay delivery or other due dates as needed to conform to changing event schedules. The Contractor shall not hold the City liable, financially or otherwise, if the Contractor, due to event scheduling at ACCD, is required to delay delivery or services. The City will make every reasonable effort to immediately notify the Contractor, either verbally or in writing, if any event(s) being held at ACCD will affect any previous schedule agreed to by the City and the Contractor. If verbal notice is provided, City will follow up with written confirmation of the delay in schedule.

5.10.2 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.

5.11 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.11.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.11.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for

the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.11.3 Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.12 Rights to Proposal and Contractual Material. All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.13 Publications. All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 Warranty – Services. The Contractor warrants and represents that all services to be provided to 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.

6.2.1 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.

6.2.2 The warranty period shall be as defined in Exhibit D, Limited Warranty. If during the warranty period, one or more of the 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.

6.2.3 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.

SECTION 7. MISCELLANEOUS

7.1 **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.

7.2 Workforce.

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

7.2.2 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:

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

7.2.2.2 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.

7.2.3 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.

7.3 **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.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Right To Audit.**

7.5.1 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.

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

7.6 **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.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "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:

7.7.1.1.1 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;

7.7.1.1.2 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),

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

7.7.2 **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.

7.8 **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.

7.9 **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: CA's Name, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Hufcor, Inc.

ATTN: Jason Edmundson, General Manager

7801 North Shepherd Drive, Suite 106

Houston, Texas 77088

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **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.

7.12 **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.

7.13 **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 with a view toward securing the Contract or securing favorable

treatment with respect to the awarding or amending or the making of any determinations 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 the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **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.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a 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 employees of the City.

7.16 **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.

7.17 **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.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 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.

7.20.2 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.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 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.

7.21.2 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.**

7.21.3 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.

7.22 Subcontractors.

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **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.

7.24 **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.

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** 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.

7.27 **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.

7.28 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

HUFCOR, INC.

By: 

Signature

Name: Jason Edmundson

Printed Name

Title: General Manager

Date: 11/11/2016

CITY OF AUSTIN

By: 

Signature

Name: Roger Stricklin

Printed Name

Title: Corporate Contract Administrator

Date: 11/16/2016

List of Exhibits

Exhibit A	Pricing Schedule
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Scope of Work
Exhibit D	Limited Warranty

EXHIBIT A
PRICING SCHEDULE
CITY OF AUSTIN
HUF COR, INC.

ITEM NO.	LABOR	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Regular Hours (Services completed Monday - Friday 7am - 5pm)	250	HOURLY	90.00	\$22,500.00
2	Non-Regular Hours (Services completed 5:01 p.m. through 6:59 a.m. Monday through Friday, all day Saturday and Sunday, and Holidays)	70	HOURLY	135.00	\$9,450.00
ITEM NO.	MATERIAL	AMOUNT BEFORE VENDOR MARK-UP		% MARK-UP	AMOUNT AFTER VENDOR MARK-UP
3	Mark-up to cost for Parts and Materials	\$10,000		25.00%	\$12,500.00
4	Percentage Mark-up to vendor cost for rental of height-reducing equipment as defined in Section 0500, Scope of Work (shall not exceed 5%)	\$5,000		5.00%	\$5,250.00
TOTAL					\$49,700.00
Other Fees for Services or Products Not Specified					
ITEM NO.	DESCRIPTION OF OTHER SERVICES OR PRODUCTS			PRICE OR % DISCOUNT	
5	Trip Charge - per round trip from San Antonio to Austin Convention Center Department			\$180.00 per round trip	
6	Additional items or services that are not listed on this pricing schedule. Pricing is discount from Manufacturer's Suggested Retail Price (MSRP).			0% from MSRP	

SIGNATURE OF
AUTHORIZED REPRESENTATIVE: _____

PRINTED NAME: _____

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 November, 2016

CONTRACTOR

Authorized
Signature

Title

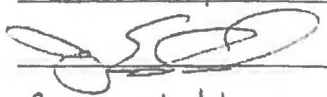
Hufcor, Inc.

General Manager

EXHIBIT C
SCOPE OF WORK
MOVABLE PARTITION WALLS AND RELATED SERVICES

1.0 PURPOSE

Contractor shall be responsible for performing services associated with the Hufcor operable partitions. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City may negotiate mutually agreeable terms and compensation for completing the additional services.

These services shall be for the City of Austin ("City"), Convention Center Department (ACCD). At the time of Contract award, the Contractor shall execute services at the Austin Convention Center (ACC) located at 500 E Cesar Chavez, Austin, Texas, 78701 and the Palmer Events Center (PEC) located at 900 Barton Springs Rd., Austin, Texas, 78704. If during the term of the Contract, ACCD installs additional Hufcor operable partitions in any ACCD buildings (current and/or future), services for those additional operable partitions shall be provided through this Contract.

The Contractor shall invoice the City for services provided to the City upon completion of services, as requested by ACCD.

Contractor and ACCD shall assign a Contract Manager ("Contract Manager") to manage the terms, conditions, operations and deliverables under this contract.

In the event of conflict between this Scope of Work, manufacturer's literature or any applicable codes, the terms most favorable to the City shall apply, unless otherwise notified by the City.

2.0 CONTRACTOR'S OBLIGATIONS

2.1 General Requirements:

- 2.1.A The Contractor shall provide services (with associated parts, equipment and labor) which include, but may not be limited to, preventative maintenance, repairs, installation, removal, modernization and training (if applicable). All services shall be on an as-needed basis. However, through the term of the Contract, the City reserves the right to have some, or all, services performed on a regularly scheduled basis. The needs of the City shall determine which services will be provided on such a basis.
- 2.1.B The Contractor shall maintain and operate a full-time, permanent business address, email address, and telephone. The Contractor shall also have adequate equipment, materials and sufficient employees trained to perform the services specified herein. The Contractor shall comply with all applicable City of Austin, State of Texas, and any Federal guidelines or regulations.
- 2.1.C The Contractor shall provide all labor, supervision, diagnostics, parts, materials, tools, equipment, instruments, incidentals, expendable items, personal protective equipment and training needed in the execution of services under this Contract.
- 2.1.D All service shall be scheduled as directed by the City's Contract Manager. All services will be approved by the City's Contract Manager either verbally or in writing prior to start of work.
- 2.1.E It shall be the full responsibility of the Contractor to visit and inspect the job locations prior to the submission of each job estimate. Submission of the job estimate is evidence that the Contractor has familiarized himself/herself with the nature and extent of the work and any local conditions that may, in any manner, affect the scope of the work to be done,

EXHIBIT C
SCOPE OF WORK
MOVABLE PARTITION WALLS AND RELATED SERVICES

and the equipment, materials and labor required. Each job estimate shall be submitted in accordance with terms, prices and markups established in this Contract.

- 2.1.F Upon completion of all routine, scheduled and unscheduled services under this Contract, the Contractor shall self-certify that the work was completed by submitting a signed service ticket. The service ticket shall include a description of the services provided (including a brief description of the cause of failure) the date and time the services began and were completed, a description of parts replaced or repaired and the location of the services.
- 2.1.G All work is subject to review, inspection, and acceptance by the City's Contract Manager or designee.
- 2.1.H Failure to perform services in a prompt and professional manner may result in termination of the Contract.
- 2.1.I Contractor shall perform all steps reasonably necessary to protect City property and persons from harm.
 - 2.1.I.a Contractor shall be responsible for any and all damage to City equipment or property as a direct result of Contractor's equipment, employees or Contractor's Subcontractor's actions.
 - 2.1.I.b Damages to City equipment or property by Contractor's equipment, employees or its Subcontractor shall be replaced or repaired to the satisfaction of the City of Austin by the Contractor, at no cost to the City. The City may, however, at its sole discretion, elect to make repairs or replacements of damaged equipment or property and deduct the cost from any payments owed to Contractor or to recover costs if no payments are owed.
- 2.1.J All work is subject to inspection and acceptance by the City's Contract Manager or designee.
- 2.1.K Upon completion of services, the Contractor shall be responsible for the immediate clean-up of the work area and removal of debris.
- 2.1.L The Contractor shall keep the City's Contract Manager advised of any developments relating to the performance of this Contract.
- 2.1.M If during the performance of services, the Contractor determines that additional time is needed to complete the services being performed, the Contractor and the City's Contract Manager will mutually agree to a new date for completion of work. Under no circumstances shall the Contractor leave services unfinished without prior approval/arrangement of the City's Contract Manager or designee.
- 2.1.N If the City needs to reschedule Contractor's services, such rescheduling will occur according to the provisions of the Contract (per Paragraph 5.10.1).
- 2.1.O Within five (5) business days of request by ACCD, the Contractor shall provide a detailed report describing services, including parts repaired or replaced for each service performed.
- 2.1.P The Contractor shall dispose of all worn/defective parts, oils, solvents, waste, or hazardous materials in accordance with all applicable laws, rules and regulations. The

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MOVABLE PARTITION WALLS AND RELATED SERVICES

Contractor shall handle, transport, and dispose of worn/defective parts, oils, solvents, waste, or hazardous materials in such a manner as to ensure the highest level of safety to the environment and public health at no additional cost to the City. The Contractor shall not store worn or defective parts on City premises. The Contractor shall remove worn/defective parts, materials, oils and solvents from City premises as soon as each job is completed.

- 2.1.Q The Contractor shall attend meetings scheduled by ACCD. Notice of any such meeting(s) may be given by City's Contract Manager, or designee, to the Contractor either orally or in writing and will designate the time, date, location, Contractor attendees, and the purpose of the meeting.
- 2.1.R Within five (5) business days of request by ACCD, the Contractor shall provide the City with any applicable warranties, operations, maintenance manuals, and/or any related drawings.
- 2.2 Preventative Maintenance:
 - 2.2.A Preventative maintenance (PM) shall be performed when requested by the City. However, the City reserves the right to move the PMs to regularly set schedule. The City shall have the final authority on whether or not the PMs will be performed on as-needed basis or on a set, pre-determined schedule.
 - 2.2.A.a The City will notify the Contractor of the City's intent to move the PMs to a set schedule. Within 10 business days of notification, the Contractor and City's Contract Manager will meet to set the schedule for the PM.
 - 2.2.A.b Preventative Maintenance shall be billed in accordance with the hourly rates of either Regular Hours or Non-Regular Hours, depending when services are provided.
 - 2.2.A.c If the City determines that the frequency of the PM needs to increase or decrease, the Contract shall be amended to reflect the change in frequency and associated pricing.
 - 2.2.B As part of the PMs, the Contractor shall identify any parts which are in need of immediate repair/replacement or parts which require repair/replacement prior to the next scheduled PM. The Contractor shall immediately notify the City's Contract Manager of the needed repairs – notification may be in writing or through verbal communication. Repairs shall be completed under the terms of General Services. Under no circumstances shall the Contractor proceed with the repair(s) without the City Contract Manager's, or designee's, authorization.
- 2.3 General Services:
 - 2.3.A General services shall be performed on an as-needed basis ("General Services" or "Non-Urgent"). The Contractor shall coordinate services with the City Contract Manager (or designee).
 - 2.3.B The City will request General Services (each instance, a "Notification") and if applicable, the Contractor shall arrange a site visit with the City's Contract Manager or designee.
 - 2.3.C The Contractor shall respond to a job assignment or meet with the City's Contract Manager at the job site within three (3) business days of notification of proposed project to discuss the project. For each job, a written estimate of the total cost of work including

EXHIBIT C
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the target date for starting and estimated time of completion for such project will be submitted to the City's Contract Manager not more than an additional 24 continuous hours later, and at no cost to the City.

- 2.3.D The estimate for General Services shall be in writing and shall include: the location of the of the services, type and description of services to be performed, an itemized cost estimate (based on prices established in the Contract) including estimated cost of labor hours and cost of materials, list of proposed equipment rental(s) needed to complete the service with associated cost (if applicable), and recommended schedule with a proposed start and finish date/timeframe.
- 2.3.E The City's Contract Manager will review the estimate and if in agreement, will issue a written notice to proceed ("Notice to Proceed"). A Notice to Proceed will be in the form of a Delivery Order (DO) issued by the City.
- 2.3.F Upon receipt of the Notice to Proceed, the Contractor shall acknowledge receipt of the Notice by sending an email or fax to the City's Contract Manager. The Contractor and City's Contract Manager will schedule a date and time for services to begin.
- 2.3.G If the City's Contract Manager does not agree with the estimate, the Contract Manager will contact the Contractor to discuss and resolve. Once in verbal agreement, the Contractor shall re-submit the cost estimate for review and approval by the City's Contract Manager.
- 2.3.H The Contractor shall complete the work within the time stated in the cost estimate and shall notify the City's Contract Manager upon completion of the services.
- 2.4 Installation/Modernization:
 - 2.4.A Movable wall partition systems and upgrades/modernization to existing equipment may be added or removed to meet the changing needs of the City.
 - 2.4.B Upgrades and modernization shall be for like-in-kind item(s) or item(s) of similar purpose. No upgrades or modernization will be performed under this contract that impacts the facility's structure, or that require architectural or mechanical engineering, drawings, or plans.
 - 2.4.C The City's Contract Manager and the Contractor shall meet to discuss the scope of the upgrade/modernization.
 - 2.4.C.a The Contractor shall submit a proposal detailing the project's scope, including (but not limited to), the location of the of the services, type and description of work to be performed, an itemized cost estimate (based on prices established in the Contract) including estimated labor hours and cost of materials, list of proposed equipment rental(s) needed to complete the work-with associated cost (if applicable), and recommended schedule with a proposed start and finish date/timeframe.
 - 2.4.D The Contractor shall be responsible for all parts and labor to maintain movable wall partition systems once upgrade/modernization is completed.
 - 2.4.E The Contractor may recommend changes to movable wall partition systems listed herein with the intent of reducing operating and maintenance costs and/or improving equipment performance and efficiency based on the Contractor's experience. All movable wall partition systems documents, including manufacturer's data, diagrams, manuals, and

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manual information regardless of the condition or status, existing or in preparation, are the property of City.

2.5 Labor Hours:

2.5.A The City will require the Contractor to perform regular services (non-urgent) during regular and/or non-regular business hours as outlined in Paragraph 2.5.B herein.

2.5.B Time designations shall be as follows:

2.5.B.a REGULAR HOURS shall be 7:00 a.m. through 5:00 p.m. Monday through Friday.

2.5.B.b NON-REGULAR HOURS shall be: all hours not designated as "Regular Hours," which include 5:01 p.m. through 6:59 a.m. Monday through Friday; weekends beginning Friday at 5:01 p.m., all day Saturday and Sunday, and ending Monday at 6:59 a.m.; and Holidays. Hourly rates for these non-regular hours may be charged to the City up to 150% (time and a half) of the regular hours.

2.5.B.c URGENT (CODE RED) HOURS shall be any time (24/7), regardless of day of the week or Holiday. All labor rates shall be in accordance with the hourly rates of either Regular Hours or Non-Regular Hours, depending when services are provided.

2.6 Urgent (Code Red) Services:

2.6.A The City may require the Contractor to respond to urgent ("Code Red") service requests. Code Red services shall be those services which are needed immediately due to an unforeseen event(s) or a situation which threatens to interfere with the business operations of the City, the safety or wellbeing of any person, or which risks damage to City property. The City shall have the sole and final authority in determining when services will be designated as Code Red.

2.6.B For each request of Code Red service, the City will request services (each instance, a "Notification") and the Contractor shall respond/acknowledge the request within one (1) hour of notification, and must be onsite within 24 continuous hours of Notification by the City.

2.6.C If applicable to the Code Red occurrence, the Contractor shall provide a complete cost estimate with an estimated completion time to the City within 24 continuous hours of Notification. The City's Contract Manager and Contractor may mutually agree that a verbal cost estimate for Code Red Services will meet the needs of the City. Verbal estimates shall not release the Contractor from its responsibilities as described by the terms of this Contract.

2.6.D The Contractor shall remain on-site for the length of time necessary to complete repairs with available materials or to secure and damaged areas while materials are being ordered.

2.6.E Upon completion of the Urgent Service, if additional repairs or services are needed, those repairs or services shall be completed under the terms of General Services. Under no circumstances shall the Contractor proceed with the additional repair or services without the City Contract Manager's, or designee's, authorization.

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- 2.6.F Code Red Services shall be on an as-needed basis and shall be available 24 hours, 7 days a week. Code Red Service hours shall be billed at either the Regular or Non-Regular hourly labor rate as specified in Section 0600, Bid Sheet. The time designation for Regular and Non-Regular hours shall be as defined in this Scope of Work.
- 2.6.G During Code Red Services, all other terms and conditions of this Contract shall apply.
- 2.7 Staffing Requirements
- 2.7.A The Contractor shall provide a single point of contact (SPOC), who is skilled, knowledgeable, and experienced with Hufcor operable partitions and related systems.
- 2.7.B The single point of contact (SPOC), designee, or dispatch shall be available and on-call 24 hours daily including weekends and holidays. The Contractor shall provide the contact information for its SPOC, designee, or dispatch immediately after execution of the Contract.
- 2.7.C All Contractor employees who are performing services under this Contract shall be fully trained and qualified in the maintenance, repair, and installation of the Hufcor operable partitions. The Contractor may be requested to provide training records which demonstrate the employees' qualifications. Records shall be submitted within five (5) business-days following City's request.
- 2.7.D The Contractor shall ensure that its personnel are continuously trained to meet the latest technology and industry standards.
- 2.7.E If applicable, the Contractor's personnel and technicians providing services shall meet all applicable certification requirements of any regulatory agency having jurisdiction over the City.
- 2.7.F All personnel assigned to the project shall wear a complete uniform, including safety shoes. ACCD shall provide visitor's badges as required. Uniforms must be alike and must have the Contractor's name clearly displayed on the front of the shirt and seasonal outerwear. Contractor's personnel shall be neat in appearance.
- 2.7.G The Contractor shall furnish documentation of the assigned personnel's qualifications upon request by the City's Contract Manager. The Contractor may replace personnel working under the Contract only with equally classified and qualified personnel. The City Contract Manager may request that the Contractor remove any personnel whose work is unsatisfactory.
- 2.8 Parts, Equipment, and Materials:
- 2.8.A Materials and parts furnished shall be the latest products available to commercial trade, shall be of the highest quality, and shall be factory new and free of defects in materials and workmanship.
- 2.8.B The Contractor shall provide all replacement parts, including Original Equipment Manufacturer (OEM) and proprietary parts. During the term of the Contract, movable wall partition systems components may become obsolete and new OEM parts may not be available. In such instances, the Contractor may provide rebuilt OEM parts or equivalent parts from another manufacturer with prior written approval from the City's Contract Manager or designee. Under no circumstances shall the Contractor provide rebuilt OEM parts or equivalent parts without the prior written approval of the City's Contract Manager.

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or designee. In all cases, parts must be equal in quality, operation and performance to original parts and must be free from defects.

- 2.8.C The Contractor shall have access to an inventory of replacement parts required to service and maintain the movable wall partition systems, such that downtime shall not exceed 24 continuous hours. This inventory will be ordered by ACCD and will be stored on ACCD premises (see Section 7.0 herein).
 - 2.8.C.a Within five (5) business days of execution of the Contract, the Contractor shall set up a meeting with ACCD. The purpose of the meeting will be to identify those parts and materials that are most commonly needed for services. ACCD shall maintain sufficient inventory of these parts and materials (In-Stock parts).
 - 2.8.C.b Parts and materials not maintained as In-Stock parts shall be considered special orders.
- 2.8.D The Contractor may markup parts, equipment, and materials in accordance with the markup established in this Contract. All line item charges for materials will be verified by the City.
- 2.8.E Within five (5) business days of request by the City, the Contractor shall provide a published price list or materials catalog used by the Contractor to purchase parts or materials to be used in the performance of this Contract.
- 2.8.F Special Orders: For any part or material which is not in-stock or which must be special ordered, the procedure shall be as follows:
 - 2.8.F.a Contractor shall immediately notify the City of the need to place a special order for materials and shall provide a cost estimate and delivery schedule via phone, e-mail or fax to the City within three (3) business days of notification.
 - 2.8.F.b The City will review the cost estimate. If the City agrees with the cost estimate, the City will provide either verbal or written approval to proceed with the special order.
 - 2.8.F.c Contractor shall acknowledge receipt of the Notice to Proceed by phone, e-mail, or fax to the City. NO ORDERS SHALL BE PLACED UNTIL THE CONTRACTOR RECEIVES APPROVAL FROM THE CITY. The City shall not be responsible, financially or otherwise, for special orders placed which do not have the City's prior approval.
 - 2.8.F.d After placing the special order, the Contractor shall immediately notify the City of the expected delivery date of the order.

3.0 ACCD CONTRACTOR ACCESS

Authorized ID and access to those acting as a Contractor or Contractor's Subcontractor who are providing services at Austin Convention Center Department (ACCD) must adhere to the security requirements defined below. Violation of the applicable requirements below may cause the Contractor or its Subcontractor to be removed from ACCD facilities.

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- 3.1 The Contractor shall enter through the service entrance and check in at the Security Check-In inside the service yard or with the Security Control Center. Any other means of access entry into the facilities are unauthorized.
- 3.2 Contractors, Contractor's Subcontractors or others who are providing services at ACCD shall be issued Temporary Badge/Access, which may be an ACCD Photo or Non-Photo ID Badge.
- 3.3 Contractor shall clearly display (above the waist and on the outer-most garment) an access/ID device at all times while on ACCD facility premises.
- 3.4 Use of ACCD access/ID devices to access any part of ACCD facilities for non-business purposes (events, shows, etc.) is prohibited.
- 3.5 Contractor shall not enter restricted areas of the facility with signs stating "Authorized Personnel Only" unless given authorization to do so or if being escorted by the City's Contract Manager. Authorization shall be in written format from the City's Contract Manager.
- 3.6 Unless authorized by ACCD, exterior access into ACCD facilities using keys is prohibited.
- 3.7 Under no circumstances shall any person issued an access/ID device, allow another person entry into any ACCD facility using their access/ID device. This includes "piggy-backing" through access doors or gates.
- 3.8 Contractors and Contractor's Subcontractors conducting business at ACCD shall not walk through the open service yard vehicle-gates to enter or exit the service yards. Entry and exit shall be by way of the designated pedestrian gates and walkway using appropriate access/ID devices and check-in procedures.
- 3.9 Contractor or Contractor's subcontractors shall return all temporary badge/access devices to the Security Control Center at the completion of the ACCD work assignment. Failure to return temporary badges/access devices at the completion of work assignments may lead to future ACCD facility access restrictions.

4.0 WARRANTY

- 4.1 Contractor's work under this Contract shall conform to the Limited Warranty (Warranty). Warranty shall cover any malfunctions or defects in products, parts and against faulty services (including labor/installation).
- 4.2 The Warranty period for materials and workmanship shall be one (1) year after date of shipment to City for new projects or ninety (90) days from the date of shipment to City for replacement parts.

5.0 TRANSPORTATION AND PARKING

- 5.1 Contractor shall provide all transportation required to perform the work. Contractor shall park its vehicles in areas designated by the City at the Contractor's expense, if any. All vehicles must be clearly marked with the Contractor's or Subcontractor's name on both sides of each vehicle. Magnetic signs are acceptable.
- 5.2 The Contractor may charge a trip-charge (round-trip), as shown in Exhibit A to the Contract. No other charges are permitted for other administrative, overhead or per diem costs.

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6.0 SAFETY

- 6.1 Contractor shall not require any person to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety. Contractor shall comply with all provisions of the Occupational Health and Safety Act (OSHA).
- 6.2 Contractor shall be completely familiar with, and shall enforce all City, State of Texas and Federal OSHA regulations and requirements as applicable, including but not limited to, the following:
 - 6.2.A Contractor personnel must wear applicable personal protection equipment at all times.
 - 6.2.B Contractor personnel operating equipment or handling materials must be fully trained in the safe use of the equipment or materials.
 - 6.2.C Contractor personnel must follow and apply safety practices prevailing in their applicable industry.
 - 6.2.D Contractor shall block off and mark all work areas with appropriate safety signs and safety barricades/bollards to protect the public from injury.
 - 6.2.E Contractor shall post safety warnings as necessary to ensure safe operations.
 - 6.2.F When Contractor becomes aware of a hazardous or a potentially hazardous condition during the course of performing services, the Contractor shall immediately notify the City upon detection of the condition.
 - 6.2.G The Contractor shall coordinate the timing and transportation of over-sized or potentially dangerous materials to the work area. If these materials are transported through the interior of a facility, the Contractor shall take every precaution to ensure public safety. Under no circumstances shall the Contractor transport these materials through the interior of a facility without prior coordination with the City.
- 6.3 Regulatory Requirements: To protect the life and health of employees and other persons; to prevent damage to property, materials, supplies, and equipment; and to avoid work interruptions, Contractor shall comply with the latest 29 CFR 1910, Occupational Safety and Health Standards (General Industry Standards) as revised or amended from time to time. Compliance with OSHA and other applicable laws and regulations for the protection of employees is exclusively the obligation of Contractor, and the City assumes no liability or responsibility for Contractor's compliance or noncompliance with such responsibilities. **CONTRACTOR SHALL INDEMNIFY THE CITY FOR ANY CLAIMS, FINES, OR DEMANDS RESULTING FROM CONTRACTOR'S FAILURE TO COMPLY WITH OSHA REQUIREMENTS.**
- 6.4 Accident Reports: Contractor shall comply with all OSHA reporting requirements for record keeping and reporting of all accidents resulting in death, injury, occupational disease, or adverse environmental impact. The Contractor shall provide a verbal report to the City within one normal working day of occurrence. Contractor shall cooperate with the City, providing written documentation and any information required for their records.
- 6.5 Environmental Requirements: Contractor shall comply with all applicable federal, state, and local environmental protection laws, regulations, and standards. Contractor shall comply with any other statutory requirements for clean air, clean water, toxic substances control, pollution control, resource conservation and recovery. All environmental protection matters or questions must be coordinated with the City.

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- 6.6 Stop-Work: Contractor shall be responsible for the enforcement of all safety requirements for any work performed under the Contract. If Contractor fails or refuses to promptly comply with safety requirements, the City's Contract Manager may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such order shall be made the subject of a claim for extension of time or for excess costs or damages to Contractor.
- 6.7 All OSHA, City and local codes, standards, rules and regulations concerning safety shall be adhered to by the Contractor.
- 6.8 Contractor shall be responsible for assuring the safety of its employees, City employees and the general public during performance of all services under this contract.
- 6.9 Contractor shall assure that all crews are fully and properly equipped to perform services promptly and safely without delay.

7.0 MAINTENANCE OF IN-STOCK PARTS INVENTORY

The In-Stock parts inventory described in Paragraph 2.8.C herein will be ordered by ACCD and will be held on ACCD premises, accessible to Contractor. ACCD will keep quantities of the In-Stock parts on-hand sufficient to meet those needs identified by Contractor (see Paragraph 2.8.C.a). ACCD will place all orders for In-Stock parts; no orders for such parts shall be placed by Contractor. The In-Stock parts inventory shall be used only for fulfillment of requirements under this Contract.

8.0 SILENCE OF SPECIFICATIONS

The apparent silence of these specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be provided. All interpretations of these specifications shall be made on the basis of this statement.

EXHIBIT D
LIMITED WARRANTY



As the exclusive limited remedy of the Purchaser, the Company warrants the equipment or material listed on the face hereof to be free from defects in material or workmanship under normal use and service, its obligation under this warranty being limited to the repair or replacement, F.O.B. destination, for any part or parts of its own manufacture which shall, within one (1) year after date of shipment for new projects or ninety (90) days from the date of shipment for replacement parts to the Purchaser, be returned to it with transportation charges prepaid and of which Company has received written notice of such alleged defects and further provided that this material or equipment shall have been maintained in its original installation or shall have been in the continuous possession of the original user. This warranty is expressly in lieu of all other express or implied warranties including, but not limited to, any warranty of merchantability or fitness for a particular purpose, and of all other obligations and liabilities on the Company's part. The Company neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its material or equipment. There are no warranties except those stated herein and in the Contract. The Company makes no representations whatsoever in regard to merchandise, equipment, parts or accessories not of the Company's own manufacture, the Company's liability in such cases being limited to such warranty, if any, as the manufacturer thereof may grant to the Company and if none, to the warranties herein expressed. In recognition of the fact that the Company's price makes no provision for such risk, the Company shall not be liable for direct, special or consequential damages or delays, including but not limited to lost profits, good will, loss of time, inconvenience or commercial loss, if such occurs, on account of defective material or workmanship or delays or accelerations in shipment, nor will any allowance be granted for any repairs, alterations, work done or expense incurred in connection with any repairs, alterations or replacements. The Company shall in no way be liable or responsible for injuries or damages to persons or property arising out of the use or operation of all the material or equipment within described, including component parts thereof. The Company reserves the right to make any changes in design, additions to and improvements in its product without imposing any obligation upon itself to install them on its product previously manufactured.



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 06/01/2016

DEPT: Austin Convention Center Department

TO: Purchasing Officer or Designee

FROM: Jerry Slabaugh

BUYER: Sharon Patterson

PHONE: (512) 404-4431

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Hufcor, Inc. dba, Hufcor Texas Group is the sole source provider for parts and services of the Hufcor Partition walls. There are no other authorized provider, distributor, or dealer for Hufcor parts and services within the Austin, Texas. No other company is authorized to support, maintain, repair or warranty the Hufcor Partition walls.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The Austin Convention Center Department is seeking a 36-month contract with Hufcor, Inc., dba Hufcor Texas Group to perform preventative maintenance, repair, and warranty on the Hufcor Partition walls in amount no to exceed \$150,000 with three 12-month extension options in an amount not to exceed \$50,000 each for a total Contract amount not to exceed \$300,000.

Austin Convention Center exclusively has, with the exception of one movable horizontal partition, Hufcor movable partition walls throughout the meeting rooms and exhibit space. Due to the nature of multi-purpose room requirements, it is imperative that ACCD is able to provide a barrier, or section, within each room and space. When sectioned-off, each area is then secure, sound-restrictive, and can function as a stand-alone room. The expense to replace the current partition walls would be extensive and would require a complete replacement of all partition walls, exceeding the total requested funding of this proposed Contract. In addition to cost, installation would need to be scheduled at night and around scheduled events, resulting in a minimum replacement time frame of 12-24 months.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Hufcor Inc., dba Hufcor Texas Group which will cost approximately \$ 300,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Originator

Date

Approved
Certification

Department Director or designee

Date

Assistant City Manager / General Manager
or designee (if applicable)

Date

Purchasing Review
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013

HUFCOR[®]

TO:	Austin Convention Center	PAGE	1 of 1
ATTN:	Jerry Slabaugh	PHONE #:	512-404-4310
FROM:	Jason Edmundson	FAX #:	512-404-4352
RE:	Sole Source Letter	EMAIL:	jerry.slabaugh@austintexas.gov

Dear Purchasing Professional:

This letter is to confirm that Hufcor Texas Group is a subsidiary of Hufcor Inc., Janesville, WI and the sole source supplier in Austin, TX for new operable partitions, repair services, or OEM replacement parts. There are no other agents or dealers authorized to represent this product within this territory.

The quoted price by Hufcor Texas Group is equal to or less than that given to its most favored customers or other government agencies.

If you desire additional information, don't hesitate to contact us at (972) 986-7400 at any time or visit our website at www.hufcortx.com. Thank you for your interest in our products.

Sincerely,



Jason Edmundson
General Manager
Cell 972-841-0859
E-mail - jedmundson@hufcortx.com



WORLD LEADER IN FLEXIBLE SPACE MANAGEMENT

Hufcor - Dallas
454 W. Mockingbird Lane
Dallas | TX 75247-6614 USA
Ph (888) 414 1576

Hufcor - San Antonio/Austin
9330 Corporate Dr. Suite 512
Selma | TX 75247-6614 USA
Ph (210) 439 7980

www.HufcorTX.com

**PRICING SCHEDULE
CITY OF AUSTIN
HUF COR, INC.**

ITEM NO.	LABOR	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Regular Hours (Services completed Monday - Friday 7am - 5pm)	250	HOURLY	90.00	22,500.00
2	Non-Regular Hours (Services completed 5:01 p.m. through 6:59 a.m. Monday through Friday, all day Saturday and Sunday, and Holidays)	70	HOURLY	135.00	9,450.00
ITEM NO.	MATERIAL	AMOUNT BEFORE VENDOR MARK-UP		% MARK-UP	AMOUNT AFTER VENDOR MARK-UP
3	Mark-up to cost for Parts and Materials	\$10,000		25.00%	12,500.00
4	Percentage Mark-up to vendor cost for rental of height-reducing equipment as defined in Section 0500, Scope of Work (shall not exceed 5%)	\$5,000		5.00%	5,250.00
TOTAL BID					49,700.00

FOR INFORMATIONAL PURPOSES ONLY: THE CITY MAY WISH TO PURCHASE ADDITIONAL ITEMS OR SERVICES FROM HUF COR, INC. IN THE FUTURE THAT ARE NOT LISTED ON THIS PRICING SCHEDULE. INDICATE THE DISCOUNT FROM MANUFACTURER'S SUGGESTED RETAIL PRICE FOR THESE ITEMS OR SERVICES. 0 % FROM MSRP

SIGNATURE OF
AUTHORIZED REPRESENTATIVE: _____



PRINTED NAME: JASON EDMONDSON