

## Exhibit B ENERGY SAVINGS PERFORMANCE CONTRACT

This Energy Savings Performance Contract (the “Contract”) is between the City of Deer Park, Texas (“Owner”), and:

Company: Performance Services Inc (PSI)  
Address: 801 E Old Settlers Blvd Ste 100  
City, State Zip: Bound Rock TX 78664  
Fax #: \_\_\_\_\_ Phone: \_\_\_\_\_  
Tax ID #: \_\_\_\_\_

(“Consultant”) (collectively Owner and Consultant are referred to as the “Parties”). The “Project” refers to the Consultant providing Owner with Advanced Metering Infrastructure (AMI) and Energy Conservation Retrofits or utility assets. “Subconsultants” refers to any of the Consultant’s subcontractors, suppliers, consultants, vendors, or service providers used to complete the Project.

The “Work” shall mean the services provided by the Consultant to complete the Project, including design services, installment services, and other services as provided in the Project Overview and other descriptors contain in the RFP which is incorporated herein by reference.

### 1. RELATIONSHIP OF THE PARTIES

- 1.1 Consultant shall provide the Work to complete the Project in accordance with the terms and conditions of this Contract. Consultant’s performance of the Work shall be as a professional consultant to Owner to carry out the Project and to provide the technical documents and supervision to achieve Owner’s Project objectives.
- 1.2 In administering this Contract, Owner may retain the services of an independent project manager and other consultants as needed to fulfill Owner’s objectives.
- 1.3 Consultant shall provide a list of all sub-consultants which Consultant intends to utilize on the Project (“Sub-consultants”). This list shall include such information on the qualifications of the Sub-consultants as may be requested by Owner. Owner reserves the right to review the Sub-consultants proposed. Consultant shall not retain a Sub-consultant to which Owner has a reasonable objection.
- 1.4 Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Sub-consultants identified by Consultant (collectively, the “Key Personnel” and individually, the “Key Person”). Therefore, Consultant shall make available Key Personnel as identified in its Statement of Qualifications. Consultant shall provide to Owner a list of the proposed Key Personnel to be assigned to the Project. This list shall include such information on the professional background of each Key Person as may be requested by Owner. If any Key Person becomes unavailable to Consultant, the Parties shall mutually agree

upon an appropriate replacement. Without prior notice to, and the written consent of, Owner, Consultant shall not:

- i. re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Contract;
- ii. allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Contract; or
- iii. substitute any Key Person.

Any of these actions shall constitute a material breach of the Contract. Consultant shall remove any individual or Sub-consultant from the Project if so directed by owner in writing following discussion with Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

## **2. CONSULTANT'S RESPONSIBILITIES; REPRESENTATIONS AND WARRANTIES**

- 2.1 Consultant shall perform all Work with the professional skill and care ordinarily provided by a competent consultant practicing under the same or similar circumstances and professional license (the "Standard of Care").
- 2.2 Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables, and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of Consultant.
- 2.3 Consultant shall be responsible for correcting any inconsistencies, errors, or omissions in the drawings, specifications, deliverables, and other documents prepared by Consultant or Sub-consultants at no additional costs to Owner.
- 2.4 Owner's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents. Any review or acceptance by Owner will not relieve Consultant of any responsibility for complying with the Standard of Care.
- 2.5 Except as specifically provided, Consultant shall, at no additional cost to Owner, render assistance to Owner in resolving problems or other issues relating to the Project design or to specified materials.
- 2.6 During the term of the Contract, Consultant shall obtain, hold, maintain, and fully pay for all licenses and permits required for the Project, unless otherwise specified in the Contract. Consultant shall review the Project site and the nature of the Work and advise Owner throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.
- 2.7 Consultant shall pay all Sub-consultants and other subcontractors, or service providers as required by Consultant's contracts with those Sub-consultants, subcontractors, or service providers. Consultant agrees that Owner has no direct or indirect contractual obligation or other legal duty whatsoever to pay the Sub-consultants and other subcontractors of Consultant or otherwise ensure that Consultant makes full and timely payment to those Sub-consultants, subcontractors, or service providers for the Work performed on the Project.

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- 2.8 Consultant represents and warrants to Owner that:
- 2.8.1 Consultant has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Consultant have the actual authority to bind Consultant to the terms of this Contract;
  - 2.8.2 When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms; the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon Consultant and do not result in a violation of any law, regulation, court decree or court order or other legal processes applicable to the Consultant;
  - 2.8.3 Consultant shall, at all times during the term of this Contract, be duly licensed to perform the Work or services, and if there is no licensing requirement for the profession or Work, be duly qualified and competent;
  - 2.8.4 Consultant is an experienced professional having the skill, legal capacity, and professional ability necessary to perform the Work required under this Contract and to design and administer a project having the scope and complexity of the Project;
  - 2.8.5 Consultant has the capabilities and resources necessary to perform Consultant's obligations under this Contract;
  - 2.8.6 Consultant is, or shall become, in a manner consistent with the Standard of Care, familiar with current laws, rules, and regulations which are applicable to the design and construction of the Project;
  - 2.8.7 All Work shall be performed in accordance with the Standard of Care;
  - 2.8.8 The Project, when completed and if constructed in accordance with the intent established by the drawings, specifications, deliverables and other documents prepared by Consultant pursuant to this Contract, shall be structurally sound and a complete properly functioning facility suitable for the purposes for which it is intended.; and
  - 2.8.9 The published specifications that Consultant has specified, designated, and planned pursuant to this Contract conform to the Contract requirements.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Contract or at law.

### 3. GENERAL CONTRACT PROVISIONS

- 4.1 Contract Performance. Consultant shall at all times perform the Work diligently and without delay and shall punctually fulfill all Contract Document requirements consistent with the schedule for the performance of the Work set forth herein. Expiration or termination of the Contract shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance. **Time is of the essence in the performance of this Contract.**
- 4.2 Access to Records. For not less than three (3) years after the Contract's expiration or termination, Owner, the State of Texas, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Consultant and the Sub-consultants which pertain to the Contract for the purpose of making audits, examination, excerpts, and transcripts. If, for any reason, any part of this Contract, any Project-related consultant contract, or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Consultant shall provide Owner and the other entities referenced above with full access to these records in preparation for and during litigation.
- 4.3 Funds Available and Authorized. Owner reasonably believes as for the Effective Date that sufficient funds are available and authorized for expenditure to finance the cost of this Contract

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within Owner's appropriation or limitation. Consultant understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to the Work performed after the last day of the current biennium is contingent on Owner receiving funds from the State, limitations or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

- 4.4 Contract Price. The "Contract Price," is the maximum, not-to-exceed, total amount payable under this Contract unless it is increased or decreased by the price of approved change orders.
- 4.4.1 The Consultant agrees that the portion of the Contract Price attributable to the Construction Work shall not exceed the guaranteed maximum price of \$8,200,000.00 (the "GMP"), that amount having been proposed by the Consultant as part of the proposal.
- 4.4.1.1 The Consultant's fee shall be included in the GMP as (\_\_\_\_\_)% of the Cost of the Work (as defined in Section 4.5 below).
- 4.4.2 Design and installation services, including project management, construction management, and construction administrative services, shall be included in the GMP.
- 4.4.3 Acceptance of the GMP. The execution of this Contract signifies the acceptance of the GMP by Owner. The full performance and payment bond required by this Contract and law shall be equal to the GMP.
- 4.4.4 GMP Savings. In the event that the actual and final Cost of the Work is less than the GMP as amended, the difference shall accrue 100% to Owner.
- 4.5 Cost of the Work. The term "Cost of the Work" shall mean costs necessarily incurred by the Consultant in the proper performance of the Work; provided, however, the Cost of the Work shall include only the items specifically identified in this section and must be directly related to the Work in this Project.
- 4.5.1 Labor Costs include the following:
- 4.5.1.1 Wages of workers directly employed by the Consultant to perform the Work;
- 4.5.1.2 Wages and salaries of the Consultant's supervisory and administrative personnel stationed at the site, and for such personnel off the site when specifically related to the Project and with Owner's agreement after review of any information and Documents required by Owner;
- 4.5.1.3 Wages and salaries of Consultant's supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly required for the work; and
- 4.5.1.4 Fringe benefit costs paid or incurred by the Consultant for taxes, insurance, contributions, assessments, and benefits required by law, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of Work under this section.
- 4.5.2 Sub-consultants/Subcontract Costs include the following:
- 4.5.2.1 Payments made by the Consultant to Sub-consultants/subcontractors in accordance with the requirements of the subcontracts toward completion of the Project;
- 4.5.2.2 Costs, including transportation, of materials and equipment incorporated or to be incorporated into the completed Project; and
- 4.5.2.3 Costs of materials in excess of those actually installed but required to provide a reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to Owner at the completion of the Work, or, at Owners option, shall be sold by the Consultant. Any sale shall be commercially reasonable, and the Consultant shall provide an accounting for such a sale within 15 days of the transaction. Net

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amounts realized, if any, from such sales shall be credited to Owner as a deduction from the Cost of Work.

- 4.5.3 Costs of Other Materials and Equipment, and Related Items include the following costs:
  - 4.5.3.1 Costs, including transportation, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Consultant at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Consultant. Cost for items previously used by the Consultant shall mean fair market value;
  - 4.5.3.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, are provided by the Consultant at the site. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed acquisition costs, and for individual items exceeding \$10,000 shall be subject to Owner's prior approval;
  - 4.5.3.3 Costs of removal of debris from the site; and
  - 4.5.3.4 That portion of the reasonable travel and subsistence expenses from the Consultant's personnel, at Owner approved rates, but not in excess of the rates allowed by Owner's employees, incurred while traveling in the discharge of duties connected with the Work.
- 4.5.4 Miscellaneous Costs that are allowable as Costs of Work include the following:
  - 4.5.4.1 That portion of premiums for insurance directly attributable to this Project, including deductible for builders all/risk insurance (but excluding premiums for comprehensive/commercial general liability, automobile liability, professional liability/errors & omissions, and worker's compensation coverage), and payment and performance bonds;
  - 4.5.4.2 Sales, use, or similar excise taxes imposed by a governmental authority that are directly related to the Work for which the Consultant is liable;
  - 4.5.4.3 Fees and assessments for permits, licenses, and inspections for which the Consultant is required by the Contract to pay;
  - 4.5.4.4 Costs of drawings, Plans, Specification, and other Documents required to complete the Work, except as provided by Owner; and
  - 4.5.4.5 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.
- 4.5.5 Repairs to damaged, defective, or nonconforming work. The Cost of Work shall also include costs, which are incurred by the Consultant in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property.

**4.6 Contract Time.**

- 4.6.1 Commencement of Work. The Work shall commence on the date the Owner issues the Notice to Proceed (the "Date of Commencement"), unless the parties mutually agree otherwise in writing. Owner's Notice to Proceed shall be issued on or after the effective date of this Contract.
- 4.6.2 Substantial Completion. Substantial Completion for the Work shall be achieved no later than December 31, 2025 ("Substantial Completion Date").
- 4.6.3 Acceptance of Work. A prerequisite to Owner's acceptance is that the Consultant must first warrant, by written notice to Owner's authorized representative, that the Consultant has substantially completed the Work.
- 4.6.4 Final Completion of the Work. Final Completion of the Work, or identified portions of the Work, shall be achieved as expeditiously as practicable. All of the dates set forth in this section shall be subject to adjustment by the Owner.

4.7 Liquidated Damages. Consultant understands that if it does not attain Substantial Completion by the Substantial Completion Date, Owner will suffer damages, which are difficult to determine and accurately specify. Consultant agrees that if it does not attain Substantial Completion by the Substantial Completion Date, Consultant shall pay to Owner \$1,100.00 per day as liquidated damages for each subsequent day until the Consultant attains Substantial Completion in accordance with the Contract Documents and the Owner's standards. The liquidated damages provided herein shall be in lieu of a claim for consequential damages incurred by Owner as a result of delay in achieving Substantial Completion.

4.8 Insurance. Consultant shall provide and maintain the following insurance until termination of this Contract

<b>Professional Liability:</b>	\$1,000,000 per claim and \$2,000,000 in the Aggregate
<b>Professional Liability Umbrella/Excess:</b>	\$5,000,000
<b>Worker's Compensation:</b>	\$1,000,000 or Statutory Limits
<b>Comprehensive General Liability:</b>	Occurrence \$1,000,000 Aggregate \$2,000,000 Personal Injury \$1,000,000 each person (Coverage to include groups A, B & C w/exclusion "C" aggregate removed)
<b>Automobile Liability:</b>	\$1,000,000 combined single limit
<b>Consultants' Subconsultants</b>	\$500,000

1. The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to Owner. Owner will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.

2. The policy so issued in the name of Consultant shall also name Owner as additional insured, except for professional liability insurance and worker's compensation insurance. All policies held by Consultant shall be primary coverage.

3. Consultant shall ensure Consultant's Subconsultants maintain the minimum level of insurance as required by Consultant under this Contract. Consultant shall furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner, and a statement that, except for professional liability insurance and worker's compensation insurance, Owner is named as additional insured. Consultant shall permit Owner to examine the insurance policies, or at Owner's option, Consultant shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If Consultant neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Consultant's expense.

4. Consultant's General Liability, Automobile Liability, and Worker's Compensation Insurance policies shall be endorsed to provide a waiver of subrogation in favor of Owner.

4.9 Indemnity.

4.9.1 **CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S OFFICERS, CONSULTANTS,**

AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS', EXPERT, OR CONSULTANT FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK. FOR ANY SUCH CLAIM, DAMAGE, LOSS, COST OR EXPENSE THAT IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, CONTRACTOR'S INDEMNITY OBLIGATION APPLIES ONLY IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT, A SUBCONSULTANT OR SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 4.10.

- 4.9.1.1 THE INDEMNIFICATION OBLIGATION UNDER SECTION 4.10.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONSULTANT, OR A SUBCONSULTANT OR SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

**4.9.2 CLAIMS FOR PROFESSIONAL LIABILITY.**

A. GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS EMPLOYEES, AGENTS, AND REPRESENTATIVES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN "INDEMNITEE" AND COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS INCURRED BY INDEMNITEES WHICH ARE:

1. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY CONSULTANT, ITS AGENT, ANY SUBCONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL;
2. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF CONSULTANT'S STANDARD OF CARE, BY THE CONSULTANT, ITS AGENT, ANY SUBCONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL;
3. CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;
4. DUE TO THE FAILURE OF CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL TO PAY THEIR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR
5. OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES ATTRIBUTABLE TO

BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONSULTANT, ITS AGENT, ANY SUBCONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL

B. REIMBURSEMENT OF GOVERNMENTAL AGENCY'S FEES IN DEFENSE OF CLAIMS.

TO THE EXTENT OWNER INCURS ATTORNEY'S FEES IN DEFENSE OF ANY CLAIM ASSERTED AGAINST OWNER WHICH ARISES OR RESULTS FROM THE ALLEGED ACTS OR OMISSIONS OF CONSULTANT DESCRIBED IN SECTION A ABOVE, CONSULTANT SHALL REIMBURSE OWNER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONSULTANT'S LIABILITY FOUND AFTER A FINAL ADJUDICATION OF LIABILITY.

4.9.3 Owner defensive requirement. Notwithstanding the obligations under Sections 4.10.1 or 4.10.2, neither Consultant nor any attorney engaged by Consultant shall defend any claim in the name of Owner, nor purport to act as legal representative of the City, without the prior written consent of the City of Deer Park Attorney(s). Owner may, at any time and at its election, assume its own defense and settlement of any claims in the event that: it determines that Consultant is prohibited from defending the City; Consultant is not adequately defending the Owner's interests; an important governmental principle is at issue; or it is in the best interests of the Owner to do so. The City of Deer Park reserves all rights to pursue any claims it may have against Consultant if Owner elects to assume its own defense.

4.9.4 Owner's Actions. This Section 4.10 does not include indemnification by Consultant of the Owner or their officers, agents, and employees, for the acts or omissions of the Owner or their officers, agents, and employees, whether within the scope of the Contract or otherwise.

4.10 Consultant's Status.

4.10.1 Consultant shall perform all Work as an independent contractor. Although Owner reserves the right to set the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, Owner cannot and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Work. Consultant, Consultant's employees and the Sub-consultants are not "officers, employees, or agents" of the Owner.

4.10.2 Consultant shall not have control or charge of, and shall not be responsible for, the acts or omissions of other consultants or contractors under contract with Owner who are performing services or construction work on the Project. However, this provision does not in any way change Consultant's professional responsibility to report to Owner any information, including information on the performance of consultants or contractors outside the control or charge of Consultant, concerning activities or conditions that have or could have an adverse effect on Owner or the Project.

4.11 Successors & Assignments. The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Contract is executed, Consultant shall not enter into any Sub-consultant agreements for any of the Work or assign or transfer any of its interest in this Contract, without the prior written consent of the Owner.

- 4.12 Compliance with Applicable Law. Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work. Consultant, the Sub-consultants, if any, and all employers providing Work, labor or materials under this Contract are subject employers under the Texas workers' compensation law.
- 4.13 Governing Law; Jurisdiction; Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively in court of competent jurisdiction in Harris County, Texas.
- 4.14 Mediation. Consultant and Owner, in an effort to resolve any conflicts that may rise during the design or construction of the Project or following the completion of the Project, agree that all disputes between them arising out of or relating to this Contract or any amendments hereto shall be submitted to non-binding mediation unless the Parties mutually agree otherwise. Consultant further agrees to include a similar provision in all agreements with Sub-consultants or subcontractors or agents retained for the Project, thereby providing for mediation as the primary method for dispute resolution between the Parties to those agreements. All parties agree to exercise their best effort in good faith to resolve all disputes in mediation.
- 4.15 Severability. The Parties agree that if any term or provision of this Contract is declared by a Court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 4.16 Force Majeure. Neither party shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to fire, riot, acts of God, terrorist acts, or war where such cause was beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.
- 4.17 Waiver. The failure of Owner to enforce any provision of this Contract shall not constitute a waiver by Owner of that or any other provision.
- 4.18 Third Party Beneficiaries. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against Owner or Consultant. Consultant's Work under this Contract shall be performed solely for Owner's benefit and no other entity or person shall have any claim against Consultant because of this Contract for the performance or nonperformance of Work hereunder.
- 4.19 Ownership of Work Product.
- 4.19.1 Definitions. As used in this Contract, the following terms have the meanings set forth: "Consultant Intellectual Property" means any intellectual property that is owned by Consultant and developed independently from this Contract and that is applicable to the Work or included in the Work Product. "Third Party Intellectual Property" means any intellectual property that is owned by parties other than Owner or Consultant and that is applicable to the Work or included in the Work Product. "Work Product" means the Work Consultant delivers or is required to deliver to Owner under this Contract. Work Product

includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, whether completed, partially completed or in draft form.

- 4.19.2 Work Product. Except as provided in Sections 3.15.3 and 3.15.4, all Work Product is created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire” or an employment to invent, shall be the exclusive property of Owner. Owner and Consultant agree that such original works of authorship are “work made for hire” of which the Owner is the author within the meaning of the United States Copyright Act. To the extent that Owner is not the Owner of the intellectual property rights in such Work Production, Consultant hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owners reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Owner. Consultant forever waives any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 4.19.3 Consultant Intellectual Property. In the event that Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grant to Owner an irrevocable, non-exclusive, non-transferable, perpetual royalty-free license to use Consultant Intellectual Property, including the right of Owner to authorize contractors, consultants and others to use Consultant Intellectual Property, for the purposes described in this Contract.
- 4.19.4 Third Party Intellectual Property. In the event that Third Party Intellectual Property is necessary for the use of any Work Production, Consultant shall secure on Owner’s behalf and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third-Party Intellectual Property, including the right of Owner to authorize contractors, consultants and others to use the Third-Party Intellectual Property, for the purposes described in this Contract.
- 4.19.5 Consultant Intellectual Property–Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of Owner to authorize contractors, consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Contract.
- 4.19.6 Third Party Intellectual Property–Derivative work. In the event that Work Product created by Consultant under this Contract is a derivative work base on Third Party Intellectual Property, Consultant shall secure on Owner’s behalf and in the name of Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, including the right to authorize contractors, consultants and others to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, for the purposes described in this Contract.
- 4.19.7 Consultant Use of Work Product. Consultant may refer to the Work Product in its brochures or other literature that consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications and calculations on other, unrelated projects.

- 4.20 Confidential Information. Consultant acknowledges that it or its employees, Sub-consultants, subcontractors or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of Owners or Owner's clients. Any and all information provided by Owner and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, Sub-consultants, subcontractors or agents in the performance of this Contract shall be deemed to be confidential information of Owner ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that Owner designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that:
- a) is or becomes (other than by disclosure of Consultant) publicly known;
  - b) is furnished by Owner to others without restrictions similar to those imposed in this Contract;
  - c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract;
  - d) is obtained from a source other than Owner without the obligation of confidentiality;
  - e) is disclosed with the written consent of the Owner; or
  - f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
- 4.20.1 Non-Disclosure. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever other than the provision of Work to Owner under this Contract, and to advise each of its employees, Sub-consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise Owner immediately in the event Consultant learns or has a reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Consultant will at its expense cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner or Consultant against any such person. Consultant agrees that, except as directed by Owner, Consultant will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon the termination of this Contract or at Owners request, Consultant will turn over to Owner all documents, papers, and other matter in Consultant's possession that embody Confidential Information.
- 4.20.2 Injunctive Relief. Consultant acknowledges that breach of this Section, including disclosure of any Confidential Information, will give rise to irreparable injury to Owner that is inadequately compensable in damages. Accordingly, Owner may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Owner and are reasonable in scope and content.
- 4.20.3 Publicity. Consultant agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of Owner.
- 4.20.4 Security. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of Owner when

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using, having access to, or creating systems for any of Owner's computers, data, systems, personnel, or other information resources.

4.21 Termination.

- 4.21.1 Parties right to Terminate by Agreement. This Contract may be terminated at any time, in whole or in part, by written mutual consent of the Parties.
- 4.21.2 Owner's Right to Terminate for Convenience. Owner may, at its sole discretion, terminate this Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.
- 4.21.3 Owner's Right to Terminate for Cause. Owner may terminate this Contract immediately, in whole or in part, upon written notice to Consultant, or such late date as Owner may establish in such notice, upon the occurrence of any of the following events:
  - 4.21.3.1 Owner lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow Owner, in the exercise of its reasonable discretion, to pay for Consultant's Work;
  - 4.21.3.2 Federal, state, or local laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract are prohibited or Owner is prohibited from paying for such Work from the planned funding source;
  - 4.21.3.3 Consultant no longer holds all licenses or certificates that are required to perform the Work in the Project;
  - 4.21.3.4 Consultant fails to provide Work within the times specified or allowed under this Contract; fails to perform any of the provisions of this Contract; or so fails to perform the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from Owner, does not correct such failures within the time that Owner specifies (which shall not be less than 10 calendar days, except in the case of emergency);
  - 4.21.3.5 Consultant commits any material breach or is in default of any covenant, warranty obligation or agreement under this Contract;
  - 4.21.3.6 Consultant makes any false or misleading representation or warranty to Owner.
  - 4.21.3.7 Consultant:
    - a) applies for or consents to the appointment or possession by, a receiver, custodian, trustee, or liquidator of Consultant or all or substantially all of its property;
    - b) admits in writing its inability, or is unable, to pay its debts as they become due;
    - c) makes a general assignment for the benefit of its creditors;
    - d) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect);
    - e) is adjudicated bankrupt or insolvent;
    - f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts;
    - g) acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as not or hereafter in effect); or
    - h) takes any corporate action for the purpose of effecting any of the foregoing.
  - 4.21.3.8 A proceeding or case is commenced, without the application or consent of Consultant, in any court of competent jurisdiction, seeking:
    - a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Consultant;

- b) the appointment of a receiver, custodian, trustee, liquidator, or the like of Consultant or of all or any substantial part of its assets; or
  - c) similar relief in respect to Consultant under any law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, and such proceeding or case continues un-dismissed, or an order, judgment or decree approving or ordering any of the foregoing is entered and continues un-stayed and in effect for a period of 20 consecutive days, or an order for relief against ESCO is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
- 4.21.3.9 Consultant has any change in ownership or control without the prior approval of Owner, which consent shall not be unreasonably withheld.
- 4.21.4 Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by Owner, Consultant shall immediately cease all activities related to the Work or the Project.
- 4.21.5 Consultant's Right to Terminate for Cause.
- 4.21.5.1 Consultant may terminate this Contract if Owner fails to pay Consultant pursuant to this Contract, provided that Owner has failed to make such payment to Consultant within forty-five (45) calendar days after receiving written notice from Consultant of such failure.
- 4.21.6 Delivery of Work Product/Retained Remedies of Owner. As directed by Owner, Consultant shall, upon termination, promptly deliver to Owner all documents, information, works in progress and other property that are deliverables or would be deliverables if the Contract has been completed. Consultant shall remain responsible to Owner for the quality of its Work Product. By Consultant's signature on this Contract, Consultant allows Owner to use Work Product and other property for Owner's intended use. The rights and remedies of Owner provided in this Section 4.23 are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- 4.22 Payment Upon Termination.
- 4.22.1 In the event of such termination, Consultant's sole and exclusive remedy will be to receive payment for any portion of the Work performed up to the date of termination, except in the event of a termination under Section 4.23.3, where Owner may elect to withhold payment from Consultant to the extent necessary to protect the Owner from damages arising from Consultant's breach. In no event will Consultant be entitled to any compensation, including close-out costs or otherwise, for any phase of the project for which the City has not previously issued a written Notice to Proceed. Within thirty (30) days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Work completed before termination and Contract close-out costs actually incurred by Consultant. Owner shall not be obligated to pay for any such costs invoices to and received by Owner later than thirty (30) days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall promptly refund any excess amount upon demand.
- 4.22.2 In the event of termination, Owner shall have any remedy available to it in law or equity. Such remedies may be pursued separately, collectively or in any order whatsoever.
- 4.23 Notice. Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery or mail, postage prepaid, to Consultant or Owner at the address or number set forth herein, or to such other address or number as either party may provide pursuant to this "Notice" section. Any notice delivered by mail shall be deemed to be given five (5) calendar days after the date of mailing. Any notice by personal delivery shall be

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deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

- 4.24 Media. Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Owner's prior written authorization.
- 4.25 Conflict of Interest. Except with Owner's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.
- 4.26 Entire Agreement. This Contract constitutes the entire agreement between the parties on the subject matters addressed herein. The terms of this Contract cannot be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties and containing all required City of Deer Park approvals. Any such waiver, alteration, modification, supplementation or amendment shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, regarding this contract except as contained, incorporated or referenced herein.
- 4.27 Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, Consultant represents the following:
1. it is not owned by or the majority of stock or other ownership interest in Consultant is not held or controlled by:
    - a. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code, as amended ("designated country"); or
    - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
  2. it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2274 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

- 4.28 Prohibition on Contracts with Companies Boycotting Energy Companies. Consultant hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

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The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. Consultant understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Consultant and exists to make a profit.

- 4.29 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Consultant hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. Consultant understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Consultant and exists to make a profit.

- 4.30 Texas Public Information Act.

- A. Consultant recognizes that this Project is publicly owned, and Owner is subject to the disclosure requirements of the Texas Public Information Act (the “PIA”). As part of its obligations within the Contract Documents, Consultant agrees, at no additional cost to Owner, to cooperate with Owner for any particular needs or obligations arising out of Owner’s obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to Owner’s audit rights.
- B. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of Owner.
- C. Consultant must:
  - 1. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to Owner for the duration of the Agreement;
  - 2. promptly provide to Owner any contracting information related to the Agreement that is in the custody or possession of Consultant on request of Owner; and
  - 3. on completion of the Contract, either:
    - a. provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Consultant; or
    - b. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

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The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract and Consultant agrees that the Contract can be terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

This Contract shall become effective on the date that the Contract is fully executed by the Parties and all required City of Deer Park approvals have been obtained (the "Effective Date"). No Work shall be performed prior to the Effective Date.

Consultant, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands this Contract, and agrees to be bound by all of this Contract's terms and conditions. This Contract, and any amendments to it, may be executed in counterparts (each of which shall be an original and all of which shall constitute but one and the same instrument) or in multiple originals.

AGREED TO AND SIGNED BY:

CONSULTANT:

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

CITY:



Date: 8/15/2023

\_\_\_\_\_  
Signature

Bill Patterson  
Printed Name

Title: Mayor Pro-Tem

## EXHIBIT C SUPPLEMENTAL CONDITIONS FOR FEDERAL-AID CONTRACTS

### I. GENERAL

- A. The term "Consultant" mentioned in this section shall also apply to any supplier, vendor, service provider, etc.
- B. Provisions provided herein supersede any conflicting terms and conditions contained in the Energy Savings Performance Contract.
- C. These Contract provisions shall apply to all Work performed on the Contract by the Consultant's organization and with the assistance of workers under the Consultant's immediate supervision and to all Work performed on the Contract by piecework, station work, or by subcontract.
- D. Except as otherwise provided for in each section, the Consultant shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions and further require their inclusion in any lower tier subcontract or purchase order that may, in turn, be made. The Required Contract Provisions shall not be incorporated by reference in any case. The Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with these Required Contract Provisions.
- E. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the Contract.
- F. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
  - Section I, paragraph B;
  - Section IV, paragraphs 1, 2, 3, 4, and 7; and
  - Section V, paragraph A.
- G. Disputes arising out of the labor standards provisions (except paragraph E) of Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this Contract. Instead, such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (D.O.L.) as set forth in 29 C.F.R. 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Consultant (and any of its subconsultants) and the contracting agency, the D.O.L., or the Consultant's employees or their representatives.

- H. **Selection of Labor:** During the performance of this Contract, the Consultant shall not:
1. Discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable); OR
  2. Employ convict labor for any purpose within the limits of the Project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**II. REMEDIES (Applies to all contracts in excess of one hundred fifty thousand dollars [\$150,000]).**

In addition to any other remedy available to the City of Deer Park as provided in this Contract, the City of Deer Park may, in its sole discretion, take any action in accordance with applicable law to protect the interests of the City of Deer Park in the event the Consultant fails to comply with any requirement specified in this Contract.

**III. TERMINATION FOR CAUSE**

- A. If the Consultant refuses or fails to prosecute the Work or any separable part, with the diligence that will ensure its completion within the time specified in this Contract including any extension, or fails to complete the Work within this time, the City of Deer Park may, by written notice to the Consultant, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, the City of Deer Park may take over the Work and complete it by Contract or otherwise, and may take possession of and use any materials, appliances, and plans on the Work site necessary for completing the Work. The Consultant and its sureties shall be liable for any damage to the City of Deer Park resulting from the Consultant's refusal or failure to complete the Work within the specified time, whether or not the Consultant's right to proceed with the Work is terminated. This liability includes any increased costs incurred by the City of Deer Park in completing the Work.
- B. The Consultant's right to proceed shall not be terminated, nor the Consultant charged with damages under this clause, if:
1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant. Examples of such causes include:
    - a. Acts of God or of the public enemy;
    - b. Acts of the City of Deer Park in either its sovereign or contractual capacity;

- c. Acts of another Consultant in the performance of a contract with the City of Deer Park;
  - d. Fires;
  - e. Floods;
  - f. Epidemics;
  - g. Quarantine restrictions;
  - h. Strikes;
  - i. Freight embargoes;
  - j. Unusually severe weather; OR
  - k. Delays of sub consultants or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Consultant and the sub consultants or suppliers.
2. The Consultant, within ten (10) days from the beginning of any delay (unless extended by the City of Deer Park), notifies the City of Deer Park in writing of the causes of delay. The City of Deer Park shall ascertain the facts and the extent of delay. If, in the judgment of the City of Deer Park, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of the City of Deer Park shall be final and conclusive on the parties.
- C. If, after termination of the Consultant's right to proceed, it is determined that the Consultant was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City of Deer Park.
- D. The rights and remedies of the City of Deer Park in this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### **IV. TERMINATION FOR CONVENIENCE**

- A. The City of Deer Park may terminate the performance of Work under this Contract in whole or, from time to time, in part, if the City of Deer Park determines that a termination is in the City of Deer Park's interest. The City of Deer Park shall terminate by delivering to the Consultant a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the City of Deer Park, the Consultant shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1. Stop Work as specified in the Notice of Termination.
  2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract, if any.
  3. Terminate all subcontracts to the extent they relate to the Work terminated.
  4. Assign to the City of Deer Park all right, title, and interest of the Consultant under the subcontracts terminated, in which case the City of Deer Park shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by the City of Deer Park, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
  6. Complete performance of any Work not terminated.
  7. Take any action that may be necessary, or that the City of Deer Park may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Consultant and the City of Deer Park has or may acquire an interest.
- C. After termination, the Consultant shall submit a termination settlement proposal to the City of Deer Park in the form and with the certification prescribed by the City of Deer Park. The Consultant shall submit the proposal promptly, but no later than six (6) months from the effective date of termination, unless extended in writing by the City of Deer Park upon written request of the Consultant within this six (6) month period. If the Consultant fails to submit the proposal within the time allowed, the City of Deer Park may determine, on the basis of information available, the amount, if any, due the Consultant because of the termination and shall pay the amount determined.
- D. Subject to paragraph (C) of this clause, the Consultant and the City of Deer Park may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. The agreed amount, however, whether under this paragraph (D) may not exceed the total Contract price as reduced by (1) the number of payments previously made and (2) the Contract price of Work not terminated. The Contract shall be modified, and the Consultant paid the agreed amount.
- E. If the Consultant and the City of Deer Park fail to agree on the whole

amount to be paid because of the termination of Work, the City of Deer Park shall pay the Consultant the reasonable amounts determined by the City of Deer Park to be due and owing to the Consultant.

V. **EQUAL EMPLOYMENT OPPORTUNITY “EEO”- COMPLIANCE WITH EXECUTIVE ORDER 11246**

During the performance of this Contract, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.
- D. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- E. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Consultant will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub consultant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**VI. COMPLIANCE WITH COPELAND ANTI-KICKBACK ACT**

- A. Consultant. The Consultant shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract.
- B. Subcontracts. The Consultant or Sub Consultant shall insert in any subcontracts the clause above and such other clauses as federal grants may by appropriate instructions require, and also a clause requiring the Sub Consultants to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for the compliance by any Sub Consultant

or lower tier Sub Consultant with all of these contract clauses.

- C. Breach. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a Consultant and Sub Consultant as provided in 29 C.F.R. §5.12.

**VII. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**

- A. Overtime requirements. No Consultant or Sub Consultant contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty (40) hours in a such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of (40) forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section, the Consultant and any Sub Consultant responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and Sub Consultant shall be liable to the United States (in the case of Work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of ten dollars (\$10) for each Calendar Day on which such individual was required or permitted to work in excess of the standard workweek of (40) forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. Withholding for unpaid wages and liquidated damages. The City of Deer Park shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any money payable on account of Work performed by the Consultant or Sub Consultant under any such contract or any other federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or Sub Consultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.
- D. Subcontracts. The Consultant or Sub Consultant shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this

section and also a clause requiring the Sub Consultants to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for compliance by any Sub Consultant or lower tier Sub Consultant with the clauses set forth in paragraphs (A) through (D) of this section.

**VIII. ACCESS TO RECORDS**

The following access to records requirements applies to this Contract:

- A. The Consultant agrees to provide the City of Deer Park, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- D. The Consultant agrees to provide the Grant Administrator or his authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract.

**IX. RETENTION OF RECORDS**

The Consultant agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Consultant agrees to maintain same until the City of Deer Park, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

**X. COMPLIANCE WITH THE CLEAN AIR ACT AND CLEAN WATER ACT (Applies to all contracts in excess of one hundred thousand dollars [\$100,000])**

Clean Air Act

- A. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.
- B. The Consultant agrees to report each violation to the City of Deer Park

and understands and agrees that the City of Deer Park will, in turn, report each violation as required to assure notification to the State of Texas and the appropriate Environmental Protection Agency Regional Office.

- C. The Consultant agrees to include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with federal assistance provided by the American Rescue Plan Act “ARPA” Grant.

Federal Water Pollution Control Act

- A. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq. The Consultant agrees to report each violation to the City of Deer Park and understands and agrees that the City of Deer Park will, in turn, report each violation as required to assure notification to the State of Texas and the appropriate Environmental Protection Agency Regional Office.
- B. The Consultant agrees to include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with federal assistance provided by the ARPA Grant.

**XI. ENERGY EFFICIENCY**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

**XII. SUSPENSION AND DEBARMENT**

- A. This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Consultant is required to verify that neither the Consultant, its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
- B. The Consultant must comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the City of Deer Park. If it is later determined that the Consultant did not comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of Deer Park, the federal government may pursue available remedies, including, but not limited to,

suspension and/or debarment.

- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**XIII. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (D.B.E.)**

- A. It is the policy of the federal grant that D.B.E. firms as defined in 49 C.F.R. Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Deer Park obtained a grant for part of the cost of designing and constructing the Project. In order to qualify for grant funds, Deer Park, the Consultant, and its Sub Consultants must comply with the FAR regulations covering the participation of small business firms owned or controlled by socially and economically disadvantaged individuals which is defined in 49 C.F.R. Part 23.
- B. The proposing firm shall make good faith efforts, as defined in Appendix A of 49 C.F.R. Part 23, to subcontract a reasonable percentage of the Work in this Contract with D.B.E. firms. In the event that the successful proposing firm for this solicitation qualifies as a D.B.E., the Contract goal shall be deemed to have been met. Individuals who are reputedly presumed to be socially and economically disadvantaged include Women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. A proposing firm that fails to meet the goal or which cannot demonstrate that it made good faith efforts to meet that goal will be considered nonresponsive to these Request for Proposal Instructions. A current list of certified D.B.E. firms which will be accepted for the purposes of this requirement may be obtained from the State of Texas Department of Transportation (State).
- C. Within five (5) consecutive Calendar Days of the deadline date for submitting Proposals, the proposing firms shall submit a Letter of Intent for each D.B.E. listed in their proposal as a Sub Consultant. Each Letter of Intent shall be accompanied by either the Sub Consultant's certification letter from the state or by a copy of its application for certification which has been submitted to the state.
- D. If any proposing firm does not meet the Project goal set forth above, it shall submit documents demonstrating that it made good faith efforts to achieve the goal. A copy of Appendix A to 49 C.F.R. 23.45 entitled "Guidance Concerning Good Faith Efforts" may be obtained from the state.

- E. In order to maximize business opportunities for D.B.E. firms, proposing firms are urged to meet the D.B.E. goal by subcontracting with as many D.B.E. firms as possible. Deer Park strongly discourages proposing firms from requiring exclusive dealing commitments from D.B.E. firms which would prevent them from being considered as Sub Consultants by other proposing firms.

**XIV. NONSEGREGATED FACILITIES (Applicable to all Federal-aid construction contracts and to all related subcontracts of ten thousand dollars [\$10,000] or more.)**

- A. By submission of this Proposal, the execution of this Contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, federal-aid construction Consultant, Sub Consultant, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- B. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by the explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g., disabled parking).
- C. The Consultant agrees that it has obtained or will obtain identical certification from proposed sub-consultants or material suppliers prior to award of subcontracts or consummation of material supply agreements of ten thousand dollars (\$10,000) or more and that it will retain such certifications in its files.

**XV. PROCUREMENT OF RECOVERED MATERIALS**

A non-federal entity that is a state agency or an agency of a political subdivision of a state and its Consultants must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency "E.P.A" at 40 C.F.R. Part 247

contains the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand dollars (\$10,000) or the value of the quantity acquired by the preceding fiscal year exceeded ten thousand dollars (\$10,000); procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the E.P.A. guidelines.

**XVI. FORCE MAJEURE**

Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

**XVII. BYRD ANTI-LOBBYING AMENDMENT**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Consultants who apply or bid for an award of one hundred thousand dollars (\$100,000) or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

**XVIII. DEPARTMENT OF HOMELAND SECURITY SEAL "D.H.S.", LOGO, AND FLAGS**

The Consultant shall not use D.H.S. seal(s), logo, crests, or reproductions of flags or likenesses of D.H.S. agency officials without specific preapproval.

**XIX. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgment that the ARPA grant financial assistance will be used to fund this Contract. The Consultant will comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives.

**XX. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

The federal government is not a party to this Contract and is not subject to any obligations or liabilities to the non-federal entity, Consultant, or any other party pertaining to any matter resulting from the Contract.

**XXI. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

The Consultant acknowledges that 31 U.S.C Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this Contract.

**XXII. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.**

If the federal award meets the definition of "funding agreement" under 37 C.F.R. §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

## E. Financial Criteria

### 1. *Unit Pricing: Complete Exhibit A-1*

Please see our Exhibit A Summary and Exhibit A-1 through A-5 forms from meter manufacturers starting on the next page. Performance Services will include any Sales Tax for the state of Texas, if any is due, in the contract cost.

## Exhibit A Summary

The table below represents the base price (meters, radios, installation, AMI activation, and associated communication infrastructure) and the annual operating fees of the five-meter manufacturers' Performance Services is presenting. In addition to the base price, the provision for 100% of the lids to be replaced (with DFW 1300 lids) is shown.

The number of boxes and type of boxes to be replaced would be determined in the IGA; however, the price below reflects replacing 20% of the current boxes (DFW1200-12).

Manufacturer	Neptune	Diehl	Master Meter	Kamstrup AMI	Kamstrup ALD
<b>Base Price</b>	\$6,006,402	\$6,588,506	\$6,835,644	\$8,327,237	\$8,408,126
<b>* Meter Lead Times</b>	8 Months	7 Months	5 Months	6 Months	6 Months
<b>Annual Fees</b>	\$31,744	\$67,485	\$29,667	\$32,729	\$74,837
* Meter lead times based on current market conditions					

Optional Alternates	
<b>100% New Lids</b>	\$183,146
<b>20% Boxes</b>	\$274,719

Base Price considers the meter sizes and quantities provided in the RFP.

The table below represents the Price per Unit for replacements of the currently used meter boxes (DFW1200-12), currently used meter lids (DFW1200-AF1), 3/4" Angle Stops, 3/4" Straight Stops, and 5/8" Meter Tails. These unit costs apply for all five-meter manufacturer options.

Field Equipment (installed)	Price per Unit
DFW 1300 Meter Boxes (grass)	\$127.52
DFW 1300 Meter Box Lids (w/ Endpoint Holes)	\$17.00
3/4" Angle Stops	\$245.00
3/4" Straight Stops	\$245.00
5/8" Meter Tails	\$57.50

\*Water Meter w/AMI projects Performance Services has performed in the past have had an average of 3% to 5% of the meter connection quantities needing curb stops to be replaced.

## Exhibit A - 1

**Meter Manufacturer: Neptune**

**Model: 5/8", 1", 1.5", 2", 3", 4", 6" and 8" – Mach 10 R900i**

- Industry-leading sample rate (4x per second)
- Ultrasonic
- 96 days of stored history
- 20 Year Accuracy Warranty (5/8")
- Customer Portal
- Tamper Alarm
- Reverse Flow Alarm
- Leak Detection Alarm
- Fully Submersible
- Robust antenna cable with traffic-rated metal pit lid antennas
- No Programming required

Meter Size	Price Per Unit		
	0 - 100 Units	101 - 1,000 Units	> 1,000 Units
5/8"x3/4"	\$468.17	\$468.17	\$468.17
1"	\$525.91	\$525.91	\$525.91
1.5"	\$1,240.65	\$1,240.65	\$1,240.65
2"	\$1,318.67	\$1,318.67	\$1,318.67
3"	\$4,489.74	\$4,489.74	\$4,489.74
4"	\$5,491.62	\$5,491.62	\$5,491.62
6"	\$8,253.81	\$8,253.81	\$8,253.81
8"	\$12,278.50	\$12,278.50	\$12,278.50

<b>Equipment</b>	<b>Price Per Unit</b>
Portable Data Collector (Backup)	\$11,766.64
Portable Data Collector Setup	included
Data Collector Station	\$21,879.08
Data Collector Station Set Up	\$31,211.24
70' Self Supporting Tower (if needed)	\$100,000
Backhaul Communications (if needed)	\$1,080.00
Total Number of Sites Estimated	3

<b>Annual Fees</b>			
<b>Item</b>	<b>#</b>	<b>Unit Cost</b>	<b>Total</b>
Neptune 360 AMI Software	10,772	\$2.00	\$21,544
Customer Portal	1	\$12,000	\$10,200
<b>Annual Fees</b>			<b>\$31,744</b>

## Exhibit A - 2

**Meter Manufacturer: Diehl Metering**

**Model: 5/8", 1", 1.5" and 2" – Hydrus**

**3", 4", 6" and 8" – Hydrus Bulk**

- Ultrasonic
- 42 days of hourly data storage
- 20 Year Accuracy Warranty
- Customer Portal
- Extreme low-flow accuracy and long term measurement stability
- Integrated leak detection
- Mountable in any installation position
- Lead-free copper alloy body
- IP68 rated
- Diehl Extended Encoder protocol that includes temperature, alarms and error messages, etc.
- Meets or exceeds C715 AWWA/ANSI Standards
- Complies with NSF/ANSI Standards 61, Annex F/G as well as FCC part 15 B

Meter Size	Price Per Unit		
	0 - 100 Units	101 - 1,000 Units	> 1,000 Units
5/8"x3/4"	\$485.32	\$485.32	\$485.32
1"	\$584.39	\$584.39	\$584.39
1.5"	\$1,391.75	\$1,391.75	\$1,391.75
2"	\$1,686.92	\$1,686.92	\$1,686.92
3"	\$4,752.89	\$4,752.89	\$4,752.89
4"	\$6,020.86	\$6,020.86	\$6,020.86
6"	\$7,863.29	\$7,863.29	\$7,863.29
8"	\$10,605.53	\$10,605.53	\$10,605.53

<b>Equipment</b>	<b>Price Per Unit</b>
Portable Data Collector (Backup)	\$27,771.48
Portable Data Collector Setup	included
Data Collector Station	\$7,537.97
Data Collector Station Set Up	\$34,912.71
70' Self Supporting Tower (if needed)	\$100,000
Backhaul Communications (if needed)	\$2,160.00
Total Number of Sites Estimated	6

<b>Annual Fees</b>			
<b>Item</b>	<b>#</b>	<b>Unit Cost</b>	<b>Total</b>
Kona Mega Gateway	6	\$816	\$4,896
Viaanix Annual Fee	10772	\$1.60	\$17,235
Connectivity Support	6	\$1,200	\$7,200
Izar Utility Portal	1	\$29,400	\$29,400
Izar Customer Portal	1	\$13,650	\$13,650
<b>Annual Fees Total</b>			<b>\$67,485</b>

## Exhibit A - 3

**Meter Manufacturer: Master Meter**

**Model: 5/8" and 1" – Sonata**

**1.5", 2", 3", 4", 6" , and 8" – Octave**

### **Sonata**

- Low Flow accuracy starting as low as 0.03 GPM
- No moving parts for lifetime accuracy
- 20-year warranty (10 years full / 10 years prorated)
- Customer Portal
- Patented obstruction free flow tube minimizes head loss and risk of damage to sonic reflectors
- Detailed LCD features totalized flow, rate of flow, battery alarm, leak alarm, burst pipe alarm, and tamper alarm
- Fully submersible; IP68 design

### **Octave**

- Grade 316 Stainless Steel (2"-8") provides full compliance with ANSI/NSF 372 (AB1953 or NSF61G)
- No moving parts. Minimal flow intrusion. Enduring accuracy
- Easy to install Floating Flanges on 2"-8"
- Wide beam ultrasonic measurement sensors for high accuracy and reliable operation.
- Active leak, burst, reverse flow, empty pipe, measurement failure, and low battery. LCD also displays rate of flow and water temperature
- Ruggedized NEMA 6P/IP-68+ construction; fully submersible design

Meter Size	Price Per Unit		
	0 - 100 Units	101 - 1,000 Units	> 1,000 Units
5/8"x3/4"	\$482.62	\$482.62	\$482.62
1"	\$623.34	\$623.34	\$623.34
1.5"	\$3,010.46	\$3,010.46	\$3,010.46
2"	\$2,016.60	\$2,016.60	\$2,016.60
3"	\$4,778.13	\$4,778.13	\$4,778.13
4"	\$6,053.65	\$6,053.65	\$6,053.65
6"	\$8,779.99	\$8,779.99	\$8,779.99
8"	\$10,467.11	\$10,467.11	\$10,467.11

Equipment	Price Per Unit
Portable Data Collector (Backup)	\$7,678.25
Portable Data Collector Setup	included
Base Station Data Collector	\$61,426.00
Base Station Data Collector Install	\$43,766.02
Repeater Station Data Collector	\$9,213.90
Repeater Station Data Collector Install	\$9,981.72
70' Self Supporting Tower (if needed)	\$100,000
Backhaul Communications (if needed)	\$1,080.00
Total Number of Sites Estimated	3

Annual Fees			
Item	#	Unit Cost	Total
Hosting Per Meter	10,772	\$1.90	\$20,467
Base Station Annual Maint	1	\$7,500	\$7,500
Repeater Maintenance	2	\$850	\$1,700
<b>Annual Fees Total</b>			<b>\$29,667</b>

## Exhibit A - 4

**Meter Manufacturer: Kamstrup AMI**

**Model: 5/8" and 1" – Flow IQ 2250**

**1.5", 2", 3" and 4" - Flow IQ 3200**

**6" and 8" – Flow IQ 4200**

- Ultrasonic
- Pinpoint Accuracy
- 20 Year Longevity
- Customer Portal
- Dual Temperature measurement
- IP68 Vacuum sealed construction
- Lead Free and certified to NSF/ANSI 61
- Flow measurement in display
- Hourly log

Meter Size	Price Per Unit		
	0 - 100 Units	101 - 1,000 Units	> 1,000 Units
5/8"x3/4"	\$595.83	\$595.83	\$595.83
1"	\$805.50	\$805.50	\$805.50
1.5"	\$2,175.14	\$2,175.14	\$2,175.14
2"	\$2,737.78	\$2,737.78	\$2,737.78
3"	\$5,302.10	\$5,302.10	\$5,302.10
4"	\$7,202.71	\$7,202.71	\$7,202.71
6"	\$7,873.96	\$7,873.96	\$7,873.96
8"	\$12,203.13	\$12,203.13	\$12,203.13

<b>Equipment</b>	<b>Price Per Unit</b>
Portable Data Collector (Backup)	\$3,211.47
Portable Data Collector Setup	included
Data Collector Station	\$17,928.64
Data Collector Station Set Up	\$7,542.10
70' Self Supporting Tower (if needed)	\$100,000
Backhaul Communications (if needed)	\$720.00
Total Number of Sites Estimated	2

<b>Annual Fees</b>			
<b>Item</b>	<b>#</b>	<b>Unit Cost</b>	<b>Total</b>
Hosting Subs	1	\$19,849	\$19,849
Notification Services	1	\$880	\$880
Customer Portal	1	\$12,000	\$12,000
<b>Annual Fees Total</b>			<b>\$32,729</b>

## Exhibit A - 5

**Meter Manufacturer: Kamstrup AMI with ALD**

**Model: 5/8" and 1" – Flow IQ 2200**

**1.5", 2", 3", and 4" - Flow IQ 3200**

**6" and 8" – Flow IQ 4200**

- Acoustic Leak Detection 5/8" and 1" meters
- Ultrasonic
- Pinpoint Accuracy
- 20 Year Longevity
- Customer Portal
- Dual Temperature measurement
- IP68 Vacuum sealed construction
- Lead Free and certified to NSF/ANSI 61
- Flow measurement in display
- Hourly log

Meter Size	Price Per Unit		
	0 - 100 Units	101 - 1,000 Units	> 1,000 Units
5/8"x3/4"	\$601.61	\$601.61	\$601.61
1"	\$813.32	\$813.32	\$813.32
1.5"	\$2,196.27	\$2,196.27	\$2,196.27
2"	\$2,764.38	\$2,764.38	\$2,764.38
3"	\$5,353.60	\$5,353.60	\$5,353.60
4"	\$7,272.68	\$7,272.68	\$7,272.68
6"	\$7,950.44	\$7,950.44	\$7,950.44
8"	\$12,321.66	\$12,321.66	\$12,321.66

<b>Equipment</b>	<b>Price Per Unit</b>
Portable Data Collector (Backup)	\$3,242.67
Portable Data Collector Setup	included
Data Collector Station	\$18,102.79
Data Collector Station Set Up	\$7,615.37
70' Self Supporting Tower (if needed)	\$100,000
Backhaul Communications (if needed)	\$720.00
Total Number of Sites Estimated	2

<b>Annual Fees</b>			
<b>Item</b>	<b>#</b>	<b>Unit Cost</b>	<b>Total</b>
Hosting Subs	1	\$19,849	\$19,849
Notification Services	1	\$880	\$880
Leak Detector	1	\$42,108	\$42,108
Customer Portal	1	\$12,000	\$12,000
<b>Annual Fees Total</b>			<b>\$74,837</b>

## **Exhibit C - Insurance and Indemnification Requirements**

Starting on the next page, please see the Certificates for Insurance for Performance Services that met the Insurance and Indemnification Requirements (Exhibit C).

Performance Services agrees to Exhibit C of Supplemental Conditions for Federal-Aid Contracts, located on page 34 of the proposal.





# TEXAS SALES AND USE TAX PERMIT

This permit is not transferable, and this side must be prominently displayed in your place of business.

Retailers: A seller may NOT accept a copy of this permit in lieu of a properly completed exemption or resale certificate. A certificate is necessary to document why tax is not collected on a sale.

You must obtain a new permit if there is a change of ownership, location, or business location name

TAXPAYER NAME, BUSINESS LOCATION NAME, and PHYSICAL LOCATION

PERFORMANCE SERVICES, INC. (PERFORMANCE SERVICES 0

PERFORMANCE SERVICES, INC.  
3010 LYNDON B JOHNSON FWY FL 1200  
DALLAS TX 75234-2710  
DALLAS COUNTY

Type of permit	SALES AND USE TAX
Taxpayer number	3-20547-9447-7
Location number	00001
First business date of location	08/04/2014

NAICS CODE: 236220 DESCRIPTION ON NEXT LINE:

Commercial and Institutional Building Construction

WE SHOW THIS BUSINESS IN THE FOLLOWING LOCAL SALES TAX AUTHORITIES:

CITY: DALLAS EFF: 08/04/2014  
TRANSIT: DALLAS MTA EFF: 08/04/2014

*Susan Combs*

Susan Combs  
Comptroller of Public Accounts

You may need to collect sales and/or use tax for other local taxing authorities depending on your type of business.

For additional information, see "Collecting Local Sales and Use Tax" section on the back of this document.

If you have any questions regarding sales tax, visit our website at [www.window.state.tx.us](http://www.window.state.tx.us) or call us at 1-800-252-5555 or 512-463-4600.

Detach here and prominently display your permit only. Retain the portion below for your records.

01-900-P4

### Is the Information Printed on this Permit Correct?

The information printed on your permit is public information. It must be accurate and current. If there is an error, make corrections on the form below. Enter the correct information for incorrect items only. Detach the form and mail it to:

Comptroller of Public Accounts  
111 E. 17th Street  
Austin, TX 78774-0100

More helpful information about your permit is on the back of this document.

### Texas Sales and Use Tax Permit Corrections Form

Taxpayer name shown on the permit PERFORMANCE SERVICES, INC. (PERFORMANCE SERVICES 0		<b>If you need to make changes to your local sales tax authorities or to the NAICS code printed on your permit, see information on the back of this form.</b>
Taxpayer number shown on the permit 32054794477	Location number shown on the permit 00001	
Correct business location name .		
Correct business location (no P.O. Box or directions accepted) .		
City .	State	ZIP code County
Correct taxpayer name .		Daytime phone (Area code and number)
Correct mailing address .		
City .	State	ZIP code Federal Employer Identification Number
If you are <b>no longer in business</b> , enter the date of your last business transaction. _____		
sign here Taxpayer or authorized agent		Date



00000084

# Texas Sales and Use Tax Resale Certificate

Name of purchaser, firm or agency as shown on permit <b>Performance Services, Inc.</b>	Phone (Area code and number) <b>317-713-1750</b>
Address (Street & number, P.O. Box or Route number) <b>4670 Haven Point Blvd.</b>	
City, State, ZIP code <b>Indianapolis, Indiana, 46280</b>	
Texas Sales and Use Tax Permit Number (must contain 11 digits) <div style="border: 1px solid black; padding: 2px; display: inline-block;">           3 2 0 5 4 7 9 4 4 7 7         </div>	
Out-of-state retailer's registration number or Federal Taxpayers Registry (RFC) number for retailers based in Mexico <div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div> (Retailers based in Mexico must also provide a copy of their Mexico registration form to the seller.)	

I, the purchaser named above, claim the right to make a non-taxable purchase (for resale of the taxable items described below or on the attached order or invoice) from:

Seller: \_\_\_\_\_

Street address: \_\_\_\_\_

City, State, ZIP code: \_\_\_\_\_

Description of items to be purchased on the attached order or invoice:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Description of the type of business activity generally engaged in or type of items normally sold by the purchaser:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The taxable items described above, or on the attached order or invoice, will be resold, rented or leased by me within the geographical limits of the United States of America, its territories and possessions or within the geographical limits of the United Mexican States, in their present form or attached to other taxable items to be sold.

I understand that if I make any use of the items other than retention, demonstration or display while holding them for sale, lease or rental, I must pay sales tax on the items at the time of use based upon either the purchase price or the fair market rental value for the period of time used.

*I understand that it is a criminal offense to give a resale certificate to the seller for taxable items that I know, at the time of purchase, are purchased for use rather than for the purpose of resale, lease or rental, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.*

<div style="display: flex; align-items: center;"> <div style="margin-right: 5px;"><b>sign here</b> </div> <div style="border-bottom: 1px solid black; flex-grow: 1;"></div> </div>	<div style="border-bottom: 1px solid black; flex-grow: 1;"></div>	<div style="border-bottom: 1px solid black; flex-grow: 1;"></div>
Purchaser	Title	Date

**This certificate should be furnished to the supplier.**

**Do not send the completed certificate to the Comptroller of Public Accounts.**

# Texas Sales and Use Tax Exemption Certification

*This certificate does not require a number to be valid.*

Name of purchaser, firm or agency <b>Performance Services, Inc.</b>	
Address (Street & number, P.O. Box or Route number) <b>4670 Haven Point Blvd.</b>	Phone (Area code and number) <b>317-713-1750</b>
City, State, ZIP code <b>Indianapolis, Indiana, 46280</b>	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: \_\_\_\_\_

Street address: \_\_\_\_\_ City, State, ZIP code: \_\_\_\_\_

Description of items to be purchased or on the attached order or invoice:

Construction building labor, services and materials.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Purchaser claims this exemption for the following reason:

Purchasing labor/services/materials to be used by exempt entity - Government Units  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

*I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.*

	Purchaser	Title	Date

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

**THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.**

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

**This certificate should be furnished to the supplier.  
Do not send the completed certificate to the Comptroller of Public Accounts.**

**CERTIFICATE OF INTERESTED PARTIES** **FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	<b>OFFICE USE ONLY</b>
<b>1 Name of business entity filing form, and the city, state and country of the business entity's place of business.</b> Performance Services, Inc Round Rock, TX, United States	
<b>2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.</b> City of Deer Park	

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.**  
 3995-23, AMI RFCSP-2023, AMI Performance Contract

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
Tim Thoman	Round Rock, Texas, United States	X	

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

**6 AFFIDAVIT** I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

*John P. Muldoon*  
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Joe Muldoon, this the 13<sup>th</sup> day of July, 2023, to certify which, witness my hand and seal of office.

*Timothy A. Thoman*  
Signature of officer administering oath

**Tim Thoman**  
Printed name of officer administering oath

**President and CEO**  
Title of officer administering oath

**ADD ADDITIONAL PAGES AS NECESSARY**

**CONFLICT OF INTEREST QUESTIONNAIRE**

**FORM CIQ**

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7<sup>th</sup> business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class 'C' misdemeanor.

**OFFICE USE ONLY**

Date Received:

1. Name of person doing business with local governmental entity:

Performance Services, Inc.

2.

Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name each employee or contractor of the local governmental entity who makes recommendations to local government officer of the governmental entity with respect to expenditures of money AND describe the affiliation or business relationship.

Not applicable

4. Name each local government officer who appoints or employs local government officers of the governmental entity for which this questionnaire is filed AND describe the affiliation or business relationship.

Not applicable

**CONFLICT OF INTEREST QUESTIONNAIRE**

For vendor or other person doing business with local governmental entity

**FORM CIQ**

Page 2

**5. Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is Yes)**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to Form CIQ as necessary.

A. Is local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

Yes  No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

Yes  No

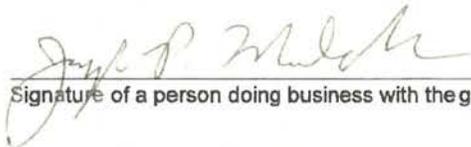
C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes  No

D. Describe each affiliation or business relationship.

Not applicable

**6.**

  
Signature of a person doing business with the government entity

7/13/2023  
Date

City of Deer Park  
June 7, 2023

## Exhibit E Reference Data Sheet

**PROVIDE AT LEAST THREE (3) REFERENCES REPRODUCE SHEET AS NECESSARY.**

Provide client name, location, contact person, telephone number and appropriate information on contracted services that are similar to this solicitation document.

Client: City of Jacksonville  
City: Jacksonville State: TX  
Contact Person: Randall Chandler Phone Number: 903-393-3400  
Title: Director of Public & Community Services

Project Begin & End Date: 12/19/2018 - 6/28/2019  
Project Budget: \$5,611,940  
Services Provided: Removal and replacement of 5,452 water meters with smart meters  
Describe your involvement in the project: principal firm, multi-firm collaboration, sub-consultant, etc.: Principal ESCO

Client: City of Waxahachie  
City: Waxahachie State: TX  
Contact Person: Richard Abernethy Phone Number: 469-309-4000  
Title: Director of Administrative Services

Project Begin & End Date: 8/30/2021 - 12/1/2022  
Project Budget: \$9,478,255  
Services Provided: Removal and replacement of 14,413 water meters with smart, ultrasonic water meters  
Describe your involvement in the project: principal firm, multi-firm collaboration, sub-consultant, etc.: Principal ESCO

Client: City of Beeville  
City: Beeville State: TX  
Contact Person: John Benson Phone Number: 361-358-4641  
Title: City Manager

Project Begin & End Date: 4/15/2020 - 4/1/2021  
Project Budget: \$5,283,210  
Services Provided: Removal and replacement of 5,192 water meters with smart water meters  
Describe your involvement in the project: principal firm, multi-firm collaboration, sub-consultant, etc.: Principal ESCO



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - Section 2 c. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - No
  - Section 4 - Affirmation
  - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
  - Section 3 - Self Performing Justification
  - Section 4 - Affirmation

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

**-- Agency Special Instructions/Additional Requirements --**

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

**SECTION 1: RESPONDENT AND REQUISITION INFORMATION**

a. Respondent (Company) Name: Performance Services of Texas State of Texas VID #: 32054794477  
 Point of Contact: **Greg Smith** Phone #: 281-796-6866  
 E-mail Address: gfsmith@performanceservices.com Fax #: \_\_\_\_\_

b. Is your company a State of Texas certified HUB?  - Yes  - No

c. Requisition #: 3995-23, AMI RFCSP-2023 Bid Open Date: 06/07/2023  
(mm/dd/yyyy)

Enter your company's name here: Performance Services of Texas

Requisition #: 3995-23, AMI RFCSP-2023

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1	Water Meters/AMI Equipment	%	%	57 %
2	Water Meter Installer	%	%	13 %
3	Water Meter Testing	%	%	.5 %
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	70.5 %

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract**\* in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Performance Services of Texas

Requisition #: 3995-23, AMI RFCSP-2023

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Performance Services of Texas Requisition #: 3995-23, AMI RFCSP-2023

**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below explain how your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

[Empty box for justification text]

**SECTION 4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

 _____ Signature	<b>Greg Smith</b> _____ Printed Name	<b>BDM</b> _____ Title	<b>07/13/2023</b> _____ Date (mm/dd/yyyy)
---	--	------------------------------	--

**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

# HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: Performance Services of Texas Requisition #: 3995-23, AMI RFCSP-2023

**IMPORTANT:** If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: 1 Description: Water Meters/AMI Equipment

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs **at least seven (7) working days** to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
No Texas certified HUBs manufacturer's existing currently			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers **in Texas** to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers **at least seven (7) working days** prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
No Texas certified HUBs/trade organization manufacturer's existing currently		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 2/17

Enter your company's name here: Performance Services of Texas Requisition #: 3995-23, AMI RFCSP-2023

## SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: 1 Description: Water Meters/AMI Equipment

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
To Be Determined	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$ TBD	57%
	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

No known HUB water meter manufacturer. These are specialized products.

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



**CERTIFICATION  
REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS AND GRANTS**

Federal Executive Order 12549 requires the Texas Department of Aging and Disability Services (DADS) to screen each covered potential contractor/grantee to determine whether each has a right to obtain a contract/grant in accordance with federal regulations on debarment, suspension, ineligibility, and voluntary exclusion. Each covered contractor/grantee must also screen each of its covered subcontractors/providers.

In this certification "contractor/grantee" refers to both contractor/grantee and subcontractor/subgrantee; "contract/grant" refers to both contract/grant and subcontract/subgrant.

**By signing and submitting this certification the potential contractor/grantee accepts the following terms:**

1. The certification herein below is a material representation of fact upon which reliance was placed when this contract/grant was entered into. If it is later determined that the potential contractor/grantee knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the Department of Health and Human Services, United States Department of Agriculture or other federal department or agency, or the Texas Department of Aging and Disability Services may pursue available remedies, including suspension and/or debarment.
2. The potential contractor/grantee shall provide immediate written notice to the person to which this certification is submitted if at any time the potential contractor/grantee learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The words "covered contract," "debarred," "suspended," "ineligible," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this certification have meanings based upon materials in the Definitions and Coverage sections of federal rules implementing Executive Order 12549. Usage is as defined in the attachment.
4. The potential contractor/grantee agrees by submitting this certification that, should the proposed covered contract/grant be entered into, it shall not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department of Health and Human Services, United States Department of Agriculture or other federal department or agency, and/or the Texas Department of Aging and Disability Services, as applicable.  
**Do you have or do you anticipate having subcontractors/subgrantees under this proposed contract?  YES  NO**
5. The potential contractor/grantee further agrees by submitting this certification that it will include this certification titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts and Grants" without modification, in all covered subcontracts and in solicitations for all covered subcontracts.
6. A contractor/grantee may rely upon a certification of a potential subcontractor/subgrantee that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract/grant, unless it knows that the certification is erroneous. A contractor/grantee must, at a minimum, obtain certifications from its covered subcontractors/subgrantees upon each subcontract's/subgrant's initiation and upon each renewal.
7. Nothing contained in all the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this certification document. The knowledge and information of a contractor/grantee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for contracts/grants authorized under paragraph 4 of these terms, if a contractor/grantee in a covered contract/grant knowingly enters into a covered subcontract/subgrant with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the federal government, Department of Health and Human Services, United State Department of Agriculture, or other federal department or agency, as applicable, and/or the Texas Department of Aging and Disability Services may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS AND GRANTS**

Indicate which statement applies to the covered potential contractor/grantee:

- The potential contractor/grantee certifies, by submission of this certification, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract/grant by any federal department or agency or by the State of Texas.
- The potential contractor/grantee is unable to certify to one or more of the terms in this certification. In this instance, the potential contractor/grantee must attach an explanation for each of the above terms to which he is unable to make certification. Attach the explanation(s) to this certification.

NAME OF POTENTIAL CONTRACTOR/GRANTEE Performance Services, Inc.  
VENDOR ID NO./FEDERAL EMPLOYER'S ID NO. 35-2047928

Joe Muldoon  
\_\_\_\_\_  
Signature of Authorized Representative  
7/13/2023  
\_\_\_\_\_  
Date

Joe Muldoon  
\_\_\_\_\_  
Printed/Typed Name of Authorized Representative  
Vice President, Texas Market  
\_\_\_\_\_  
Title of Authorized Representative

THIS CERTIFICATION IS FOR FY **2023**, PERIOD BEGINNING October 1, 2023, and ENDING September 30, 2024.

## INSTRUCTIONS FOR CERTIFICATION

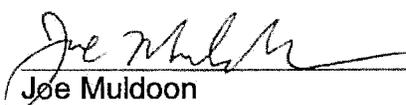
- 2 -

1. By signing and submitting this proposal, the prospective contractor/grantee is providing the certification set out below.
2. The inability of a contractor/grantee to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor/grantee shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor/grantee to furnish a certification or an explanation shall disqualify such contractor/grantee from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor/grantee knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective contractor/grantee shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective contractor/grantee learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contractor/grantee agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective contractor/grantee further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

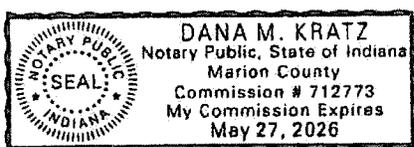
**NON-COLLUSION AFFIDAVIT**

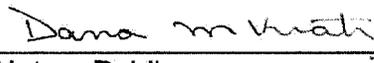
STATE OF INDIANA     §  
                                  §  
COUNTY OF HAMILTON §

By the signature below, the signatory for the bidder certifies that neither he nor the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm bidding this project has violated the antitrust laws of this State, codified at Section 15.01, *et seq.*, Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in the same line of business, nor has the signatory or anyone acting for the firm, corporation or institution submitting a bid committed any other act of collusion related to the development and submission of this bid proposal.

Signature:   
Printed Name: Joe Muldoon  
Title: Vice President, Texas Market  
Company: Performance Services, Inc.  
Date: 07/13/2023

SUBSCRIBED and sworn to before me the undersigned authority by Joe Muldoon the Vice President Texas Market of, Performance Services Inc on behalf of said bidder.



  
Notary Public

My commission expires: May 27, 2026

# TEXAS PUBLIC INFORMATION ACT

FORM

For potential vendor doing business with local governmental entity

The Public Information Act (PIA) provides a mechanism for citizens to inspect or copy government records. It also provides that governmental bodies may withhold government records from the public in specific instances.

The PIA generally requires a governmental body to release information in response to a request for information. However, if a governmental body determines the information is excepted from disclosure under the PIA, then both the request and information at issue must be reviewed by the Open Records Division (ORD). The ORD will issue a decision on whether the governmental body is permitted to withhold the requested information or must release the information to the requestor.

Some public information is confidential by statute. If information is confidential by statute, a governmental body generally cannot release the information under the PIA. Governmental bodies also maintain information that is not confidential by statute. A governmental body has the option to withhold non-confidential information in certain circumstances.

For more information about the Texas Public Information Act, visit:  
<https://www.texasattorneygeneral.gov/>.

## OFFICE USE ONLY

Date Received

1 Name of potential vendor doing business with local governmental entity:

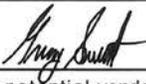
Performance Services

2  Check this box if you acknowledge the City of Deer Park is subject to public information requests.

3 Name and title of representative of potential vendor.

Greg Smith

Name / Title

4   
Signature of potential vendor

7/13/2023

Date

Please see the below Certificates for Insurance for Performance Services.

		<b>CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 12/06/2022			
<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</p> <p><b>IMPORTANT:</b> If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</p>							
<b>PRODUCER</b> Dimond Bros. Insurance, LLC 11708 North College Avenue  Carmel IN 46032			<b>CONTACT</b> NAME: Julia Hoskins PHONE (A/C, No, Ext): (317) 853-3588 FAX (A/C, No): (317) 853-3501 E-MAIL ADDRESS: julia.hoskins@dimondbros.com		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Amerisure Insurance Co. NAIC # 19488 INSURER B: Amerisure Mutual Insurance Company 23396 INSURER C: Travelers Property Casualty Co. of America 25674 INSURER D: INSURER E: INSURER F:		
<b>INSURED</b> Performance Services, Inc. 4670 Haven Point Blvd #200  Indianapolis IN 46280							
<b>COVERAGES</b>		<b>CERTIFICATE NUMBER:</b> 22-23 ALLCOV		<b>REVISION NUMBER:</b>			
<p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>							
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			CPP1323442	12/06/2022	12/06/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPO/PAGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> AUTOS ONLY <input checked="" type="checkbox"/> AUTOS ONLY			CA1381318	12/06/2022	12/06/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B/C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			CU2033750/EX-7S50428822NF	12/06/2022	12/06/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 Excess Umbrella \$ 10,000,000
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC1328253	12/06/2022	12/06/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E L EACH ACCIDENT \$ 1,000,000 E L DISEASE - EA EMPLOYEE \$ 1,000,000 E L DISEASE - POLICY LIMIT \$ 1,000,000 Per Item/Occurrence \$125,000
C	Leased/Rented Equipment			QT630OR548216TIL22	12/06/2022	12/06/2023	
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)							
<b>CERTIFICATE HOLDER</b>  SAMPLE				<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 			
ACORD 25 (2016/03)						© 1988-2015 ACORD CORPORATION. All rights reserved.	
The ACORD name and logo are registered marks of ACORD							



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
12/06/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Dimond Bros. Insurance, LLC 11708 N. College Ave.  Carmel IN 46032		<b>CONTACT NAME:</b> Julia Hoskins <b>PHONE (A/C No, Ext):</b> (317) 853-3588 <b>FAX (A/C, No):</b> (317) 853-3501 <b>E-MAIL ADDRESS:</b> julia.hoskins@dimondbros.com															
<b>INSURED</b> Performance Services, Inc. 4670 Haven Point Blvd #200  Indianapolis IN 46280		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Berkley Insurance Company</td> <td>32603</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Berkley Insurance Company	32603	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #																
INSURER A: Berkley Insurance Company	32603																
INSURER B:																	
INSURER C:																	
INSURER D:																	
INSURER E:																	
INSURER F:																	

**COVERAGES**      **CERTIFICATE NUMBER:** 22-23 PROF/POLL      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL	SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GENTL AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E L EACH ACCIDENT \$ E L DISEASE - EA EMPLOYEE \$ E L DISEASE - POLICY LIMIT \$
A	Professional/Pollution Liability			PCADB-50208751222	12/06/2022	12/06/2023	Per Claim \$2,000,000 Annual Aggregate \$2,000,000 Retention \$35,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  SAMPLE	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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