



STEPHEN F. AUSTIN STATE UNIVERSITY

NACOGDOCHES, TEXAS

PROCUREMENT AND BUSINESS SERVICES
P. O. Box 13030
NACOGDOCHES, TX 75962

REQUEST FOR PROPOSAL

RFP NUMBER
POURING RIGHTS-2024

ADDENDUM NO. 3
DATED: 12/21/2023

PROPOSAL MUST BE RECEIVED BEFORE:
5:00PM, CST, TUESDAY, JANUARY 16, 2024

MAIL PROPOSAL TO:

Stephen F. Austin State University
Procurement and Business Services
P. O. Box 13030, SFA Station
Nacogdoches, TX 75962-3030

HAND DELIVER AND/OR EXPRESS MAIL TO:

Stephen F. Austin State University
Procurement and Business Services
2102 Alumni Drive, Austin Bldg., Room 131
Nacogdoches, TX 75962

Show RFP Number, Due Date and Time on Return Envelope

NOTE: PROPOSAL must be time stamped at **Stephen F. Austin State University Procurement and Business Services** before the hour and date specified for receipt of proposal.

REFER INQUIRIES TO:

Kim Jones
Stephen F. Austin State University
Procurement and Business Services
936.468.6551
email: joneskk2@sfasu.edu

**STEPHEN F. AUSTIN STATE UNIVERSITY
Request for Proposal #
POURING RIGHTS-2024**

ADDENDUM NO. 3

**THIS ADDENDUM MUST BE ACKNOWLEDGED FOR THE RESPONSE TO RECEIVE
CONSIDERATION.**

Updates in Red

Please note the following response to question #15 with attachment to follow answer:

15. Can you share annual volume information for sales purchased through the (vending machines, Café, Athletics, Boosters etc.)?
- Stated by either cases or units sold, category or brand, and package size

Answer: Previously answered as not being able to provide volume information. Please see volume reports as requested as EXHIBITS A & B

EXHIBIT A

DELIVERY TYPE AND BRAND CATEGORY 2023

DeliveryType	BrandCategory	Volume			
		2023 YTD	2022 YTD	Diff	% Chg
DIRECT DELIVERY	POWERADE	3,779	4,364	-585	-13.41
	DASANI	2,573	2,414	159	6.59
	CORE POWER-KO	1,104	1,143	-39	-3.37
	DR PEPPER-CS	747	1,087	-340	-31.28
	COCA-COLA	642	699	-57	-8.15
	SPRITE	460	546	-86	-15.71
	MONSTER-KO	403	323	80	24.77
	GLACEAU SMARTWATER	312	324	-12	-3.55
	GOLD PEAK	229	226	3	1.11
	COCA-COLA LIGHT/DIET	202	232	-30	-12.82
	COCA-COLA ZERO	193	190	3	1.58
	REIGN-KO	181	132	49	37.26
	BODYARMOR SUPERDRINK	176	192	-16	-8.36
	DIET DR PEPPER-CS	158	154	4	2.61
	MINUTE MAID	154	142	12	8.45
	DUNKIN'	144	135	10	7.06
	FANTA	120	135	-16	-11.48
	PEACE-KO	116	71	45	63.38
	BARQ'S	101	96	6	5.76
	MINUTE MAID JUICE TO	94	113	-19	-16.81
	FAIRLIFE MILK-KO	71	64	7	11.02
	GLACEAU VITAMINWATER	63	60	3	5.04
	AHA-KO	50	87	-37	-42.53
	BODYARMOR LYTE-KO	36	46	-10	-20.88
	GLACEAU VWTR ZERO-KO	28	37	-10	-25.68
	SEAGRAMS-KO	26	24	2	8.33
	SPRITE ZERO/DIET/LIG	24	20	4	20.00
	HI-C	20	30	-10	-33.33
	TOPO CHICO-KO	12	20	-8	-40.00
	REIGN INFERNO-KO	8	10	-2	-15.79
	JAVA MONSTER- KO	6	23	-18	-76.09
	FUZE-KO	5	15	-10	-66.67
	POWERADE LIGHT/ZERO	4	7	-3	-44.44
	REIGN STORM CLEAN EN	4	0	4	100.00
	ANCILLARY ITEMS	2	7	-5	-71.43
	FANTA ZERO/DIET/LIGH	1	0	1	100.00
	BANG ENERGY-KO	1	0	1	100.00
	BODYARMOR SPORTWATER	0	6	-6	-100.00
	TRUE NORTH-KO	0	2	-2	-100.00
	Not assigned	-11	-4	-7	-175.00
VENDING	DR PEPPER-CS	666	786	-119	-15.20
	MONSTER-KO	539	518	20	3.92
	COCA-COLA	427	471	-44	-9.42
	DASANI	334	412	-78	-18.95
	SPRITE	294	320	-26	-8.00
	POWERADE	195	229	-34	-14.95
	COCA-COLA ZERO	134	134	0	-0.34
	FANTA	128	118	10	8.39
	COCA-COLA LIGHT/DIET	98	121	-23	-19.16
	GOLD PEAK	71	107	-36	-33.54
	DIET DR PEPPER-CS	61	71	-10	-14.68
	MINUTE MAID JUICE TO	47	47	0	0.89
	BARQ'S	41	46	-5	-11.43
	NOS	35	57	-22	-38.20
	GLACEAU VITAMINWATER	27	29	-1	-3.95
	DUNKIN'	26	36	-10	-26.85
	BODYARMOR SUPERDRINK	19	24	-5	-20.83
	PEACE-KO	17	8	9	108.34
	GLACEAU SMARTWATER	9	0	9	100.00
	REIGN-KO	7	13	-6	-48.00
	REIGN INFERNO-KO	3	7	-4	-53.85
	FULL THROTTLE	2	4	-2	-50.00
	FUZE-KO	0	5	-5	-100.00
	JAVA MONSTER- KO	0	8	-8	-100.00
	TOPO CHICO-KO	0	1	-1	-100.00
	BODYARMOR LYTE-KO	0	2	-2	-100.00
Totals		15,418	16,746	-1,328	-7.92

EXHIBIT B

DELIVERY TYPE, SIZE AND BRAND

Delivery Type	Size	Brand/Category	Volume 2023 YTD	2022 YTD	Diff	% Chg
DIRECT DELIVERY		POWERADE	3,390	3,653	-263	-7.20
		DASANI	1,010	869	141	16.23
		DR PEPPER-CS	501	468	33	7.05
		COCA-COLA	414	320	94	29.38
		SPRITE	248	216	32	14.81
		GLACEAU SMARTWATER	167	139	28	20.14
		COCA-COLA ZERO	132	120	12	10.00
		MINUTE MAID	124	118	6	5.08
		DIET DR PEPPER-CS	121	133	-12	-9.02
		COCA-COLA LIGHT/DIET	111	120	-9	-7.50
		FANTA	103	106	-3	-2.83
		BARQ'S	76	78	-2	-2.56
		GLACEAU VITAMINWATER	24	26	-2	-7.84
		SPRITE ZERO/DIET/LIG	20	19	1	5.26
		GLACEAU VWTR ZERO-KO	5	11	-7	-69.09
		FANTA ZERO/DIET/LIGH	1	0	1	100.00
	20 OZ	POWERADE LIGHT/ZERO	0	1	-1	-100.00
		DASANI	1,286	1,360	-74	-5.44
		GLACEAU VITAMINWATER	39	34	5	14.71
		GLACEAU VWTR ZERO-KO	23	26	-3	-11.54
		GOLD PEAK	9	8	1	12.50
		COCA-COLA	0	0	0	0.00
	16.9 OZ	SPRITE	0	3	-3	-100.00
		GLACEAU SMARTWATER	0	7	-7	-100.00
	14 OZ	CORE POWER-KO	1,104	1,141	-37	-3.20
		FAIRLIFE MILK-KO	71	64	7	11.02
		DASANI	222	100	122	122.00
		POWERADE	184	325	-141	-43.38
		SPRITE	111	28	83	296.43
		MINUTE MAID JUICE TO	92	109	-17	-15.60
		DR PEPPER-CS	91	49	42	85.71
		COCA-COLA	90	53	38	71.43
		AHA-KO	50	87	-37	-42.53
		COCA-COLA ZERO	48	29	19	65.52
		COCA-COLA LIGHT/DIET	38	32	6	18.75
		DIET DR PEPPER-CS	19	13	6	46.15
		FANTA	5	0	5	100.00
		SPRITE ZERO/DIET/LIG	4	1	3	300.00
		REIGN STORM CLEAN EN	4	0	4	100.00
		TOPO CHICO-KO	2	2	0	0.00
		BODYARMOR SUPERDRINK	0	10	-10	-100.00
		BODYARMOR LYTE-KO	0	5	-5	-100.00
	12 OZ	TRUE NORTH-KO	0	2	-2	-100.00
		MONSTER-KO	-1	9	-10	-111.11
		MONSTER-KO	404	313	91	29.07
		REIGN-KO	181	132	49	37.26
		BODYARMOR SUPERDRINK	75	62	13	21.14
		REIGN INFERNO-KO	8	10	-2	-15.79
		BODYARMOR LYTE-KO	7	23	-16	-68.89
	16 OZ	BANG ENERGY-KO	1	0	1	100.00
		MINUTE MAID	0	2	-2	-100.00
		DR PEPPER-CS	155	570	-415	-72.81
		COCA-COLA	120	300	-180	-60.00
		SPRITE	90	295	-205	-69.49
	5 GALLON	COCA-COLA LIGHT/DIET	50	80	-30	-37.50
		POWERADE	153	154	-1	-0.81
		BODYARMOR SUPERDRINK	101	120	-19	-15.83
		BODYARMOR LYTE-KO	29	18	11	61.11
	28 OZ	POWERADE LIGHT/ZERO	4	6	-2	-40.00
		POWERADE	53	183	-130	-71.23
		GOLD PEAK	53	73	-20	-27.59
		MINUTE MAID	30	20	10	50.00
		BARQ'S	25	18	8	42.86
		HI-C	20	30	-10	-33.33
		DIET DR PEPPER-CS	18	8	10	133.33
		COCA-COLA ZERO	13	38	-25	-66.67
		FUZE-KO	5	15	-10	-66.67
		FANTA	3	20	-18	-87.50
	2.5 GALLON	COCA-COLA	0	8	-8	-100.00
	18.5 OZ		167	146	22	14.78
	33.8 OZ		121	87	34	39.08
	23 OZ		116	71	45	63.38
	13.7 OZ		106	135	-29	-21.19
	1 LTR		55	92	-37	-40.22
	11 OZ		38	10	28	280.00
	2 LTR		26	26	0	0.00
	23.7 OZ		24	72	-48	-66.43
	355 ML		22	24	-2	-8.33
	7.5 OZ		20	0	20	100.00
	40 X 48 INCH		9	0	9	100.00
	15.5 OZ		6	12	-6	-50.00
	15 OZ		6	13	-8	-57.69
	20.3 OZ		4	6	-2	-33.33
	10 OZ		2	4	-2	-50.00
	1.25 LTR		0	3	-3	-100.00
	1.5 LTR		0	20	-20	-100.00
	500 ML		0	6	-6	-100.00
	24 OZ		0	1	-1	-100.00
	8 OZ		0	2	-2	-100.00
	9 OZ		0	7	-7	-100.00
	1.11 KG		0	50	-50	-100.00
	20 POUND		-1	-3	2	66.67
	3 LTR		-2	0	-2	-100.00
	36 X 36 INCH		-15	-1	-14	-1,400.00
		DR PEPPER-CS	659	721	-62	-8.81
		COCA-COLA	418	443	-25	-5.75
		DASANI	334	412	-78	-18.95
		SPRITE	291	299	-8	-2.54
		POWERADE	195	229	-34	-14.95
		COCA-COLA ZERO	134	126	7	5.76
		FANTA	124	114	10	8.65
		COCA-COLA LIGHT/DIET	97	113	-16	-14.31
		DIET DR PEPPER-CS	58	56	1	2.37
		BARQ'S	40	41	-1	-3.06
		GLACEAU VITAMINWATER	27	29	-1	-3.95
	20 OZ	GLACEAU SMARTWATER	9	0	9	100.00
		MONSTER-KO	539	518	20	3.92
		NOS	35	57	-22	-38.20
		BODYARMOR SUPERDRINK	19	24	-5	-20.83
		REIGN-KO	7	13	-6	-48.00
		REIGN INFERNO-KO	3	7	-4	-53.85
	16 OZ	FULL THROTTLE	2	4	-2	-50.00
		BODYARMOR LYTE-KO	0	2	-2	-100.00
		MINUTE MAID JUICE TO	47	47	0	0.89
		COCA-COLA	9	28	-19	-67.01
		DR PEPPER-CS	7	64	-57	-89.12
		FANTA	4	4	0	0.00
		SPRITE	3	21	-18	-85.71
		DIET DR PEPPER-CS	3	15	-12	-79.66
		COCA-COLA LIGHT/DIET	1	8	-7	-87.50
		BARQ'S	1	5	-4	-80.00
		FUZE-KO	0	5	-5	-100.00
	12 OZ	COCA-COLA ZERO	0	8	-8	-100.00
	18.5 OZ	GOLD PEAK	71	107	-36	-33.54
	13.7 OZ	DUNKIN'	26	36	-10	-26.85
	23 OZ		17	8	9	108.34
	15 OZ		0	8	-8	-100.00
	20.3 OZ		0	1	-1	-100.00
VENDING						
Totals			15,420	16,748	-1,331	-7.92



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NACOGDOCHES, TEXAS

PROCUREMENT AND BUSINESS SERVICES
P. O. Box 13030
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REQUEST FOR PROPOSAL

RFP NUMBER
POURING RIGHTS-2024

ADDENDUM NO. 2
DATED: 12/13/2023

PROPOSAL MUST BE RECEIVED BEFORE:
5:00PM, CST, TUESDAY, JANUARY 16, 2024

MAIL PROPOSAL TO:

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Stephen F. Austin State University
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email: joneskk2@sfasu.edu

**STEPHEN F. AUSTIN STATE UNIVERSITY
Request for Proposal #
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ADDENDUM NO. 2

**THIS ADDENDUM MUST BE ACKNOWLEDGED FOR THE RESPONSE TO RECEIVE
CONSIDERATION.**

Updates in Red

**Please see attached sign in sheets from the Pre-proposal meeting held 11/30/2023 following
questions and answers.**

Please note the following responses to questions received:

1. In order to provide the university with the most advantageous partnership proposal, Pepsi requests the extension to the RFP be pushed to January 19th 2024. This would allow time to respond accordingly and provide the best financial partnership possible to the university, and would allow time due to Holiday schedules (both Thanksgiving week lost as the RFP came out & Christmas week coming up in December).

Answer: We will adjust the RFP timeline as follows:

- Proposals due by 5:00 p.m. on Tuesday, January 16, 2024
- Committee review and evaluation of proposals January 17-26, 2024
- Vendor presentations January 31 or February 1, 2024
- Notification of award expected on or near February 7, 2024

2. If the university is willing to grant an extension to the RFP due date, Pepsi requests that the question deadline be extended, ideally, we would ask the deadline be post the response to this list of questions, to allow potential follow up questions to the answers the university provides to these initial questions.

Answer: University cannot accept any more questions at this time.

3. Does the university/ concessionaire purchase cups from the current supplier? If so, can you please provide quantities purchased by each size over the past year and pricing?

Answer: SFA's current dining services provider orders Coca-Cola branded cups, as well as most of the fountain syrups, through Sysco.

4. Please provide the university priority for a beverage provider?

Answer: Exceptional and attentive service, financial transparency and easy to read monthly sales reports, and effective management of pars in machines.

5. Does the university plan any new dining/ retail locations over the next 2-3 years? If yes, will they be replacing existing locations or new locations? Please provide any additional details to these locations (i.e., dining hall or convenience store)?

Answer: SFA will be building a new dining hall to replace East College Cafeteria (ECC). The ECC will remain operational until construction is complete on the new facility, April 2025, then the ECC will be demolished. There will be both traditional dining and a retail component in the new dining hall. Additionally, the new Forestry building and science building (both not expected until 2027+) may allow for additional vending opportunities. Currently there is one drink and one snack machine in the existing buildings.

6. Can the university provide the RFP in a word document?

Answer: No.

7. Provide volume in case quantities for the last 3 years broken out by fountain, vending, and bottle & can and also by flavor and package.

Answer: We do not have volume information to share but we do have revenue numbers.

FY23

Concessions (bottles) - \$45,000

Retail - \$144,000

Catering - \$11,000

Fountain - \$44,000 (cost to Chartwells)

8. Provide Equipment list broken out by fountain, coolers, and vendors.

Answer:

**Fountain Beverage
Machines**

SC Dining Hall – 3
East Dining Hall – 3
Einstein's – 1
CFA – 3
Sal's – 1
Cola
Panda Express – 2
Tu Taco – 1

Total – 14

**Full Size Coolers
Supplied by Coca-Cola**

Football Stadium - 13
Basketball Coliseum – 12
Salty Tom's – 1
Tu Taco – 1
Twiggy's – 1

Total – 28

**Small (undercounter size)
Coolers Supplied by Coca-Cola**

Baseball Trailer – 4
Volleyball - 2
Soccer Trailer* – 2

*Trailer owned by Coca-

Total - 8

9. The RFP asks for a 5yr + 5yr proposal. Is the University open to considering other terms such as a 7yr + 3yr or a 10yr deal?

Answer: We are open to proposals for 5 years + 5 years and 7 years + 3 years but not a 10-year deal.

10. Section 5.3.5 mentions that beverage products must be offered that work with Gilley's vending equipment. Does this mean that Gilley will be doing all beverage vending?

Answer: No, Gilly is our snack vendor only. The pouring rights vendor would be responsible for providing their own machines. We would like the machines to be comparable to the snack machines we currently use, due to current space constraints. All machines must have credit card readers and as many as possible with tap and pay.

11. For clarity is a PDF submitted electronically of the proposal the only thing required or does a USB with the proposal on it also have to be submitted?

Answer: Please refer to Section 3. – 3.1 for the answer to that question.

12. If the vendor has the ability to offer service to customer owned equipment is that something we can include in our proposal?

Answer: Yes.

13. Currently there are juice units and fresh brewed tea units on campus. Is this something that the vendors can include in their proposal or are there separate contracts for that?

Answer: Yes, please include options.

14. Can you please provide detailed pictures of the athletic concessions and any beverage equipment located in them?

Answer:



15. Can you share annual volume information for sales purchased through the (vending machines, Café, Athletics, Boosters etc.)?

- Stated by either cases or units sold, category or brand, and package size

Answer: We cannot provide any volume information.

16. Can you share who your current provider and commission % on beverages and Mech rates/ Prices?

Answer: Our current provider is Coca-Cola.

17. Can you share how many “glass front vending” vs stack machines you have across district for beverage vending?

Answer: About 20% of our current stock are glass front and the rest are stack.

18. Can you share the amount of coolers you have in concession and across school (student nutrition etc.)?

Answer: Listed in question #8.

19. Can you share the amount of fountains you have across all outlets?

Answer: Listed in question #8.

20. Will Starbucks bottled beverages be a part of the Pouring Rights volume?

Answer: No, these are an exception to the pouring rights contract.

21. Will all outlets and locations be required to purchase through vendor under the contract (this includes all faculty departments, food concepts etc....)

Answer: Yes, with the exception of faculty departments. We don't have an ability to monitor the oversight of that.

22. Would the University consider fixed funding and variable funding based on volume incentives?

Answer: Yes, we would consider both if provided in the proposal.

23. Is Marketing support with student engagement funds to be used for promotions, events, samplings something the University is seeking?

Answer: Yes, any and all of the above.

24. Is there a minimum number of machines required for vending/ cooler equipment?

Answer: All current vending machines are accounted for and meet our expectations. Coolers should stay around the same number.

25. Would there be an option in the new dining areas for bottle availability?

Answer: Yes, we would consider a grab & go section for the new dining hall.

26. With the UT system alignment, are there any new facility changes in the next few years, that will have additional volume through the pouring rights agreement that we should be aware of?

Answer: Answered in question #5.



SIGN IN SHEET

Company Name: PepsiCo Email: Ryan.edwards@pepsico.com
Representative Name: Ryan Edwards Phone: (682) 226-2193 Fax: —
Address: _____ City: _____ St/Zip: _____
CONTACT FOR HUB PAPERWORK (name, phone, email): Ryan Edwards, (682) 226-2193, ryan.edwards@pepsico.com

Company Name: PepsiCo Email: jennifer.huffer@pepsico.com
Representative Name: Jennifer Huffer Phone: 713-899-4169 Fax: _____
Address: _____ City: _____ St/Zip: _____
CONTACT FOR HUB PAPERWORK (name, phone, email): _____

Company Name: _____ Email: _____
Representative Name: _____ Phone: _____ Fax: _____
Address: _____ City: _____ St/Zip: _____
CONTACT FOR HUB PAPERWORK (name, phone, email): _____



SIGN IN SHEET

Company Name: Coca Cola Southwest Beverages Email: ryann.mccarron@cocalaswb.com
Representative Name: Ryann McCarron Phone: 469-418-3086 Fax: _____
Address: 2 Urban Center, 5420 US Freeway City: Dallas TX St/Zip: TX 75240
Suite 800
CONTACT FOR HUB PAPERWORK (name, phone, email): Ryann McCarron

Company Name: _____ Email: _____
Representative Name: _____ Phone: _____ Fax: _____
Address: _____ City: _____ St/Zip: _____
CONTACT FOR HUB PAPERWORK (name, phone, email): _____

Company Name: _____ Email: _____
Representative Name: _____ Phone: _____ Fax: _____
Address: _____ City: _____ St/Zip: _____
CONTACT FOR HUB PAPERWORK (name, phone, email): _____



SIGN IN SHEET

Company Name: Persico Email: Joe.Maldonado@persico.com
Representative Name: Joe Maldonado Phone: 936-208-9054 Fax: _____
Address: _____ City: _____ St/Zip: _____
CONTACT FOR HUB PAPERWORK (name, phone, email): _____

Company Name: Coca Cola Southwest Bev Email: Michael.Qualls@coca.colaswb.com
Representative Name: Michael Qualls Phone: 979412-2169 Fax: _____
Address: 702 Capital phwy 77802 City: Bryan t St/Zip: tx. 77802
CONTACT FOR HUB PAPERWORK (name, phone, email): _____

Company Name: _____ Email: _____
Representative Name: _____ Phone: _____ Fax: _____
Address: _____ City: _____ St/Zip: _____
CONTACT FOR HUB PAPERWORK (name, phone, email): _____



SIGN IN SHEET

Company Name: COCA-COLA Email: THOMAS.SOBCEK@COACOLASWB.COMRepresentative Name: TOM SOBCEK Phone: 713-689-8249 Fax: _____Address: 3321 NW STAMUNGS DRIVE City: NACOGDOCHES St/Zip: TX 75964

CONTACT FOR HUB PAPERWORK (name, phone, email): _____

Company Name: CCSWB Email: DAVID CRAMPTON@COACOLASWB.COMRepresentative Name: DAVID CRAMPTON Phone: 832 421-7513 Fax: _____Address: 8161 MOBILE LN City: DALLAS St/Zip: TEXAS 75227

CONTACT FOR HUB PAPERWORK (name, phone, email): _____

Company Name: _____ Email: _____

Representative Name: _____ Phone: _____ Fax: _____

Address: _____ City: _____ St/Zip: _____

CONTACT FOR HUB PAPERWORK (name, phone, email): _____



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REFER INQUIRIES TO:

Kim Jones
Stephen F. Austin State University
Procurement and Business Services
936.468.6551
email: joneskk2@sfasu.edu

**STEPHEN F. AUSTIN STATE UNIVERSITY
Request for Proposal #
POURING RIGHTS-2024**

ADDENDUM NO. 1

**THIS ADDENDUM MUST BE ACKNOWLEDGED FOR THE RESPONSE TO RECEIVE
CONSIDERATION.**

Updates in Red

**Regarding questions we have received from vendors and the requests to extend the RFP due
date deadline:**

As RFP Requested in Section 2.6 Pre-Proposal Conference:

University will hold a pre-proposal conference at 1:00 p.m., Central Time on November 30, 2023, in Room 1.301 of The Baker Pattillo Student Center located on campus. (Ref. APPENDIX FOUR – Campus Map). The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives' relevant questions and clarify provisions of this RFP.

Please note that all questions will be taken during the pre-proposal conference dated above. An addendum will be published with answers to questions asked during the pre-proposal conference. **University shall consider extending the due date of the RFP at that time.**



STEPHEN F. AUSTIN STATE UNIVERSITY

NACOGDOCHES, TEXAS

PROCUREMENT AND BUSINESS SERVICES
P. O. Box 13030
NACOGDOCHES, TX 75962

REQUEST FOR PROPOSAL

RFP NUMBER
POURING RIGHTS – 2024

RESPONSES MUST BE RECEIVED BEFORE:
5:00PM CST, TUESDAY, DECEMBER 19, 2023

MAIL RESPONSE TO:

Stephen F. Austin State University
Procurement and Business Services
P. O. Box 13030, SFA Station
Nacogdoches, TX 75962-3030

HAND DELIVER AND/OR EXPRESS MAIL TO:

Stephen F. Austin State University
Procurement and Business Services
2102 Alumni Drive, Room 131
Nacogdoches, TX 75962-3030

Show RFP Number, Due Date and Time on Return Envelope

NOTE: RESPONSE must be time stamped at **Stephen F. Austin State University Procurement and Business Services** before the hour and date specified.

REFER INQUIRIES TO:

Kim Jones
Stephen F. Austin State University
Procurement and Business Services
936.468.6551
email: joneskk2@sfasu.edu

REQUEST FOR PROPOSAL

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Attachments:**APPENDIX ONE:** PROPOSAL REQUIREMENTS**APPENDIX TWO:** SAMPLE AGREEMENT**SCHEDULE 1 - BEVERAGE VENDING AND POURING RIGHTS AGREEMENT****SCHEDULE 2 - SPONSORSHIP RIGHTS AGREEMENT****APPENDIX THREE:** HUB SUBCONTRACTING PLAN**APPENDIX FOUR:** BEVERAGE MACHINE LOCATIONS AND CAMPUS MAP**APPENDIX FIVE:** CERTIFICATE OF INTERESTED PARTIES (FORM 1295)**APPENDIX SIX:** PERFORMANCE BOND**APPENDIX SEVEN:** ACCESS BY INDIVIDUALS WITH DISABILITIES

SECTION 1

INTRODUCTION

1.1 Description of University

Stephen F. Austin State University, the newest member of The University of Texas System, began a century ago as a teachers' college in Texas' oldest town, Nacogdoches. Today, it has grown into a regional institution comprising six colleges — business, education, fine arts, forestry and agriculture, liberal and applied arts, and sciences and mathematics. Accredited by the Southern Association of Colleges and Schools, SFA enrolls approximately 11,000 students while providing the academic breadth of a state university with the personalized attention of a private school. The main campus encompasses 421 acres that include 36 academic facilities, nine residence halls, and 68 acres of recreational trails that wind through its six gardens. The university offers more than 80 bachelor's degrees, more than 40 master's degrees and four doctoral degrees covering more than 120 areas of study. Learn more at sfasu.edu

1.2 Background and Special Circumstances

The university is seeking a qualified vendor, hereafter referred to as "Company," to provide pouring rights services for the entire University including, dining halls, Athletics and related sports venues

1.3 Objective of Request for Proposal

The University is soliciting proposals in response to this Request for Proposal for Selection of a Vendor to Provide Beverage Services and Supply Beverages for Dining and Concessions with Certain Exclusive Pouring and Sponsorship Rights from qualified and experienced vendors to provide beverage fountain machines and the necessary beverage services (collectively, "Services") with certain exclusive pouring rights and sponsorship opportunities.

The Services, which are more specifically described in **Section 5.3** (Scope of Work) of this RFP, include provision of beverages, dispensing equipment and related supplies for dining and concession operations on Campus operated by university and third-party concessionaires ("University Concessionaires"). In exchange for monetary and non-monetary consideration, the Contractor (if any) (Ref. **Section 2.3**) selected by university in accordance with the requirements and specifications set forth in this RFP, will be granted certain exclusive rights to have Contractor's products be the only beverages sold, served, or offered for sale on the Campus by University and/or any of University's Concessionaires, except as otherwise provided by the Agreement. The Office of Procurement and Business Services, on behalf of the University desires to obtain written proposals from companies who wish to obtain Exclusive Soft Drink Pouring Rights for certain related Sponsorship Opportunities for the University campus facilities for the contract period specified herein. In general, and in addition to other needs specified herein, Proposer is requested to submit a Proposal as described in this Request for Proposal (RFP). In return for the specified Exclusive soft drink pouring rights and certain Related Sponsorship Opportunities offered to the Proposer, the Proposer shall provide the University equipment, services, fees and pricing guarantees. Pursuant to the terms of the contract and subject to the exclusions, no competitive products or related items including, but not limited to premium items, shall be made available, sampled, advertised and /or promoted at university (subject to exclusions). The University's general goal is to improve beverage service and increase net revenues by maximizing the availability of product, offering marketing and sales opportunities, and developing strategies that benefit the University and the beverage provider. Ultimately, we will create a relationship based upon a shared understanding of these mutual benefits emphasizing active and open communication, and most effectively applying the resources and expertise of each party. Each Proposer may also include in their Proposal any other items, such as programs, innovations, or resources that it believes would benefit the University. The University shall only consider Proposals from financially responsible firms presently engaged in the business of manufacturing, distributing or selling, or licensing the right to manufacture, distribute or sell Soft Drink Beverages available on a nationwide basis and providing support services in conjunction therewith. Information submitted by each proposer will determine which Proposal will best serve the University. Failure of successful Proposer to accept any items of its Proposal as part of the Contract may result in cancellation of the award."

1.4 Type of Agreement

The Contractor will be required to enter into an agreement with university as further described in **Section 4**, and in a form substantially similar to the Beverage Vending and Pouring Rights Agreement (the “Beverage Vending and Pouring Rights Agreement”) attached to this RFP as Schedule 1 of Appendix Two and incorporated for all purposes.

As part of this RFP, the Contractor and University will enter in to an agreement for sponsorship rights at specified facilities on Campus, in addition to the Beverage Vending and Pouring Rights Agreement, Contractor will also be required to enter into a separate agreement with University as further described in Section 4, and in a form substantially similar to the Sponsorship Rights Agreement (the “Sponsorship Rights Agreement”) attached to this RFP as Schedule 2 of Appendix Two and incorporated for all purposes.

The Beverage Vending and Pouring Rights Agreement and the Sponsorship Rights Agreement are sometimes collectively referred to as the “Agreement.”

1.4 Term of the Agreement

The initial term of the resulting Agreement will be for five (5) years, and thereafter the University shall have the right, at its option, to renew the Agreement for another five (5) years assuming mutually agreeable terms and pricing.

1.4.1 The resulting agreement will be considered an exclusive agreement between the University and the awarded Contractor based on the evaluation of this RFP.

The Sponsorship Rights Agreement and the Beverage Vending and Pouring Rights Agreement will expire on the same date with the same option to extend

1.5 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by [§61.003, Education Code](#)) to use the group purchasing procurement method (Ref. §§[51.9335](#), [73.115](#), and [74.008](#), *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System (**UT System**), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that take into account the higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP. Any purchases made by other institutions based on this RFP will be the sole responsibility of those institutions.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals until **5:00 p.m. Central Time**, on **Tuesday, December 19, 2023 (Submittal Deadline)**.

2.2 RFP Contact Information and Questions

Interested parties may direct questions about this RFP to:

Contact: Kim Jones
Title: Assistant Director of Procurement
Phone: 936.468.6551
Email to: joneskk2@sfasu.edu
Subject Line: RFP #POURING RIGHTS-2024

University instructs interested parties to restrict all contact and questions regarding this RFP to written communications delivered (i) in accordance with this Section on or before **5:00p.m. Central Time Friday, December 07, 2023 (Question Deadline)**, or (ii) if questions relate to Historically Underutilized Businesses, in accordance with **Section 2.5**.

University will provide responses as soon as practicable following the Question Deadline. University intends to respond to all timely submitted questions. However, University reserves the right to decline to respond to any question.

University will evaluate all proposals and select Finalists between **December 20, 2023 – January 12, 2024**. Finalists will be notified and invited to present to the evaluation committee on **January 18, 2024 or January 19, 2024. (Time, location and details of presentation to be provided at the time of Finalists notification.)** Notification of award expected as early as **January 26, 2024**. Following notification of award will be contract finalization with expected start date on or before **June 1, 2024**.

2.3 Criteria for Selection

The successful Proposer, if any, selected by University through this RFP will be the Proposer that submits a proposal on or before the Submittal Deadline that is the most advantageous to university. **Contractor** means the successful Proposer under this RFP.

Proposer is encouraged to propose terms and conditions offering the maximum benefit to university in terms of (1) service, (2) total overall cost, and (3) project management expertise.

The evaluation of proposals and the selection of Contractor will be based on the information provided in the proposal. University may consider additional information if University determines the information is relevant.

Criteria to be considered by university in evaluating proposals and selecting Contractor, will be these factors:

2.3.1 Threshold Criteria Not Scored

- 2.3.1.1 Ability of University to comply with laws regarding Historically Underutilized Businesses; and
- 2.3.1.2 Ability of University to comply with laws regarding purchases from persons with disabilities.

2.3.2 Scored Criteria

2.3.2.1 Financial Package	40%
2.3.2.2 Quality of the Proposer's goods or services	20%
2.3.2.3 Extent to which the goods or services meet the University's needs	20%
2.3.2.4 Reputation of the Proposer and of the Proposer's goods or services	10%
2.3.2.5 Proposer's past relationship with University	5%

2.3.2.6 Proposer's exceptions to the terms and conditions set forth in **Section 4** of this RFP

5%

2.4 Key Events Schedule

Date RFP Issued	November 17, 2023
Pre-Proposal Conference (Ref. Section 2.6)	November 30, 2023, 1:00 pm (CST)
Question Deadline (Ref. Section 2.2)	December 7, 2023, 5:00 pm (CST)
Submittal Deadline (Ref. Section 2.1)	December 19, 2023, 5:00 pm (CST)
Presentations (Ref. Section 2.2)	January 18 & 19, 2024. TBD (CST)
Notification of Award (Ref. Section 2.2)	On or around January 26, 2024
Start Date (Ref. Section 2.2)	On or around June 1, 2024

2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (**HUBs**) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any Work, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by university as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by university, its obligation to make a good faith effort to utilize HUBs when subcontracting any Work will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of Work by the Proposer is subject to review by university to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [34 TAC §20.285](#), and has determined that subcontracting opportunities are probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan (**HSP**) is a required part of the proposal. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses, attached as **APPENDIX THREE**.

*Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including **APPENDIX THREE**. Proposers that fail to submit the HSP will be considered non-responsive to this RFP as required by [§2161.252, Government Code](#).*

Questions regarding the HSP may be directed to:

Contact: Lacey Bradshaw
 Title: HUB Coordinator
 Phone: 936.468.4412
 Email: Lacey.Bradshaw@sfasu.edu

Contractor will not be permitted to change its HSP unless: (1) Contractor completes a new HSP in accordance with the terms of **APPENDIX THREE**, setting forth all modifications requested by Contractor,

(2) Contractor provides the modified HSP to University, (3) University approves the modified HSP *in writing*, and (4) all agreements resulting from this RFP are amended in writing to conform to the modified HSP.

2.5.4 *At the same time Proposer submits its proposal (no later than the Submittal Deadline (Ref. **Section 2.1**)), Proposer must submit the following HUB materials (**HUB Materials**):*

(a) **One (1) complete electronic copy of Proposer's HSP in a single .pdf file on a USB drive.** Proposer's HUB Materials must be submitted (as instructed in **Section 3.2**) as a separate attachment titled HSP

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP attachment meeting the above requirements may be rejected by university and returned to Proposer unopened as non-responsive due to material failure to comply with advertised specifications.

University will open Proposer's HSP prior to opening the proposal to confirm Proposer submitted the HSP. Proposer's failure to submit the HSP will result in University's rejection of the proposal as non-responsive due to material failure to comply with advertised specifications.

NOTE: The requirement that Proposer provide the HSP under this **Section 2.5.4** is separate from and does not affect Proposer's obligation to provide University with the electronic copies of its proposal specified in **Section 3.1**.

2.5.5 University may offer Proposer an opportunity to seek informal review of its draft HSP by University's HUB Office before the Submittal Deadline. If University extends this offer, details will be provided at the Pre-Proposal Conference (Ref. **Section 2.6**) or by other means. Informal review is designed to help address questions Proposer may have about how to complete its HSP properly. Concurrence or comment on Proposer's draft HSP by University will *not* constitute formal approval of the HSP, and will *not* eliminate the need for Proposer to submit its final HSP to University as instructed by **Section 2.5**.

2.6 Pre-Proposal Conference

University will hold a pre-proposal conference at **1:00 p.m., Central Time on November 30, 2023, in Room 1.301 of The Baker Pattillo Student Center located on campus.** (Ref. **APPENDIX FOUR – Campus Map**). The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

Proposer must submit (a) one (1) complete electronic copy of its entire proposal, in a single .pdf file on **USB drive**. An *original* signature by an authorized officer of Proposer must appear on the Execution of Offer (Ref. **Section 2** of **APPENDIX ONE**) of the submitted electronic copy of the proposal.

3.2 Submission

Proposals must be received by university on or before the Submittal Deadline. (Ref. **Section 2.1**) and delivered to:

Stephen F Austin State University
Procurement and Business Services
2102 Alumni Drive Room 131
P.O Box 13030, SFA Station
Nacogdoches, TX 75962-3030
RFP #POURING RIGHTS-2024

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of ninety (90) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

3.4.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Agreement (Ref. **APPENDIX TWO**), the Notice to Proposer (Ref. **Section 2**), Proposal Requirements (Ref. **APPENDIX ONE**) and the Specifications and Additional Questions (Ref. **Section 5**). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- 3.4.1.1 Specifications and Additional Questions (Ref. **Section 5**);
- 3.4.1.2 Sample Agreement (Ref. **APPENDIX TWO**);
- 3.4.1.3 Proposal Requirements (Ref. **APPENDIX ONE**);
- 3.4.1.4 Notice to Proposers (Ref. **Section 2**).

3.5 Submittal Checklist

Proposer is instructed to complete, sign, and return the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, then University may reject the proposal:

- 3.5.1 Signed and Completed Execution of Offer (Ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Pricing and Delivery Schedule (Ref. **Section 6**)
- 3.5.3 Responses to Proposer's General Questionnaire (Ref. **Section 3** of **APPENDIX ONE**)
- 3.5.4 Signed and Completed Addenda Checklist (Ref. **Section 4** of **APPENDIX ONE**)
- 3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (Ref. **Section 5**)
- 3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (Ref. **Section 2.5** and **APPENDIX THREE**).

SECTION 4

GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Agreement (Ref. **APPENDIX TWO**) or, in the sole discretion of university, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit a list of the exceptions as part of its proposal in accordance with **Section 5.3.1**. Proposer's exceptions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates the Proposer's proposal.

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SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

Minimum requirements and specifications for Work, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3**, **Contractor** means the successful Proposer.

5.2 Additional Questions Specific to this RFP

Proposer must submit the following information as part of Proposer's proposal:

- 5.2.1 If Proposer takes exception to any terms or conditions set forth in **APPENDIX TWO**, Proposer must submit a list of the exceptions.
- 5.2.2 By signing the Execution of Offer (Ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (Ref. [§2252.908, Government Code](#)) and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (**TEC**), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX FIVE**. *Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing [§2252.908, Government Code](#), and information on the TEC website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php. **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.***
- 5.2.3 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the "Access by Individuals with Disabilities" language that is set forth in **APPENDIX SEVEN, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the "Access by Individuals with Disabilities" language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer's objection. **NOTE: A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.**
- 5.2.4 PROPOSER MUST PROVIDE A DETAILED LIST OF ANY AND ALL SPONSORSHIP BENEFITS PROPOSER ANTICIPATES UNIVERSITY WILL GRANT CONTRACTOR IN CONNECTION WITH THE SPONSORSHIP AGREEMENT. PROPOSER'S REQUESTED SPONSORSHIP BENEFITS WILL BE SUBJECT TO AVAILABILITY AND APPROVAL BY UNIVERSITY. A DETAILED DESCRIPTION OF UNIVERSITY APPROVED SPONSORSHIP BENEFITS WILL BE LISTED IN **EXHIBIT A** OF THE SPONSORSHIP AGREEMENT. University anticipates sponsorship benefits will satisfy qualified sponsorship requirements under applicable the Internal Revenue Code and the Treasury Regulations.
- 5.2.5 Proposer understands all sponsorship benefits University grants Contractor will satisfy qualified sponsorship requirements of the Internal Revenue Code and the Treasury Regulations.
- 5.2.6 Confirm Proposer understands that logos Proposer may use in connection with rights University conveys to Proposer under the Agreement, are restricted to Proposer's name, address, telephone number, web site address, logo, recognized slogan, and/or product pictures.
 - 5.2.6.1 Demonstrated ability to provide beverage pouring services.
Proposals must describe the Proposer's experience in the operation of Beverage & Vending Services for Dining and Concessions with Certain Exclusive Pouring and Sponsorship Rights and the manner in which Proposer would operate beverage vending and dispensing services for the University campus community.
 - 5.2.6.2 Service and Maintenance Support.
Proposals must describe in detail the Proposer's plan for scheduled and unscheduled maintenance and any other required mechanical support of beverage vending and dispensing machines.

5.2.7 Nutritional Practices.

Contractor will provide a variety of nutritional options in its Beverages products such as bottled water; unsweetened Beverages; non-caloric Beverages, artificially sweetened Beverages; and caloric beverages with some nutritional benefits (“Healthy Products”). University desires that at least twenty-five percent (25%) of Contractor’s Beverage product will consist of Healthy Products.

Proposer should describe its Healthy Product line and the Healthy Products Proposer plans to offer in completion of the Services.

5.3 **Scope of Work**

Contractor will provide the following services to University:

5.3.1 Overview

Contractor will supply fountain machine pouring services and other related beverage services to the University and University Concessionaires all in accordance with the terms of the agreement (Ref. **APPENDIX TWO**).

5.3.2 Snack Vending

Snack vending Machine services are **NOT** requested or included in this RFP Scope of Work and will **NOT** be provided by awarded Contractor in relation to this RFP solicitation.

5.3.3 Fountain Beverages

Contractor will provide Beverages for all vending, dinning and concession operations on Campus operated by the University and/or Concessionaires utilized by the University (collectively “**Beverage Operations**”). Contractor will provide all Beverages reasonably required to ensure professional Fountain Operations on Campus as well as University’s sports Venues. Contractor will provide a full range of Beverage products, brands, and sizes in its Fountain Operations. Contractor’s duties will include delivery of all Fountain Beverage products to the University Campus, as well as to sports Venues when requested by SFASU Athletics for University sporting events.

Proposer should identify in its Proposal the range of Beverage products, brands, and sizes that Proposer plans to incorporate into its Fountain Operations.

5.3.4 Nutritional Practices

Contractor will provide a variety of nutritional options in its Beverage products such as bottled water, unsweetened Beverages, non-caloric Beverages, artificially sweetened Beverages, and caloric Beverages with some nutritional benefits (“**Healthy Products**”). University desires that at least twenty-five (25%) of Contractor’s Beverage products consists of Healthy Products.

Proposer should describe its Healthy Product line and the Healthy Products Proposer plans to offer in completion of the Services

5.3.5 Pre-Existing Contracts

Contractor acknowledges pre-existing contracts as described in **Section 1.3**.

Note: Our snack vending machine services are currently being provided by Gilly Vending, Inc. and the awarded Contractor will be required to provide products that can operate with Gilly Vending, Inc. vending machines. Current Concessionaire: Chartwells

5.4 **Additional Questions Specific to this RFP**

Proposer must submit the following information as part of Proposer’s proposal:

5.4.1 Demonstrate ability to provide Fountain Beverage products.

Proposals must describe in detail the Proposer’s experience in providing Fountain Beverage products to other customers and the manner in which Proposer has provided in the past and would provide products while servicing the University and related sports venues.

5.4.2 Beverage Machine locations and Campus Map
(Appendix Four)

5.4.3 A Proposal must describe the Proposer's healthy product line and the Healthy Products Proposer plans to offer in completion of the Services. Specify % of Healthy Products to be offered in vending machines.

5.4.4 A Proposal must describe the Healthy Product options that Proposer plans to offer SFASU and SFASU controlled properties, such as sports venues (Ref. **5.4.4**)

5.4.5 A Proposal must provide the range of Beverage products, brands, and sizes that Proposer offers to incorporate into its Fountain Operations.

5.4.6 Proposer must describe in its proposal the method and process by which University shall be able to verify or audit gross sales revenue reported by Proposer if it is selected as the Contractor.

5.5 Consideration

In response to **Section 6** of this RFP, Proposers must submit a Financial Consideration Proposal as described below. The following items should be included in the Financial Consideration Proposal:

5.5.1 Sponsorship Opportunities. It is the University's intent to explore and pursue innovative ways for individual vendors to support Athletics and Campus Wide programs, initiatives, and events to the mutual benefit of both parties.

Such initiatives along with a brief description and qualification that the Proposer believes would be of value to the University should be included with the proposal submission for consideration.

5.5.1.1 Sponsorship Fee. University seeks sponsorship in support of a) University sponsored (Campus Wide) events and b) Athletics as further described herein. In consideration for sponsorship payments, the successful Proposer will be granted rights to display certain sponsorship and advertising messages on the scoreboards identified in RFP **Section 5.6.1**.

5.5.1.2. Product Donation. University seeks a) annual donation of product for University sponsored (Campus Wide) events and b) annual donation of product and beverage related equipment ("Sponsorship Support") for Athletic teams, and hospitality for working press, stats crew, and game officials. Events listed will occur annually unless otherwise specified.

University desires Proposer deliver to University free of cost or expense from time-to-time, within seventy-two (72) hours after written request by University, a quantity of Contractor's Beverage products; provided that the quantity of the Beverage products will be specified in University's written request, and further provided that the maximum quantity of Beverage products that Contractor would be obligated to deliver to University in any contract year would be previously specified in the Agreements.

5.5.2. Advertising and Marketing Fee. The Contractor will pay a fee to the University for the opportunity to advertise and market Contractor signage and/or products on Campus in conjunction with University events or in support of Athletic Teams.

5.5.3 Royalty. The Contractor will pay to University royalties (collectively, the “Royalty”) on each sale of each Product sold on Campus, including the sale of vending Product and the sale of each mix syrup bag sold by Contractor as follows:

(a) Vending Royalty. Contractor will pay University a Royalty on gross revenue generated by Work. The term “gross revenue” means gross revenue before exclusion of applicable sales taxes.

(b) Minimum Annual Royalty Guarantee. Guaranteed royalty from annual sales from Contractor’s vending machines – See **Section 3.1.1** in the Beverage Vending and Pouring Rights Contract in **APPENDIX TWO**.

5.5.4. Pouring Rights. Proposer must propose an annual Pouring Rights Fee that it will pay to University in consideration of University granting Contractor the exclusive right to supply all Beverages to be sold on Campus by University or University’s Concessionaires.

5.5.5 Innovation. If applicable, Proposer should provide to the University any innovative support for the intercollegiate athletic program/student-athletes as it relates to how best to support recovery post-workout and/or post-competition.

5.5.6 Product Support and Fueling Station. If applicable, Proposer should work with the University to create a fueling station for student-athletes. Stock pre- and/or post-work out supplements and nutrition to maximize recovery. In Proposal, items to include but not limited to: protein powders and/or shakes, milk-based products, isotonic beverages, isotonic beverage powder/mix. If applicable, Proposal should include product refrigerators in the fueling station with additional refrigerator units throughout the athletic department.

5.5.7 Branded Sideline Kits/Carts. If applicable, Proposal should include annual allotment of sideline kits/carts for practice and competition. Include but not limited to: at least 500 water bottles each year, branded towels, ice chests, coolers, etc. Please provide your best offer inclusive of these examples above.

5.5.8 Product Donations – Donations by the pouring rights holder, to the University.

SECTION 6

ROYALTY, FEES & IMPLEMENTATION SCHEDULE

Proposal of: _____
(Proposer Name)

To: Stephen F. Austin State University

RFP #POURING RIGHTS - 2024

Ladies and Gentlemen:

Having examined specifications and requirements of this RFP (including attachments), the undersigned proposes to furnish Work upon the pricing terms quoted below:

6.1 Term of Agreement

University anticipates that the term of the Agreement may be up to ten (10) years with the initial term of the Agreement proposed to begin on TBD, 2024, and proposed to expire on TBD, 2029. University may elect to renew the Agreement for up to one (1) additional five (5) year term.

6.2 Pricing for Work and Expenses

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S SUBMITTAL.

a. Proposer must provide Pricing for each proposed product in its product line.

	Carbonated _____oz*	Carbonated _____oz*	Non- Carbonated _____oz*	Water _____oz*	Isotonic _____oz*	Juices _____oz*	Other – Energy Drinks _____oz*
Year 1	\$	\$	\$	\$	\$	\$	\$
Year 2	\$	\$	\$	\$	\$	\$	\$
Year 3	\$	\$	\$	\$	\$	\$	\$
Year 4	\$	\$	\$	\$	\$	\$	\$
Year 5	\$	\$	\$	\$	\$	\$	\$
Renewal Term							
Year 6-10	\$	\$	\$	\$	\$	\$	\$

b. Proposer confirms that it will pay University the Annual Royalty based on the percentage specified below per unit of product vended (based on scaled sales volume of cases of product sold)

	< XXX Cases Sold	> XXX Cases Sold
Year 1	%	%
Year 2	%	%
Year 3	%	%
Year 4	%	%
Year 5	%	%
Renewal Term:		
Year 6-10	%	%

- c. Proposer will pay to University a Minimum Royalty Guarantee from annual sales of vended Beverages.

	Minimum Guarantee
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	
Year 6-10	\$
Total	\$

6.3 Concession Product and Supply Pricing:

Proposer will sell to University and University Concessionaires beverages and supplies at Pricing set forth below:
(Proposer will provide Pricing for each proposed product in its product line.)

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S SUBMITTAL.

- a. Proposer must provide Pricing for each proposed product in its product line.

	Carbonated _____oz*	Carbonated _____oz*	Non- Carbonated _____oz*	Water _____oz*	Isotonic _____oz*	Juices _____oz*	Other – Energy Drinks _____oz*
Year 1	\$	\$	\$	\$	\$	\$	\$
Year 2	\$	\$	\$	\$	\$	\$	\$
Year 3	\$	\$	\$	\$	\$	\$	\$
Year 4	\$	\$	\$	\$	\$	\$	\$
Year 5	\$	\$	\$	\$	\$	\$	\$
Renewal Term							
Year 6-10	\$	\$	\$	\$	\$	\$	\$

- b. Proposer will pay to University an Annual Royalty as a percentage financial return to university based on the annual amount University purchases in beverages and supplies.

	Annual Royalty
Year 1	%
Year 2	%
Year 3	%
Year 4	%
Year 5	%
Renewal Term:	
Year 6-10	%

OR PROPOSAL

6.4 Annual Exclusivity Rights Fee:

Proposer will pay to University an Annual Exclusivity Rights Fee for the exclusive right to have Proposer's products be the only beverages, sold, served, or offered for sale on the Campus by University and/or any of University's Concessionaires, except as otherwise provided by the Agreement.

The Annual Exclusivity Rights Fee for the renewal period may be a higher amount, but may not be a lower amount than the Annual Exclusivity Rights Fee for the initial term.

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S SUBMITTAL

		Exclusivity Rights Fee
Year 1		\$
Year 2		\$
Year 3		\$
Year 4		\$
Year 5		\$
Renewal Term:		
Year 6-10		\$
Total		\$

6.5 Annual Sponsorship Fee:

Proposer will pay to University an Annual Sponsorship Fee for the exclusivity privileges concerning promotional recognition to be proposed by the contractor as follows:

The Annual Sponsorship Fee for the renewal period may be a higher amount, but cannot be a lower amount than the annual fee for the initial term.

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S PROPOSAL.

	Annual Sponsorship Fee	Other Fee
Year 1	\$	\$
Year 2	\$	\$
Year 3	\$	\$
Year 4	\$	\$
Year 5	\$	\$
Renewal Term:		
Year 6-10	\$	\$
Total	\$	\$

6.6 Non-Monetary Sponsorship Support:

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S PROPOSAL.

Sponsor will provide University with non-monetary sponsorship support ("**Sponsorship Support**") equal to _____ Dollars (\$____) for each Agreement Year during the term of the Agreement.

Sponsorship Support for the renewal period may be a higher amount, but may not be a lower amount, than the annual support for the initial term.

<u>Year</u>	<u>Annual Sponsorship Support</u>
Initial term- Five Years	

6.7 Facility and Capital Improvement Contributions:

Proposer will pay to University an annual facility and capital improvement contribution ("**Facility and Capital Improvement Contribution**").

The contribution for the renewal period may be a higher amount, but cannot be a lower amount than the initial term.

TO BE COMPLETED WITH AND SUBMITTED AS PART OF PROPOSER'S PROPOSAL.

Facility & Capital Improvement Contributions	
Initial Up-front Contribution	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	\$
Year 6-10	\$
Total	\$

6.8 Pursuant to Section 6.5 during Agreement Year 1, Proposer will provide University with marketing support for enhancements to University Bookstore and other retail areas as requested by the University. ("**Marketing Support**") with a value of _____ Dollars (\$____) ("**Marketing Fund**"). Marketing Support will include: printed and promotional materials but not limited to.

	Marketing Fund
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	\$
Year 6-10	\$
Total	\$

6.9 Other Monetary Compensation

	Other Monetary Compensation
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	\$
Year 6-10	\$
Total	\$

6.10 Other Non-Monetary Compensation

	Other Non- Monetary Compensation
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Renewal Term:	\$
Year 6-10	\$
Total	\$

Total

\$

6.11 Other Consideration

6.12 Discounts

Describe all discounts that may be available to University, including educational, federal, state and local discount

6.13 Payment Terms

University's standard payment terms are "net 30 days" as mandated by the *Texas Prompt Payment Act* (Ref. [Chapter 2251, Government Code](#)).

Indicate below the prompt payment discount that Proposer offers:

Prompt Payment Discount: _____% _____ days/net 30 days.

[Section 51.012, Education Code](#), authorizes University to make payments through electronic funds transfer methods. Respondent agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Respondent agrees to provide Respondent's banking information to University in writing on Respondent letterhead signed by an authorized representative of Respondent. Prior to the first payment, University will confirm Respondent's banking information. Changes to Respondent's bank information must be communicated to University in writing at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Respondent.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Tax Code](#), and [Title 34 TAC §3.322](#). Pursuant to [34 TAC §3.322\(c\)\(4\)](#), University is not required to provide a tax exemption certificate to establish its tax exempt status.

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE
PROPOSAL REQUIREMENTS
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SECTION 1

GENERAL INFORMATION

1.1 Purpose

University is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by university.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of services to be performed, the detailed requirements of services to be provided, and the conditions under which services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Proposer.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by university as having received a copy of this RFP. Only University's responses that are made by formal written Addenda will be binding on university. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by University prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. The Proposer must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (Ref. **Section 4** of **APPENDIX ONE**). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany the Proposer's proposal.

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone and facsimile (**FAX**) numbers, and email address, to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to that party.

1.3 Public Information

Proposer is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

University may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act* (Ref. [Chapter 552, Government Code](#)). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§[552.101](#), [552.104](#), [552.110](#), [552.113](#), and [552.131](#), *Government Code*.

1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with university in a form substantially similar to the Agreement between University and Contractor attached to this RFP as **APPENDIX TWO**, and otherwise acceptable to university in all respects (**Agreement**).

1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. Any proposals that are not submitted by the Submittal Deadline or that are not accompanied by required number of completed and signed originals of the HSP will be rejected by university as non-responsive due to material failure to comply with this RFP (Ref. **Section 2.5.4**). Upon completion of the initial review and evaluation of proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation with any of the Proposers. In conducting negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

University may discuss and negotiate all elements of proposals submitted by Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University may defer further action on proposals not included within the competitive range pending the selection of Contractor; provided, however, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interest of university.

After the Submittal Deadline but before final selection of Contractor, University may permit Proposer to revise its proposal in order to obtain the Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. University will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. University is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to university overall, as determined by university.

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of university. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by university.

1.6 Proposer's Acceptance of RFP Terms

Proposer (1) accepts [a] Proposal Evaluation Process (Ref. **Section 1.5** of **APPENDIX ONE**), [b] Criteria for Selection (Ref. **Section 2.3**), [c] Specifications and Additional Questions (Ref. **Section 5**), [d] terms and conditions of the Agreement (Ref. **APPENDIX TWO**), and [e] all other requirements and specifications set forth in this RFP; and (2) acknowledges that some subjective judgments must be made by University during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFP; (2) University issues this RFP predicated on University's anticipated requirements for Work, and University has made no representation, written or oral, that any particular scope of work will actually be required by University; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.

1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of university.

- 1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by university, at University's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to university, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by university, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (Ref. **Section 5**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (Ref. **Section 2 of APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by university, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (Ref. **Section 6**), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of Work; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform Work that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Proposer should describe each significant phase in the process of providing Work to University, and the time period within which Proposer proposes to be able to complete each such phase.

1.9.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (Ref. **Section 3** of **APPENDIX ONE**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (Ref. **Section 4** of **APPENDIX ONE**) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by university, in its sole discretion.

1.9.6 Submission

*Proposer should submit all proposal materials as instructed in **Section 3**. RFP No. (Ref. **Title Page**) and Submittal Deadline (Ref. **Section 2.1**) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left-hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package.*

Proposer must also submit the HUB Subcontracting Plan (also called the HSP) as required by **Section 2.6**.

University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the HSP as required by **Section 2.6**. University will not accept proposals submitted by telephone or FAX transmission.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to university. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Proposer's written request explaining and documenting the reason for withdrawal, which is acceptable to university.

SECTION 2

EXECUTION OF OFFER

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

2.1 Representations and Warranties. Proposer represents, warrants, certifies, acknowledges, and agrees as follows:

- 2.1.1 Proposer will furnish Work to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
- 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with university will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
- 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing Work.
- 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform Work.
- 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of Work.
- 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
- 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any subcontractor, except as expressly provided in the Agreement.
- 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
- 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
- 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
- 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
- 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on university that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

- 2.1.13 Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.1.15 Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 19, 87th Texas Legislature, Regular Session \(2021\)](#))*, Proposer verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of any contract or agreement resulting from this RFP against a firearm entity or firearm trade association. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.
- 2.1.16 Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 13, 87th Texas Legislature, Regular Session \(2021\)](#))*, Proposer verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of any contract or agreement resulting from this RFP. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.
- 2.1.17 Pursuant to Section 161.0085, *Texas Health and Safety Code (enacted by [SB 968, 87th Texas Legislature, Regular Session \(2021\)](#))*, Proposer certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Proposer's business. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its proposal. Failure to sign this [Execution of Offer](#), or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at university.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.
- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- ☐ No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of UT System, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of UT System within the immediate twelve (12) months prior to the Submittal Deadline.

- No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (Ref. [§669.003, Government Code](#)).
- All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before university enters into any Agreement resulting from this RFP with Proposer.

2.8 Compliance with Equal Employment Opportunity Laws. Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

2.9 Compliance with Safety Standards. All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.

2.10 Exceptions to Certifications. Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this *Execution of Offer*. All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.

2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification. If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

2.12 Conflict of Interest Certification.

- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e., owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
- Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
- Proposer has disclosed any personnel who are related to any current or former employees of university.
- Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of university in connection with this RFP.

2.13 Financial Advisor Disclosure

Not used

2.14. Proposer Certification Relating to Critical Infrastructure. Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 2116, 87th Texas Legislature, Regular Session \(2021\)](#), Proposer certifies (A) it is neither owned by nor is the majority of stock or other ownership interest of the Proposer held or controlled by (i) 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* (a "designated country") or (ii) 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; and (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country. Proposer understands that the prohibitions set forth in the preceding sentence apply regardless of whether (1) Proposer's or its parent company's securities are publicly traded or (2) Proposer or its parent company is listed on a public stock exchange as either (a) a Chinese, Iranian, North Korean, or Russian company or (b) a company of a designated country. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

2.15 Proposer Compliance and Warranty Relating to Cloud Computing Services.

Not used

216 Proposer should complete the following information:

If Proposer is a corporation, then State of Incorporation: _____

If Proposer is a corporation, then Proposer's Corporate Charter Number: _____

RFP #POURING RIGHTS – 2024

2.17 Notice of Performance Bond Requirements. Pursuant to Tex. Gov't Code Sec. 2252.064, the awarded contractor is required to execute a bond issued by a surety company authorized to do business in this state in an amount determined by the contracting state agency, but not to exceed the contract price. The bond must be payable to the state and conditioned on the faithful performance of the terms of the contract.

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER §§[552.021](#) AND [552.023](#), *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER [§559.004](#), *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER §§[552.021](#) AND [552.023](#), *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER [§559.004, GOVERNMENT CODE](#), INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Proposer's General Questionnaire. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer will explain the reason when responding N/A or N/R.

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

Address of office that would be providing service under the Agreement:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by university.

3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

- 3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.
- 3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under the Agreement with University (if any).
- 3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.
- 3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and/or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of university? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to [§231.006, Family Code](#), and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act* (Ref. [Chapter 552, Government Code](#)), and other applicable law.

3.2 Approach to Work

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to university from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.3** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
 - 3.2.3.1 Identification of tasks to be performed;
 - 3.2.3.2 Time frames to perform the identified tasks;
 - 3.2.3.3 Project management methodology;
 - 3.2.3.4 Implementation strategy; and
 - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in this RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

- 3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.
- 3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from university.

3.4 Service Support

Proposer will describe its service support philosophy, how it is implemented, and how Proposer measures its success in maintaining this philosophy.

3.5 Quality Assurance

Proposer will describe its quality assurance program, its quality requirements, and how they are measured.

3.6 Miscellaneous

- 3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to university. Additional services or benefits must be directly related to the goods and services solicited under this RFP.

- 3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by university from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Name)

To: University

RFP No.: _____

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (*initial blanks for any Addenda issued*).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX TWO

SAMPLE AGREEMENTS

SCHEDULE 1 - BEVERAGE VENDING AND POURING RIGHTS AGREEMENT

SCHEDULE 2 - SPONSORSHIP RIGHTS AGREEMENT

SEE ATTACHMENTS

SAMPLE ONLY
APPENDIX TWO
AGREEMENT

Schedule 1 of APPENDIX TWO

BEVERAGE VENDING AND POURING RIGHTS AGREEMENT

This Beverage Vending and Pouring Rights Agreement (this "**Agreement**") is entered into effective as of _____, **2024** (the "**Effective Date**") by and between **STEPHEN F. AUSTIN STATE UNIVERSITY**, an agency and institution of higher education authorized by the State of Texas ("**University**"), and _____ a ("**Contractor**")

RECITALS

University desires that certain beverage products and services be made available on University's Campus for the benefit and convenience of its students, faculty, staff and visitors.

Contractor represents that it has the knowledge, ability, equipment, and personnel to properly conduct beverage pouring services, retail single serve coolers and fountain machine operations on University's including, dining halls, Athletics, Dining and Concessions and related sports venues.

University, in reliance on such assurances from Contractor, is willing to contract with Contractor on the terms and conditions provided in this Agreement.

TERMS AND CONDITIONS

THEREFORE, in consideration of the mutual benefits and covenants contained in this Agreement, the parties agree as follows:

1. Definitions.

- 1.1 "**Agreement Year**" means the twelve-month period beginning on the Effective Date and ending twelve calendar months thereafter and each successive twelve-month period during the Term of this Agreement.
- 1.2 "**Beverage**" or "**Beverages**" means all nonalcoholic beverages of any kind, but will not include milk, flavored milk, fresh-brewed coffee and fresh-brewed tea products, hot chocolate, tap water or unbranded fresh-squeezed juices.
- 1.3 "**Beverage Dispensing Equipment**" means all Beverage dispensing equipment and all related supplies.
- 1.4 "**Campus**" means all the real property constituting University's main campus located at 1936 North Street, under the possession and control of the Board of Regents of The University of Texas System for the use and benefit of university, including all buildings and grounds associated with branded or unbranded food service outlets, vending locations, and athletic facilities, but excluding any real property owned by a third party and leased to university as the tenant.

SAMPLE ONLY

- 1.5 **"Competitive Products"** means all Beverages that are not Products.
 - 1.6 **"Concessionaires"** means one or more third parties that manage or operate food and beverage operations on Campus.
 - 1.7 **"NCAA"** means National Collegiate Athletic Association.
 - 1.8 **"Products"** means all Beverages manufactured and distributed by Contractor.
 - 1.9 **"TAC"** means Texas Administrative Code.
 - 1.10 **"Tournament"** means a tournament, play-off, championship, or exhibition contest.
 - 1.11 **"University Rules"** means (i) the Rules and Regulations of the Board of Regents of The University of Texas System, (ii) the policies of The University of Texas System (**"UT System"**), and (iii) the policies and procedures of university, all as amended from time to time.
2. **Term.** The term (the **"Term"**) of this Agreement will commence on the Effective Date and will expire on TBD, unless earlier terminated pursuant to the terms and conditions of this Agreement. University may elect to renew this Agreement for up to one (1) additional five (5) year term.

University has also entered into a Sponsorship Rights Agreement (**"Sponsorship Rights Agreement"**) with the Contractor dated effective on the Effective Date. *The term of the Sponsorship Rights Agreement will run conterminously with the Term of this Agreement. Upon the expiration or earlier termination of this Agreement, the Sponsorship Rights Agreement will automatically and simultaneously terminate.*

3.0 Grant of Rights to Contractor. Subject to the terms and conditions of this Agreement, University grants to Contractor the following rights that will be exclusive among persons, companies, or other entities selling Beverages, and are described as follows:

- 3.1 Contractor will have the right to (i) offer Beverages for sale on Campus through supply Beverages and Beverage Dispensing Equipment for concession and food service operations on Campus operated by University or University's Concessionaires; (iii) have Contractor's Products be the only Beverages sold, served, or offered for sale on Campus by University or any of University's Concessionaires; (iv) have Contractor's Products be the only Beverages sold at athletic contests held on Campus; and (v) prominently display materials promoting Products at the point-of-sale on Campus, including translites and pictorials depicting Contractor's name and logos on Beverage Dispensing Equipment, trademark cups, and Products.
- 3.2 Limitation on Exclusive Rights. The rights granted in this Agreement, including Contractor's exclusivity rights and privileges, do not extend to locations that are not included in the definition of Campus (ref. Section 1.4)
- 3.2 The rights granted in this Section do not apply to events held on Campus as a part of (i) an NCAA Tournament; (ii) a Tournament of an athletic conference of which University is a member; or (iii) a Tournament controlled by an entity other than University, including professional or semi-professional sport teams, conferences or entities; provided, that, these exceptions will be effective only if and to the extent that the NCAA, the athletic conference, or other entity controlling the contests has a Beverage distribution agreement, sponsorship agreement, advertising agreement or

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similar agreement covering the Tournament with an entity offering Competitive Products.

- 3.3 The rights granted in this Section do not apply to university-sponsored events, athletic contests and Tournaments that are not held on Campus and involve co-sponsorship by other organizations or business entities.
- 3.4 All rights granted to Contractor and all activities conducted by Contractor under this Agreement must comply with all University Rules and must be conducted in a manner that does not disturb or interfere with the academic programs or administrative activities of UT System or any of the institutions or any program or activity that is conducted by or is authorized by UT System or any of the institutions; does not interfere with entry to or exit from a building, structure, or facility; does not interfere with the flow of pedestrians or vehicular traffic on sidewalks or streets or at places of ingress and egress to and from property, buildings, or facilities; does not harass, or intimidate the person or persons being solicited; and does not violate applicable state, federal, or local laws, regulations, or ordinances ("**Applicable Laws**").
- 3.5. The rights granted in this Agreement do not apply to private events held on Campus in which a third party provides University compensation for short term use of a university facility.

4. **Purchase and Sale of Beverages.**

- 4.1 University will purchase from Contractor, and Contractor will sell to university, one hundred percent (100%) of University's requirements for Beverages to be offered for sale by University on Campus at the prices specified in **EXHIBIT B** attached and incorporated for all purposes.
- 4.2 University will cause its Concessionaires to purchase from Contractor, and Contractor will sell to Concessionaires, one hundred percent (100%) of Concessionaires' requirements for Beverages offered for sale by Concessionaires on Campus. Concessionaire will purchase one hundred percent (100%) of Concessionaire's requirements for Beverages offered for sale by Concessionaire on Campus at pricing available to Concessionaire through its own contract with Contractor.
- 4.3 The prices specified in **EXHIBIT B** for Products to be sold to University and Concessionaires will remain in effect until the date that is one (1) year after the Effective Date. Thereafter, not more than one (1) time each Agreement Year and only after thirty (30) days written notice to university and approval by university, prices may be increased by Contractor in the same amount as Contractor's increase in cost of goods sold, including labor, fuel, and raw materials associated with the manufacture and/or distribution of the Products. Contractor's notice must be supported by documentation, including raw cost data reflecting the change in Contractor's costs.

5. **Beverage Vending Operations.**

5.1 Contractor will perform and conduct Beverage vending operations on Campus through Contractor's beverage vending machines ("Beverage Vending Equipment") that will sell the Products listed in **EXHIBIT B** at the locations ("Beverage Vending Equipment Locations") specified in **EXHIBIT A** attached and incorporated for all purposes.

5.2 Contractor's Beverage Vending Equipment will be placed in mutually agreed upon areas of each of the Beverage Vending Equipment Locations listed on **EXHIBIT A**. Contractor will not place Beverage Vending Equipment in locations on Campus that will interfere with (i) ingress or egress from buildings or (ii) compliance with University Rules or Applicable Laws, including fire and safety codes. The locations of Contractor's Beverage Vending Equipment may be changed from time to time upon written agreement of

SAMPLE ONLY

the parties. In addition to the Beverage Vending Equipment listed on **EXHIBIT A**, Contractor will be permitted to place additional vending machines upon prior written approval of university, which approval will not be unreasonably withheld.

5.3 Contractor's unit sales price ("Unit Sales Price") to be charged for each Product sold on Campus through the Vending Equipment and the royalty percentage ("Royalty Percentage") payable to university on each sale are listed in **EXHIBIT B**. Contractor will not increase the Unit Sales Price charged for each Product sold through the Vending Equipment above the Unit Sales Price specified for the corresponding Product listed in **EXHIBIT B**.

5.4 Contractor will inspect and restock all Beverage Vending Equipment as necessary to maximized sales while retaining product freshness.

5.5 Contractor will offer for sale only those Products that University has approved as to brand, size, Unit Sales Price and Royalty Percentage. Contractor will not alter the range of Products, brands, or sizes it offers for sale in Beverage Vending Equipment without written permission from university, which will not be unreasonably withheld. In the event that the parties agree that reduced service and modified merchandise selections are appropriate during summer sessions, holidays, or building shutdowns, then any such mutual agreement will be reduced to writing, signed by both parties, and designated as an amendment to this Agreement.

5.6 Contractor will provide to university one (1) cash fund in the amount of \$100.00 that will be used by university for making refund payments available at one (1) location on Campus designated by university. Contractor will make additional funds available to university as required to maintain each fund at a level adequate to pay refunds promptly as requested. Contractor will supply a written form, acceptable to university, for use as a voucher for claimants submitting refund claims. The form will include space for claimants to identify (1) the type of equipment, (2) the equipment location, (3) the amount of the loss, (4) a description of how the loss occurred, (5) the date of the loss, and (6) the claimant's name and signature.

6. Beverage Vending Equipment

6.1 Contractor will provide, install and operate all Beverage Vending Equipment. Beverage Vending Equipment operated on Campus by Contractor must be new or like-new models, must contain coin changers, dollar bill reader/changers and must be of a size and type acceptable to university. All Beverage Vending Equipment will be installed and operated in conformity with University Rules and Applicable Laws. All Products sold through Contractor's Beverage Vending Equipment will conform in all respects to University Rules and Applicable Laws and will be suitable for human consumption in all respects.

6.2 Contractor agrees all Beverage Vending Equipment will include debit/credit card readers that accept all major credit cards.

6.3 Contractor will affix to all Beverage Vending Equipment a prominent notice containing instructions on how to (1) operate the equipment, (2) report malfunctions, (3) comment on product quality, and (4) request refunds.

SAMPLE ONLY

7. **Consideration.**

Payments and other consideration from Contractor to University described in this Agreement will be referred to herein collectively as “**Consideration.**”

8. **Dispensing Equipment.**

8.1 Contractor will loan to University all Beverage dispensing equipment (“**Dispensing Equipment**”) reasonably required to dispense Products on Campus. Contractor’s duties will include delivery and set-up, cleaning, maintenance and repairs of all Dispensing Equipment required for university and all current and future Concessionaires. University will not be liable for loss or damage to Dispensing Equipment loaned to current or future Concessionaires.

8.2 University agrees that (i) Dispensing Equipment may not be removed from Campus without Contractor’s written consent, (ii) University will not encumber Dispensing Equipment in any manner except as authorized by Contractor, and (iii) University will be responsible to Contractor for any loss or damage to Dispensing Equipment loaned to university, reasonable wear and tear excepted.

9. **Installation: Operation and Removal.** Contractor will pay all costs for obtaining, installing, operating, servicing, and replacing Dispensing Equipment. University will provide Contractor with electric energy and water for operation of Dispensing Equipment at no cost to Contractor. University will not be responsible for interruptions in electric energy, water or other utility services. However, University will exercise reasonable diligence in pursuing the restoration of interrupted utility services. Contractor will, within thirty (30) days after the expiration or earlier termination of this Agreement, remove all of Contractor’s equipment placed on Campus and restore Campus property to a condition that is reasonably satisfactory to university.

10. **Service.** Contractor will provide on-call maintenance and repair service for Dispensing Equipment 24-hours a day, seven days a week, at no cost. Contractor will make available to university a toll-free telephone number for service calls, and will respond on-site to calls within four (4) hours between 7:30 AM and 5:30 PM, Monday through Friday, and within twenty-four (24) hours during weekends. Contractor will keep at least one (1) on- duty supervisor available from 8:00 AM to 5:00 PM each day that University is open, and at least one (1) on-call supervisor available at other times. Contractor will service all Dispensing Equipment as often as necessary to keep the equipment properly supplied and in good working order. Contractor will keep all Dispensing Equipment in a neat and sanitary condition at all times. Contractor will clean all spills that occur while filling, cleaning, or maintaining Dispensing Equipment, clean the front of each piece of equipment each time Contractor restocks or services the equipment, and remove packaging and waste from Campus after each service call. Contractor will cooperate with university to promptly remedy any sanitary problems related to Contractor’s machines.

In the event University reasonably believes that Contractor is not in compliance with Applicable Laws and reasonably determines that the violation of the Applicable Laws creates an imminent health hazard or immediate threat to the health and safety of University’s campus

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community or the public, University may immediately (a) perform any cleaning or other services deemed necessary by University (Contractor will reimburse University for all reasonable costs, including overtime costs.), (b) report Contractor's non-compliance with Applicable Laws to any governmental body or authority, and (c) *at University's option*, (i) require Contractor to cure within a timeframe that is acceptable to University, or (ii) suspend Contractor's performance of the Services, and/or (iii) terminate this Agreement *without notice or opportunity to cure*. Upon receipt of written notice of suspension or termination of this Agreement, Contractor will immediately cease performance of the Services and all other food handling operations under this Agreement.

Contractor will maintain a program of regular preventive maintenance and replacement of worn, damaged, or malfunctioning Dispensing Equipment. University may require Contractor to replace Dispensing Equipment that cannot be returned to service within four (4) working days after University's service call. Replacement equipment will be of a type and condition at least equal to the equipment that is replaced. Contractor may enter Campus at all reasonable times during normal business hours, to install, repair, service, inspect or supply Dispensing Equipment and to remove Dispensing Equipment upon the expiration or earlier termination of this Agreement. Contractor may enter Campus at other times upon written approval of university.

10. **Signs.** Contractor will not post signs or posters at the Locations or elsewhere on Campus. Contractor may only engage in marketing or promotional activity on Campus, that in each instance, (a) fully complies with Applicable Laws and University Rules, (b) has received University's advance written approval, and (c) qualifies as "use or acknowledgement" as defined in [Treasury Regulations 1.513-4\(c\)\(iv\)](#).

11. **Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND UT SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, **INDEMNITEES**) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY, **CLAIMS**) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

IN ADDITION, CONTRACTOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER

PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY WILL REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

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12. Insurance.

- 12.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the [Texas Insurance Code](#), having an A.M. Best Rating of A-: VII or better, and in amounts not less than the following minimum limits of coverage:

- 12.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability – Disease - Each Employee	\$1,000,000
Employers Liability – Disease - Policy Limit	\$1,000,000

Workers' Compensation policy must include under Item 3.A. of the information page of the Workers' Compensation policy the state in which Work is to be performed for university.

- 12.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy shall include bodily injury, property damage and liability assumed under an insured contract, including defense costs with respect to liability arising out of activities performed by or on behalf of the Contractor.

- 12.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

- 12.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under Sections 5.1.1 Employer's Liability; 5.1.2 Commercial General Liability; and 5.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

- 12.1.5 Third Party Employee Crime Insurance to protect the assets and property of university with limits of not less than \$1,000,000 per claim. Independent contractor's insurance shall be primary to any insurance carried by UT System or any of its Institutions.

- 12.2 Contractor will deliver to university:

- 12.2.1 After the execution and delivery of this Agreement and prior to the performance of any Work by Contractor, evidence of insurance on a Texas Department of Insurance (TDI) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during the Term, then prior to the end

SAMPLE ONLY

of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

- 12.2.2 **All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System and University as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
- 12.2.3 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas and University. No policy will be canceled until after thirty (30) days' unconditional written notice to university. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to university thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 5**.
- 12.2.4 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by university prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 12.2.5 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following University contact:
- Name: Carrie Charley
Title: Asst. VP of Campus Living Dining and Auxiliary
Email Address: Carrie.Charley@sfasu.edu
- 12.2.6 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by university. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by university in writing.

13. **Default and Termination.**

- 13.1 In addition to any other legal or equitable remedy, University will have the right to terminate this Agreement upon thirty (30) days' written notice to Contractor at any time if:
- 13.1.1 Contractor fails to make any payment due under this Agreement, and if such default continues uncured for the thirty (30) day period; or

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- 13.1.2 Contractor breaches any material term or condition of this Agreement, and if such breach continues uncured for the thirty (30) day period.
- 13.2 In the event University reasonably believes that Contractor is not in compliance with Applicable Laws and reasonably determines that the violation of the Applicable Laws creates an imminent health hazard or immediate threat to the health and safety of University's campus community or the public, University may immediately (a) perform any cleaning or other services deemed necessary by University (Contractor will reimburse University for all reasonable costs, including overtime costs.), (b) report Contractor's non-compliance with Applicable Laws to any governmental body or authority, and (c) *at University's option*, (i) require Contractor to cure within a timeframe that is acceptable to University, or (ii) suspend Contractor's performance of the Services, and/or (iii) terminate this Agreement *without notice or opportunity to cure*. Upon receipt of written notice of suspension or termination of this Agreement, Contractor will immediately cease performance of the Services and other operations under this Agreement.
- 13.3 In addition to any other legal or equitable remedy, Contractor will have the right to terminate this Agreement upon forty-five (45) days' written notice to university at any time if:
- 13.3.1 University breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five (45) day period; or
- 13.3.2 University's right to convey any of the promotional and product exclusivity rights contained in this Agreement expire or are revoked and if such breach continues uncured for the forty-five (45) day period.
- 13.4 If this Agreement is terminated before the stated expiration date either (i) by University for any reason other than a default by Contractor as provided in this Agreement, or the Sponsorship Agreement, or (ii) by Contractor by reason of a default by University as provided in this Agreement, or the Sponsorship Agreement, then, to the extent authorized by the Constitution and laws of the State of Texas, University will within sixty (60) days after the termination date refund the prepaid but unearned portion of all Exclusivity Fees previously received by University with respect to the Agreement Year in which termination occurs. The Exclusivity Fees for each Agreement Year will be deemed "earned" pro rata on a daily basis during such Agreement Year, up to the date of termination.
- 13.5 The University's Office of The Vice President for Business Affairs in conjunction with the University's Purchasing Department will establish a method by which to review or audit Contractor's performance to determine sufficiency of performance and compliance with the requirements of this Agreement.

14. **Assignment and Subcontracting.**

Except as specifically provided in **Exhibit D**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and any amounts due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a default under this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including [Chapter 2161, Texas Government Code](#), and 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). The benefits and burdens of this Agreement are assignable by University.

15. Historically Underutilized Business Subcontracting Plan.

Contractor will use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit D**). Contractor will maintain business records documenting its compliance with the HSP and submit a monthly compliance report to university in the format required by the Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **SPSS**). Submission of compliance reports will be required as a condition for any payments by University under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to SPSS in accordance with Texas law, including 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). University may also terminate this Agreement for default and make a claim against Contractor.

15.1 Changes to the HSP. If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with [34 TAC §20.285](#); (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 13** to replace the HSP with the revised subcontracting plan.

15.2 Expansion of Work. If University expands the scope of Work through a change order or any other amendment, University will determine if the additional Work contain probable subcontracting opportunities *not* identified in the initial solicitation for Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of [34 TAC §20.285](#) before (a) this Agreement may be amended to include the additional Work; and (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with [34 TAC §20.285](#), Contractor will be deemed to be in default of this Agreement under **Section 10** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code*, and [34 TAC §20.285](#). University may report nonperformance under this Agreement to SPSS in accordance with Texas law, including [34 TAC §20.285\(g\)\(5\)](#), [§20.585](#) and [20.586](#).

16. Merger and Amendment. The provisions of this Agreement (including the exhibits) constitute the entire agreement between the parties with regard to the subject matter hereof and no prior or contemporaneous agreement, written or oral, will affect the terms thereof. No amendment to this Agreement will be effective unless reduced to writing and signed by the authorized representative of each party.

17. Venue: Governing Law. Ector County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

18. Organization and Authority. Contractor is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor

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19. **State Auditor.** Contractor understands acceptance of this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (Auditor), to conduct an audit or investigation in connection with this Agreement (ref. §§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
20. **Financial Statement: Reports, and Bond.** Contractor must present to university at the time of contracting a financial statement prepared by a certified public accountant licensed in Texas. Contractor must provide a payment statement monthly, supported by quarterly sales tax reports for each quarter. Contractor's payment reports must be certified on an annual basis by a certified public accountant licensed in Texas, and must be provided each Agreement Year on or before the anniversary of the Effective Date, as required by *Texas Government Code*, Chapter 2252, Subchapter C. **Performance Bond.** In accordance with Section 2252.064, *Texas Government Code*, Contractor will provide University with a performance bond for each Agreement Year during the Term and any Renewal Term (ref. **Section 2**). The amount of the performance bond for the first Agreement Year during the Term will be equal to, the amount of the projected Royalty payable to University during that Agreement Year. *Thereafter, the amount of the performance bond will be adjusted at the beginning of each Agreement Year to reflect the amount of the Royalty payable to university for the previous Agreement Year.* The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University's Representative in all respects. The performance bond will be made payable to university and conditioned upon the prompt and faithful performance of the Work and all of Contractor's other duties and obligations under this Agreement.
21. **Texas Family Code Child Support Certification.**
- Pursuant to [§231.006, Texas Family Code](#), Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
23. **Tax Certification.**
- If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#) (Chapter 171), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that it is exempt from the payment of those taxes, or that it is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
24. **Payment of Debt or Delinquency to the State.**
- Pursuant to §§[2107.008](#) and [2252.903](#), *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
26. **Student Evaluation.**
- Contractor will comply with requirements of [§51.945, Texas Education Code](#), and all University Rules regarding students' involvement in the evaluation of the performance of Contractor, by periodically holding meetings or forums to provide University's students with a reasonable opportunity to discuss the performance of Contractor. Contractor will obtain University's prior written approval concerning the date, time and location for each meeting or forum at least thirty (30) days in advance.

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27. **Notices.**

Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is provided below) or email (to the extent an email address is provided below), when received:

If to University: Name: Carrie Charley
 Title: Asst. VP of Campus Living Dining and Auxiliary
 Email Address: Carrie.Charley@sfasu.edu

If to Contractor: _____

 Fax: _____

 Email: _____

 Attention: _____

or other person or address as may be given in writing by either party to the other in accordance with this Section.

28. **Breach of Contract Claims.**

To the extent that [Chapter 2260, Texas Government Code](#), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of university will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims. The parties specifically agree (i) neither execution of this Agreement by University nor any other conduct, action or inaction of any representative of university relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

29. Limitations.

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, **LIMITATIONS**), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

30. Energy Devices.

Contractor is responsible for any and all expenses associated with the acquisition, installation, or maintenance of all energy-saving devices required by this Section.

31. Loss of Funding.

University's performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of university.

32. Confidentiality and Safeguarding of University Records: Press Releases: Public Information.

Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of university, or (3) have access to, records or record systems (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws. Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Family Educational Rights and Privacy Act, [20 United States Code \(USC\) §1232g](#) (**FERPA**) are addressed in **Section 12.41**. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University's computer systems, including UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and

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maintain the confidentiality of University Records.

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- 12.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to university within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by university regarding the impermissible use or disclosure.
- 12.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of university will be (1) returned to university, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to university in writing the destruction of University Records.
- 12.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 12.11**.
- 12.11.4 **Press Releases.** Except when defined as part of Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of university in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of university.
- 12.11.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act (TPIA)*, [Chapter 552, Texas Government Code](#). In accordance with §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.
- 12.11.6 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 12.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 12.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 12.13 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to university or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless University otherwise instructs Contractor in writing.

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34. Personnel and Background Checks.

Each individual who is assigned to perform any of Contractor 's duties and obligations under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor and previously approved by University in writing. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing any Work on Campus, Contractor will at its expense (a) provide University with a list ("**List**") of all individuals who may be assigned to perform Work, and (b) have an appropriate criminal background screening performed concerning each individual. Contractor will determine on a case-by-case basis whether each individual is qualified to provide Work. Contractor will not knowingly assign any individual to provide Work who has a history of criminal conduct unacceptable for a university campus, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work.

35. Survival of Provisions.

The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

36 THIS AGREEMENT IS NOT EFFECTIVE FOR AMOUNTS OVER \$1,000,000 WITHOUT APPROVAL OF THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM.

THIS AGREEMENT IS NOT EFFECTIVE FOR AMOUNTS OVER \$1,000,000 WITHOUT APPROVAL OF THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM.

This Agreement is executed on behalf of University and Contractor, to be effective as of the Effective Date.

CONTRACTOR

By: _____

Name: _____

Title: _____

Date Signed: _____

UNIVERSITY

By: _____

Name: _____

Title: _____

Date Signed: _____

Attached:

EXHIBIT A- Beverage Vending Equipment Locations

EXHIBIT B- Products, Beverage Vending Units Sales Prices and Royalty Percentages

EXHIBIT C- Prices for Sale and Purchase of Beverages

EXHIBIT D – HUB Subcontracting Plan

EXHIBIT E- Scope of Work

EXHIBIT A

BEVERAGE VENDING EQUIPMENT LOCATIONS

**For Beverage Vending Equipment Locations see
Appendix Four in the RFP**

EXHIBIT B

PRODUCTS, BEVERAGE VENDING UNIT SALES PRICES AND ROYALTY PERCENTAGES

PLEASE SEE SECTION 6 OF THE RFP

EXHIBIT C

**PRICES FOR SALE AND PURCHASE OF BEVERAGES
PLEASE SEE SECTION 6 OF THE RFP**

EXHIBIT D

**HUB SUBCONTRACTING PLAN [CONTRACTOR'S HUB SUBCONTRACTING PLAN SUBMITTED WITH
ITS PROPSAL WILL BE ATTACHED AS EXHIBIT D**

EXHIBIT E

SCOPE OF WORK

5.3 Scope of Work

Contractor will provide the following services to university:

(1) high quality beverage services and concessionaire equipment on University's campus at prices that are competitive with local vendors in the Nacogdoches, TX area; (2) a variety of beverage offerings; (unless exempted by University – see **Section 5.5** below); (3) prompt and professional operation of the beverage machines and concessionaire equipment and all related equipment; and (4) adequate financial compensation to University in consideration for exclusive rights to operate pouring beverage services, provide beverages for dining and concessions operations, (5) sponsorship, advertising rights and promotional payments at certain athletic facilities on University's campus and (6) facility and capital improvement considerations.

University expects that the products will include: all carbonated and noncarbonated nonalcoholic beverages, including but not limited to soft drinks, flavored and unflavored packaged waters, fruit juices, fruit juice-containing or flavored drinks, fruit punches, teas, energy drinks, "aides" and sports drinks. "**Beverage**" or "**Beverages**" means all nonalcoholic beverages of any kind, but will not include milk, flavored milk, fresh-brewed coffee and fresh-brewed tea products, hot chocolate, tap water or unbranded fresh-squeezed juices.

Contractor's duties will include delivery and set-up, cleaning, maintenance, and repairs of all necessary equipment.

University will furnish all utilities necessary for operation of the pouring services at no charge to Contractor.

All beverage and dispensing equipment installed must be of a size specified by university and must be a new or relatively recent model.

All products vended will conform in all respects to local, state, and federal laws and regulations relating to the standards of food and drink and will be suitable for human consumption in all respects.

Contractor will cooperate with university concerning student participation in the selection and monitoring of food and beverage service vendors, as required by Section 51.945, *Texas Education Code*. Cooperation will include the participation in periodic meetings or forums to provide University students with a reasonable opportunity to discuss Contractor's performance of its services.

Contractor will enter into an agreement with university to provide beverage services and concessionaire equipment and dispensing machines on University's campus in accordance with the requirements and specifications of this RFP, including, without limitation, the terms and conditions of the Sample Agreement (ref. **Appendix Two**).

5.3.1 **Specific Duties Required**

5.3.1.1 Fountain Machine Services.

Contractor will provide for the installation and operation of beverage fountain machines on University's campus, including the delivery and set-up, cleaning, maintenance, repair and operation of equipment and all necessary related equipment, in accordance with the terms and conditions in the Sample Agreement (ref. **Appendix Two**) and under the following conditions:

- 5.3.1.1.1 Contractor's equipment will be located only in areas identified in this RFP or otherwise designated in writing by university.
- 5.3.1.1.2 Contractor will be responsible for all costs related to producing, delivering, setting-up and maintaining Contractor's fountain machines and other equipment.
- 5.3.1.1.3 All revenue from the fountain machines operated by Contractor will be collected on a regular schedule and, at a minimum of every two weeks.
- 5.3.1.1.4 Contractor will be liable for all damages resulting from acts of negligence and willful misconduct by Contractor, or its employees or agents and for injuries to customers caused by Contractor's equipment.
- 5.3.1.1.5 Contractor will be required to perform in accordance with the standards stated in its proposal concerning response to maintenance calls on its equipment.
- 5.3.1.1.6 All activities of Contractor and its employees and agents conducted on the campus of university must comply with all applicable federal, state, and local laws and ordinances, the Rules and Regulations of the Board of Regents of The University of Texas System, and any applicable institutional rules of Stephen F. Austin State University.
- 5.3.1.1.7 Contractor will be responsible for timely payment of all taxes and licensing fees associated with installation and operation of fountain machines and the revenue generated from those operations.
- 5.3.1.1.8 Contractor will have regular access to its equipment located on the University campus during the University's regular operating

hours only and for only the buildings where Contractor's equipment is located. If Contractor requires access at other times, Contractor must obtain admittance by permission from an authorized officer of the University and purchase parking permits as necessary.

5.3.2 **Refunds to Customers.**

As specified in the Sample Agreement (ref. Section 2.10 of **Appendix Two**), Contractor will provide two cash funds to university in the amount of \$50.00 each for use in making refund payments to customers at campus locations specified by university. Contractor will make additional funds available to university as required to maintain the refund payment fund at a level adequate to pay refunds to customers promptly. Contractor will supply a written form, satisfactory to university, for use as a voucher for submitting refund claims. The refund claim form will include space for claimants to identify (1) the type of machine, (2) the machine location, (3) the amount of the loss, (4) a description of how the loss occurred, (5) the date of the loss, and (6) the claimant's signature. Contractor will absorb all money shortages that may develop due to theft, burglary, inoperable vending machines, or other cause.

5.3.3 **Performance Bond.**

As specified in the Agreement (ref. Section 5.4 of **Appendix Nine**), the Contractor will execute and keep in force for the term of the Agreement a bond issued by a surety company authorized to do business in the State of Texas for 100% of the project total conditioned on the full and faithful performance of the obligations, agreements, and covenants of the Agreement.

5.4 **Exclusivity Privileges**

The Agreement, if any, resulting from this RFP will convey to the Contractor (a) an exclusive privilege to be the sole operator of beverage vending machines on the University's main campus, and (b) exclusive privilege to supply both pre-packaged and dispensed beverages at university-sponsored events (subject to exclusions listed below):

Contractor's exclusivity privileges under the Agreement **will NOT include** the following:

- 5.4.1 Privilege of supplying beverages at university-sponsored special events and tournaments that are held at locations off-campus and involve co-sponsorship by other local organizations and business entities. Such events will be designated at the sole discretion of the University.
- 5.4.2 Privilege of supplying beverages for NCAA-sponsored events conducted on university campus, except with the prior consent of the NCAA.

Contractor's exclusivity privileges under the Agreement **will include** the following:

- 5.4.3 Privilege of operating and supplying all beverage vending machines located on the main campus and all satellite campuses of university, except those specifically excluded above.
- 5.4.4 Privilege of supplying beverages required by all of University's on-campus food concession operators. Contractor will supply ALL beverages sold by such operators, including those

beverages dispensed from drink machines or sold from coolers or beverage displays by those operators on campus.

- 5.4.5 Privilege of supplying beverages for sale at on-campus University Athletic events, competitions, and tournaments, subject to the exceptions stated in the Agreement.
- 5.4.6 Privilege of supplying beverages for sale at on-campus non-athletic University-sponsored events at which University specifies that beverages will be sold.
- 5.4.7 Privilege of displaying prominent signage in all University Athletic venues including the Homer Bryce Stadium, William R. Johnson Coliseum and any additional locations requested by Stephen F. Austin State University.
- 5.4.8 Reports, Contractor must present to university at the time of contracting a financial statement prepared by a certified public accountant licensed in Texas. Contractor must provide a payment statement monthly supported by quarterly sales tax reports for each quarter. Contractor's payment reports must be certified on an annual basis by a certified public accountant licensed in Texas, as required by *Texas Government Code*, chapter 2252, Subchapter C, and must be provided to university each year on or before the 15th day of each month.

5.5 Exception of Exclusivity for Certain Locations

- 5.5.1 **Special Promotional Events:** During the Term, temporary signage (e.g., banners, table covers, posters, electronic messages on existing videoboards,) for Competitive Products may be displayed on the Campus during Special Promotional Events provided, however, that (i) Sponsor's marketing, advertising, and promotional rights under this Agreement will not otherwise be permanently affected during any such Special Promotional Event(s), (ii) Competitive Products will not be sold, distributed, dispensed, sampled, served, or otherwise made available during any such Special Promotional Event(s), (iii) Blockage of any signage Sponsor may have on the Campus may occur temporarily only during any such Special Promotional Event(s), as well as for incidental Blockage due to the construction and/or placement of a person, stage or other structure necessary to and actually used during the Special Promotional Event(s), and (iv) all temporary signage for Competitive Products will be promptly removed from the Campus upon the conclusion of the Special Promotional Event(s).
- 5.5.2 **NCAA and Intercollegiate Athletic Conference Promotional Programs:** The University reserves the right to participate in promotional programs involving intercollegiate athletic conference corporate partners (which may include a Competitive Product) when the program includes all institutions in the Athletic Conference. In the event that the University participates in a NCAA championship event, the University reserves the right to participate in promotional programs coordinated by corporate partners of the NCAA in which all event participants are featured (and which may include a Competitive Product). In the event that the University participates in a Bowl Championship Series or other post-season bowl game, tournament or other similar event, the University reserves the right to participate in a promotion with the corporate partners of said event if all event participants are involved (and which may include a Competitive Product).

Schedule 1 of APPENDIX TWO
QUALIFIED SPONSOR AGREEMENT

THIS QUALIFIED SPONSOR AGREEMENT (this “**Agreement**”) is entered into effective _____, 2024 (“**Effective Date**”), by and between (“**Sponsor**”), and Stephen F. Austin State University, a member of The University of Texas System an agency of the State of Texas and an institution of higher education (“**University**”).

University has the right to grant Sponsor certain sponsorship benefits related to University's Intercollegiate Athletics.

Sponsor desires to identify itself as an official sponsor (“**Official Sponsor**”) of University's Intercollegiate Athletics and receive sponsorship recognition rights provided in this Agreement in exchange for the sponsorship payment described in **Section 3** of this Agreement.

Sponsor is aware that the terms of this Agreement will not incorporate or affect any philanthropic payments donated to University by Sponsor, if any.

In consideration of good and valuable consideration received and acknowledged to be adequate, Sponsor and University agree as follows:

1. Sponsorship Recognition.

1.1. Recognition. University will provide to Sponsor recognition as set forth on **EXHIBIT A** Sponsorship Recognition & Guidelines, attached and incorporated for all purposes, so long as such recognition complies with **Section 1.2** and satisfies the qualified sponsorship requirements under the then current Treasury Regulations. All sponsorship recognition provided under this Agreement is collectively referred to herein as “**Sponsorship Recognition**.” All Sponsorship Recognition materials provided under this Agreement are collectively referred to as “**Sponsorship Recognition Material**.”

1.2. No Endorsements or Calls to Action. Notwithstanding any other term or condition of this Agreement to the contrary, no Sponsorship Recognition Material or recognition of Sponsor of any other any kind, may state or imply that University endorses a particular company, organization or any other entity, including Sponsor, or any other entity's goods or services, including Sponsor's goods or services.

Sponsor will not have the right to display a message in Sponsorship Recognition Material that contains a comparative or qualitative description of Sponsor's goods or services, price information about Sponsor's goods or services, or any other message that is a call to action related to Sponsor's goods or services.

2. Term; Termination.

2.1 Term. The term (“**Term**”) of this Agreement will commence on the Effective Date and will expire on **TBD, 2029** (“**Expiration Date**”) with a one (1) five (5) year option to extend; provided, the stated expiration date of the Term of this Agreement will not be later than the stated expiration date of that certain Beverage Vending and Pouring Rights Agreement between University and Sponsor dated effective _____, 20__ (the “**Beverage Agreement**”). The Term of this Agreement will run conterminously with the term of the Beverage Agreement, and upon the expiration or earlier termination of the Beverage Agreement, this Agreement will automatically and simultaneously terminate also.

2.2 Termination with Cause. Either party may terminate this Agreement, effective upon delivery of a termination notice, without prejudice to any other legal or equitable rights to which such terminating party may be entitled, if (i) the other party fails to perform a material duty or obligation under this Agreement, and that failure is not (a) cured to the satisfaction of the non-defaulting party within thirty (30) days following written notice of the failure to the defaulting party, or (b) to the extent not reasonably curable within the thirty (30) day time period, attempted to be cured within the thirty (30) day period and, thereafter, pursued diligently until cured to the satisfaction of the non-defaulting party within a reasonable time period; or (ii) any of the representations or warranties made by the other party to this Agreement prove to be untrue or inaccurate in any material respect.

2.3 University’s Rights to Terminate. University may immediately terminate this Agreement upon written notice to Sponsor, if University determines that continued affiliation with Sponsor is inconsistent with University’s mission or philosophy and/or adversely impacts the reputation of university. If University terminates this Agreement under this **Section 2.3**, Sponsor will only be required to pay for a pro-rata portion of the Sponsorship Payment due to university based on the Sponsorship Recognition actually provided to Sponsor by University prior to termination. If Sponsor has, as of the effective date of termination, paid to university more than the pro-rata amount, University will refund the difference to Sponsor within thirty (30) days after the effective date of termination.

2.4 Continuing Obligations. Expiration or termination of this Agreement for any reason will not relieve either party from its obligation to (i) perform up to the effective date of expiration or termination, or (ii) perform such obligations as may survive expiration or termination.

3. Sponsorship Payment. [NOTE TO PROPOSER: This Section 3 will be completed based on Sponsor’s proposal in response to Section 6 of the RFP. For example:

As consideration for the rights granted to Sponsor under this Agreement, Sponsor will pay to University sponsorship recognition): an aggregate amount of _____ DOLLARS (\$_____) [\$_____ for the website sponsorship recognition and \$_____ for all other Sponsorship Recognition] (“**Cash Sponsorship Payment**”).

The Cash Sponsorship Payment will be payable as follows:

In addition, Sponsor has agreed to transfer, and University has agreed to accept, goods and/or services with a total value of _____ DOLLARS (\$_____) ("**In Kind Sponsorship Payment**") as payment-in-kind for the rights granted to Sponsor under this Agreement. The (a) goods and/or services to be provided by Sponsor, and (b) date and method or delivery, are described in detail in **EXHIBIT C**. In Kind Sponsorship Payment, attached and incorporated for all purposes.

The Cash Sponsorship Payment and the In-Kind Sponsorship Payment are collectively the "**Sponsorship Payment**."

4. Payment and Billing.

4.1 Manner of Payment. Unless otherwise provided by this Agreement, the Sponsorship Payment under this Agreement will be paid by check made payable to university.

University at: 4.2 Time/Late Payments. Sponsor will deliver the Sponsorship Payment to

Stephen F. Austin State University
PO Box 6095, SFA Station
Nacogdoches, TX 75962

in accordance with **Section 3** of this Agreement. Failure to pay the Sponsorship Payment on the date(s) specified in **Section 3** of this Agreement will constitute a breach of this Agreement. In the event of a breach, University may exercise all its legal rights and remedies and immediately suspend all future Sponsorship Recognition under this Agreement. Sponsor will continue to be responsible for all unpaid Sponsorship Payments under this Agreement.

5. Insurance; Indemnification.

5.1 Insurance. If Sponsor's employees, agents, suppliers or subcontractors will be present on University's property, Sponsor will maintain and cause its agents, suppliers and subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<u>Coverages</u>	<u>Limits</u>
Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 per accident and employee
Commercial General Liability (Including contractual liability)	\$1,000,000 per occurrence
Personal & Advertising Injury	\$1,000,000 per occurrence
Product/Completed Ops	\$1,000,000 aggregate
Business Auto Liability	\$1,000,000 combined single limit
General Aggregate	\$2,000,000 per policy limit

All policies (except Workers' Compensation) will name University, the Board, and their officers and employees as Additional Insured. A Waiver of Subrogation in favor of University and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to University prior to the Effective Date of this Agreement. Sponsor will endorse all policies to require insurance carriers to notify University of cancellation, termination, material change, or non-renewal relating to any insurance policy required herein.

5.2 Damage or Injury. Sponsor will be solely responsible for any damage or injury to University's facilities, property (tangible or intangible), or personnel that results from acts or omissions of Sponsor or Sponsor's employees, agents, suppliers or subcontractors.

5.3 General Indemnity. TO THE FULLEST EXTENT PERMITTED BY LAW, SPONSOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**INDEMNITEES**") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "**CLAIMS**") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM, IN WHOLE OR IN PART, ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF SPONSOR, ANYONE DIRECTLY EMPLOYED BY SPONSOR OR ANYONE FOR WHOSE ACTS SPONSOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

5.4 Intellectual Property Indemnity. SPONSOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF THIS AGREEMENT, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF SPONSOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY SPONSOR AND SPONSOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH SPONSOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

6. Relationship of the Parties. For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Sponsor is an independent entity and is not a partner, joint venturer, or agent of university. Sponsor will not bind nor attempt to bind University to any agreement or contract. As an independent entity, Sponsor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

7. Notices. Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University: Stephen F. Austin State University
Asst. VP of Campus Living Dining Aux.
Email: Carrie.Charley@sfasu.edu
Attention: Carrie Charley

If to Sponsor: _____

Attention: _____
E mail: _____
Fax: _____

or other person or address as may be given in writing by either party to the other in accordance with this Section.

8. General.

8.1 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Sponsor and University and will supersede any and all other agreements between the parties whether verbal or otherwise. Any amendment or modification of this Agreement must be in writing and signed by an authorized representative of both parties.

8.2 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance is held to be invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances will not be affected.

8.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute an original of this Agreement, but all the counterparts will together constitute the same agreement. No counterpart will be effective until each party has executed at least one counterpart.

8.4 Subject to Laws, Regulations and Rules. This Agreement and all rights granted under this Agreement are subject to (i) all applicable federal, state, and municipal, laws, regulations, codes, ordinances and orders (collectively, the “**Applicable Laws**”), (ii) all existing contractual arrangements and obligations of University; (iii) the constitution, bylaws, rules, policies and procedures of the National Collegiate Athletic Association (NCAA), Conference, and any other athletic organization with jurisdiction (collectively, “**Athletic Organization Rules**”); and (iv) all University Rules. For purposes of this Agreement, “**University Rules**” means (i) the *Rules and Regulations* of the Board of Regents of The University of Texas System found at <http://www.utsystem.edu/board-of-regents/rules>; (ii) the policies of The University of Texas System found at <http://www.utsystem.edu/board-of-regents/policy-library>; (iii) the institutional rules and regulations and policies of University found at <https://www.sfasu.edu/docs/hops/01-101.pdf>

8.5 Texas Public Information Act. University strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (“**TPIA**”), Chapter 552, *Texas Government Code*. If Sponsor provides goods or services to university, then in accordance with Section 552.2 of TPJA and Section 2252.907, *Texas Government Code*, and at no additional charge to University, Sponsor will make any information created or exchanged with university pursuant to this Agreement (and not otherwise exempt from disclosure under TPJA) available in a format reasonably requested by university that is accessible by the public.

8.6 Compliance with Law and Rules; Licenses and Permits. Sponsor and University will comply with all Applicable Laws, Athletic Organization Rules and University Rules. In addition, each party will obtain and maintain in effect at its sole expense, all licenses or permits that are required for that party's performance of this Agreement.

8.7 Venue; Governing Law. Nacogdoches County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

8.8 Assignment; Waiver. This Agreement, including the rights under it, may not be assigned or transferred by Sponsor, nor may University be required to broadcast or publish Sponsorship Recognition Materials that recognize or benefit any entity other than Sponsor. Failure of University or Sponsor to enforce any provision of this Agreement will not be construed as a general relinquishment or waiver as to that provision or any other provision of this Agreement.

8.9 Captions. The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

8.10 Binding Effect. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

8.11 Severability. In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

8.12 Survival of Provisions. No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination

8.13 Limitations. THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "**LIMITATIONS**"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

8.14 Ethics Matters; No Financial Interest. Sponsor and its employees, agents, representatives and subcontractors have read and understand:

University's Conflicts of Interest Policy available at: <https://www.sfasu.edu/docs/hops/01-402.pdf>

University's Standards of Conduct Guide available at: <https://www.sfasu.edu/docs/human-resources/sfa-personnel-documents-packet-2018.pdf>

Applicable state ethics laws and rules available at: www.utsystem.edu/ogc/ethics

Neither Sponsor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Sponsor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

8.15 Loss of Funding. Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Sponsor and University may terminate this Agreement without further duty or obligation hereunder. Sponsor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of university.

8.16 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, UNIVERSITY PROVIDES ANY AND ALL SERVICES TO SPONSOR UNDER THIS AGREEMENT "AS IS", WITHOUT WARRANTIES, GUARANTEES, CERTIFICATIONS, OR REPRESENTATIONS OF ANY KIND. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) UNIVERSITY EXPRESSLY AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, (2) UNIVERSITY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT

EXCEED THE AMOUNTS PAID BY SPONSOR TO UNIVERSITY DURING THE IMMEDIATELY PRECEDING CONTIGUOUS TWELVE (12) MONTH PERIOD DURING THE TERM OF THIS AGREEMENT, AND (3) UNIVERSITY WILL NOT BE RESPONSIBLE OR LIABLE TO SPONSOR OR TO ANY PERSON OR ENTITY CLAIMING THROUGH SPONSOR FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST OR ANTICIPATED PROFITS, REVENUES, OR SAVINGS, EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.17 Tax Liability. The Sponsorship Payment is intended to be a qualified sponsorship payment as defined in the *Internal Revenue Code*. Sponsor acknowledges that the issue of tax liability as a result of entering into this Agreement is an important concern to University.

8.18 External Terms. This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's provision of goods or services under this Agreement ("**External Terms**"). The External Terms are null and void and will have no effect under this Agreement, regardless of whether University or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrink wrap, clickwrap, browse wrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

The parties have executed this Agreement as of the dates indicated below.

"University"

Stephen F Austin State University

By: _____

Name: Gina Oglesbee

Title: Interim President

Date: _____

"Sponsor"

By: _____

Name: _____

Title: _____

Date: _____

Attach:

EXHIBIT A – Sponsorship Recognition & Guidelines

EXHIBIT B – Intentionally left blank

EXHIBIT C – In Kind Sponsorship Payment

EXHIBIT D – Trademarks

EXHIBIT A

SPONSORSHIP RECOGNITION & GUIDELINES

1. Specific Recognition

[NOTE TO PROPOSER: This Section 1 will be completed based on Proposer's response to RFP.]

1.1 To be proposed by contractor.

1.2 Promotional Product and Printed Material Distribution

1.2.1 Products and Materials. Subject to the terms and conditions of this Agreement, Sponsor will have the following Sponsorship Recognition Material distribution rights:

Sponsor understands, acknowledges, and agrees that the method of distribution and the amount, scope, and type of promotional products that may be distributed in accordance with this Section will be determined by university.

1.2.2 Policy Limitations. University Rules, including Rule 80301, place restrictions on the display and distribution of promotional products and the distribution of printed material related to goods or services provided by Sponsor. Among other restrictions, such activities: (i) may not interfere with the use of facility entrances and exits or the flow of pedestrian or vehicular traffic; (ii) may not harass, embarrass, or intimidate the people being solicited; (iii) may not violate any applicable law or regulation; (iv) may only be authorized the day before and the day of an intercollegiate athletic event or an athletic related event taking place in a facility used for athletic events; (v) may only be conducted from booths, tables, and kiosks (or in a University designated area for display of motorized vehicles) immediately adjacent to an athletic facility, the location and number of which have been authorized by University; (vi) must be conducted in accordance with University Rules, including those regarding safety; and (vii) must not include making sales or taking orders.

1.2.3 License Required. Any promotional products distributed under this Agreement that are imprinted with the name, logos, trademarks, service marks and other symbols of University (collectively, "**University Marks**") may only be imprinted pursuant to a license issued by Learfield or any successor identified by University.

1.3 Other

2. Guidelines

2.1 Approval of Sponsorship Recognition Material; Use of University Marks; Use of University Name; License; Required Approval.

2.1.1 Approval of All Sponsorship Recognition Material. All Sponsorship Recognition Material is subject to approval by university, which will not be unreasonably withheld. All Sponsorship Recognition Material must comply with Applicable Laws, Athletic Organization Rules and University Rules. All Sponsorship Recognition Material must be submitted to:

Stephen F. Austin State University
Attn: Carrie Charley
Email: Carrie.Charley@sfasu.edu

for written approval *prior to production and use*. The parties will cooperate with each other in order to assure compliance with this Section. Requests for written approval of Sponsorship Recognition Material will be in writing, accompanied by the material to be approved, and transmitted by facsimile, express mail, overnight carrier, or regular mail depending upon the expected response time. University will use reasonable efforts to respond to requests within ten (10) days after the date the request is received by university in accordance with this Section. Failure to obtain prior written approval required by this Section will be a material breach of this Agreement and will entitle University to terminate this Agreement.

2.1.2 Use of Marks; License Grant. University, on behalf of the Board of Regents of The University of Texas System, an agency of the State of Texas ("**Board**"), grants to Sponsor (also referred to as "**Licensee**") during the Term a non-exclusive, non-transferable, non-sublicensable license to use the trademarks, service marks and domain names listed in **EXHIBIT D** ("**Marks**" or "**University Marks**"), attached and incorporated for all purposes, in accordance with the Sponsorship Agreement. Licensee accepts this license subject to the Trademark License Agreement Terms and Conditions found at <https://www.sfasu.edu/umc/brand-toolkit>

2.2 Inability to Broadcast or Publish.

If University, due to public emergency or necessity, legal restrictions, labor disputes, strikes, boycotts, secondary boycotts, acts of God, (whether or not such acts of God have occurred frequently or habitually or are of a common or seasonal occurrence in the general locality of such broadcasting or publishing), or for any reason, including mechanical breakdowns beyond the control and without the fault of University, is unable to broadcast or publish Sponsorship Recognition Materials at the time specified, University will not be liable to Sponsor except to the extent of allowing a pro rata reduction in the Sponsorship Payment or reasonably suitable alternate broadcast or publication arrangements.

2.3 Sponsorship Recognition Material Preparation.

2.3.1 University Obligations. University will provide broadcast time or publication space for Sponsorship Recognition Material prepared by Sponsor or Sponsor's agent. Production of Sponsorship Recognition Material, supplying talent, and other services will be arranged, coordinated and paid for by Sponsor and are not covered by this Agreement. University's obligation under this Section to provide broadcast time or publication space for Sponsorship Recognition Material is conditioned upon Sponsor providing University the necessary Sponsorship Recognition Material and any related services, all of which must have been approved pursuant to **Section 2.1** and submitted to university no later than fourteen (14) days prior to broadcast or publication (the "**Material Due Date**").

2.3.2 Right to Substitute Sponsorship Recognition Material for Broadcast. If University does not receive the Sponsorship Recognition Material for broadcast, previously approved as required by **Section 2.1** of this Exhibit, by the Material Due Date, University will notify the following Company representative verbally: _____, (_____) _____, with

written confirmation delivered in accordance with **Section 7** of this Agreement. If Sponsor fails to provide University with the approved Sponsorship Recognition Material at least twenty-four (24) hours after the Material Due Date, University will not be obligated to broadcast the Sponsorship Recognition Material. University's failure to broadcast the Sponsorship Recognition Material as a result of Sponsor's failure to meet the Material Due Date will in no way relieve Sponsor of any of its obligations and duties under this Agreement, including the obligation to pay the Sponsorship Payment in full.

2.3.3 Failure to Deliver Sponsorship Recognition Material for Print Publications. If University does not receive the Sponsorship Recognition Material for print publications, previously approved as required by **Section 2.1** of this Exhibit, by the Material Due Date or if copy corrections are submitted after that date, University will not be obligated to publish the Sponsorship Recognition Material. University's failure to publish the Sponsorship Recognition Material as a result of Sponsor's failure to meet the Material Due Date will in no way relieve Sponsor of any of its obligations and duties under this Agreement, including the obligation to pay the Sponsorship Payment in full.

2.3.4 Revisions to Sponsorship Recognition Material. Any revision to or rewrites of Sponsorship Recognition Material will be at the sole cost of Sponsor.

2.3.5 Positions/Timing of Sponsorship Recognition Material. The specific placement or timing of Sponsorship Recognition Material in broadcasts or print publications is not guaranteed unless expressly specified in this Exhibit.

2.3.6 Handling of Sponsorship Recognition Material. University will exercise normal precautions, but will assume no liability for losses or damages to Sponsorship Recognition Material or other property furnished by Sponsor in connection with this Agreement.

2.3.7 Releases and Clearances. Sponsor represents and warrants that for all Sponsorship Recognition Material, Sponsor has procured any and all necessary exclusive rights, clearances and permissions for Sponsor's production and University's broadcast and publication of the Sponsorship Recognition Material as contemplated in this Agreement, including any and all rights, clearances and/or permissions necessary to use all locations, names, likenesses, identities, trademarks and service marks.

EXHIBIT C

In Kind Sponsorship Payment

[NOTE TO PROPOSER: This Exhibit C will be completed based on Proposer's response to the RFP.]

Failure to deliver the In-Kind Sponsorship Payment on the date(s) specified in this **EXHIBIT C** will constitute a breach of this Agreement. In the event of a breach, University may exercise all its legal rights and remedies and immediately suspend all future Sponsorship Recognition under this Agreement. Sponsor will continue to be responsible for all undelivered In-Kind Sponsorship Payments under this Agreement.

UNIVERSITY MARKS

Please see Stephen F Austin State University Identity Guide below:

<https://www.sfasu.edu/umc/brand-toolkit>

APPENDIX THREE

HUB SUBCONTRACTING PLAN

Proposer must submit a completed HUB Subcontracting Plan with its proposal in accordance with **Section 2.5** of the RFP.

<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>



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: _____ State of Texas VID #: _____
Point of Contact: _____ Phone #: _____
E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

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 do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(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: _____

Requisition #: _____

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 do not 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: _____ Requisition #: _____

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.

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

Printed Name

Title

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.

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Page 1 of 1
(Attachment A)

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

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: _____ Description: _____

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 (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - 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 (mm/dd/yyyy)	Was the Notice Accepted?
		- Yes - No
		- Yes - No

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

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Enter your company's name here: _____ Requisition #: _____

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: _____ Description: _____

- 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
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - 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):

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.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____

State of Texas VID #: _____

Point-of-Contact: _____

Phone #: _____

E-mail Address: _____

Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____

Phone #: _____

Requisition #: _____

Bid Open Date: _____

(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____ .
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(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.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable

EASY HUB LOOKUP on the CMBL

In accordance with Texas Administrative Code 20.14, the following HUB lookup procedures have been developed utilizing the Comptroller of Public Accounts website to identify possible HUB Vendors for subcontracting opportunities.

To that end the following easy step by step instructions to identify NIGP codes and search for potential HUB subcontractors is provided by Stephen F. Austin State University. In addition, the University may have already completed searches that may be beneficial and include a list of potential HUB subcontractors that may be used by the Respondent. If you have a hard time reading the webpages cited, increase the page view to 200% or better.

For assistance with this instruction or further assistance in identifying potential HUB subcontractors, please contact Lacey Bradshaw at 936-468-4412.

STEP 1: After identifying what areas that are going to be subcontracted for the project go to the following web address at Comptroller of Public Accounts:

<https://mycpa.cpa.state.tx.us/commbook/indexSearch>

State of Texas Commodity Code Search

(Revised January, 2016)

NOTE: Search results represent NIGP's search-friendly keyword data set and not official code descriptions. The official NIGP Commodity Book is copyrighted material to be used for reference purposes only and may not be reproduced without a license from Periscope Holdings, Inc.

[Go To Numeric Index](#)

Enter a word or words to match. Matches will contain all words entered.

Search keywords:

OR

Search by Class: (3 digits required)

[Reset](#)

Search Results

No search done yet or nothing entered to search for

texas.gov | Texas Records and Information Locator (TRAIL) | State Link Policy | Texas Homeland Security | Texas Veterans Portal

Glenn Hegar, Texas Comptroller • Home • Contact Us

Privacy and Security Policy | Accessibility Policy | Link Policy | Public Information Act | Compact with Texans

At this point type in the item you are looking for in Search keywords: (for this example we are looking for drywall services). Press Submit Search and the results will appear. See example below:

The screenshot shows a web browser window with the URL https://cmlreg.cpa.state.tx.us/commodity_book/Alpha_index_inquiry.cfm. The page title is "State of Texas Commodity Code Search" and it is dated "(Revised January, 2016)". A note states: "NOTE: Search results represent NIGP's search-friendly keyword data set and not official code descriptions. The official NIGP Commodity Book is copyrighted material to be used for reference purposes only and may not be reproduced without a license from Periscope Holdings, Inc." There is a link "Go To Numeric Index". Below this, a search bar contains the text "drywall". There is an "OR" section and a "Search by Class: (3 digits required)" field. A "Submit Search" button and a "Reset" link are present. The "Search Results" section shows "10 results matching 'drywall' sorted by Keyword Match". A table lists the results:

Class-Item	Keyword Match
150-33	DRYWALL GROUT
150-33	DRYWALL MORTAR
150-33	DRYWALL PLASTER
320-71	DRYWALL SCREWS
910-75	DRYWALL SERVICES, CEILING AND WALL
570-81	DRYWALL STUDS, STEEL
150-33	GROUT, DRYWALL
150-33	MORTAR, DRYWALL

The page will list Keyword Match for drywall. In this example the Class-Item for Drywall Services, Ceiling and Wall is 910-75. Remember to write down the Class and Item numbers. You will do the same for other items that you will be subcontracting on the project. Once you have completed collecting all Class and Item numbers for sub-contracting opportunities you can precede to Step 2

STEP 2: With the Class and Item numbers you can search for HUB Vendors on the Centralized Master Bidders List – HUB Directory Search. Go to the following web address at Texas Comptroller of Public Accounts:

<https://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>

Under **SEARCH FOR** mark HUBs Only (you are looking for HUB vendors)

The EXAMPLE below is how the form should be filled out. Search for HUBs on CMBL; Selection 1: Class-Item; Select Fields for Output (Vendor ID, Company Name, Contact Person, City, Email, Phone, Business Description, HUB Eligibility, HUB Gender)

In the example below we are searching for NIGP Class Code 910, Items 75 (Drywall Services).

Once all the information needed has been marked. Click : **SEARCH**.

Search For Vendors - Centralized Master Bidders List - HUB Directory Search

Glenn Hegar
Texas Comptroller of Public Accounts

Search For Vendors

Help

Related Links

- [CMBL/HUB Directory Search Tips](#)
- [Register For CMBL - HUB](#)
- [HUB Mentor Protege Agreement Listing](#)
- [System for Award Management \(EPLS\)](#)
- [Debarred Vendors List](#)

The **CMBL** is a master database used by State of Texas purchasing entities to develop a mailing list for vendors to receive bids based on the products or services they can provide to the State of Texas. Manufacturers, suppliers, and other vendors wishing to furnish materials, equipment, supplies, and services to the state should register for the CMBL to receive bidding opportunities.

The CMBL/HUB Directory Search is automatically defaulted to "CMBL Only" to perform a search for vendors, including [Texas certified HUBs](#) who have elected to [register on the CMBL](#). Purchasing entities use [NIGP Class and Item Codes](#) within the "Multiple Vendor Search" feature to identify vendors who can provide the products or services they want to purchase, and to develop mailing lists of vendors to receive bids.

For detailed explanations of the various search and data output features (i.e., Search For, Single Vendor Search, Multiple Vendor Search, Business Category / Vendor Location Search, Select Fields For Output, Output Options) that may be used to create lists of potential vendors as well as retrieve detailed information on a specific vendor, click [CMBL/HUB Directory Search Tips](#).

[Search](#) [Clear Search](#)

SEARCH FOR

☒ CMBL Only ☐ HUBs Only ☐ HUBs On CMBL ☐ All Vendors

SINGLE VENDOR SEARCH

Vendor ID:

Vendor Number:

Vendor Name: contains

[Include Inactive Vendors](#) ☐ Note: If this box is checked, you must enter either a Vendor ID, Vendor Number or Vendor Name.

MULTIPLE VENDOR SEARCH

Selection	NIGP Class Code	Items	Highway District(s)
Selection 1	<input type="text"/> 910	<input type="text"/> 75	<input type="text"/>
Selection 2	<input type="text"/>	<input type="text"/>	<input type="text"/>
Selection 3	<input type="text"/>	<input type="text"/>	<input type="text"/>

BUSINESS CATEGORY / VENDOR LOCATION SEARCH

Business Category:

County Location:

City Location: begins with

Zip Code Location: exact

Highway District(s) Location:

Once the search is completed, a page like the one below will appear listing all the HUB companies that are Class 910 and Item 75.

The search found 222 vendors where are HUB's.

At this point you should look at the Business Description to confirm that the company does indeed provide drywall services. Note that the first company listed 1DZ ENTERPRISE, L.L.C. does not list drywall services, instead the company business description lists Janitorial Service – if at all possible, you should not use this company in your Good Faith Efforts as there are other companies that list dry wall in their business description.

3 B'S CONTSTRUCTION does list drywall and is a good candidate for sending a request to bid the project.

YOU ARE REQUIRED TO SELECT THREE (3) HUB VENDORS TO CONTACT.

When looking for HUB Vendors to support you at SFA look for these vendors that are close to Nacogdoches and East Texas. If none can be found in our area, expand your search to the Dallas/Fort Worth area, Austin and Houston market areas.

NOTES:

1) SELECTING HUBS THAT ARE FROM EL PASO, AND FAR WEST TEXAS DOES NOT SHOW GOOD FAITH IN YOUR SELECTION PROCESS.

2) IF YOU DO NOT UNDERSTAND THESE DIRECTIONS OR NEED ASSISTANCE, PLEASE CONTACT THE SFA PROCUREMENT OFFICE FOR HELP.

Search For Vendors - C:\ x

https://mycpa.cpa.state.tx.us/tpasscmlsearch/CmbllHubSearch.do

Glenn Hagar
Texas Comptroller of Public Accounts

Search For Vendors

Results For HUBs Only Search

Search found 222 vendors, 222 are HUB's, Includes 0 Inactive Vendors.
Search Condition : SearchType=HUB's Only,Section1 Class Code=910,Section1 Item(s)=(75)

[Back](#)

Vendor ID	Company Name	Contact Person	City	Email	Phone	Business Description
1475357271900	1DZ ENTERPRISE, LLC	Debra A. Garcia	INGLESIDE	debbiegarc20@gmail.com	361-534-4244	Janitorial Service
1204990047000	3 B'S CONSTRUCTION	Owner/Andrew Rosas	LYTLE	andrewrosas@sbcglobal.net	210-382-0984	New construction, remodeling to include wood frame, metal stud,drywall. Installat suspended ceiling, concrete work and demolition.
1461995281600	360TXC	Tony Lester	AUSTIN	estimator@360txc.com	877-710-7474	We provide general contracting and complete project planning and management s vast project portfolio covers everything from 1,000sqft interiors and renovations to 25,000sqft+ ground-up and core-shell buildouts.
1472181557000	3J CONTRACTING	Jose Mondragon	CORPUS CHRISTI	3jcontracting@gmail.com	361-548-4937	Remodel, repair, Paint, Lawn Services,constructions,electrical, plumbing, fencing a demolition of small building,& hauling land waste.
1743004957100	A-1 TOTAL INTERIOR, INC.	Pres./CEO/Randy Sanchez Sr.	SAN ANTONIO	A1totalinteriors@sbcglobal.net	210-733-3739	Construction finish out new builds; remodels; commercial & residential contractors
1760404341800	A.C.T. SERVICES	President / Deborah Harris	SAN ANTONIO	debbie@actsoftx.com	210-902-5785	A.C.T. Services provides quality residential and commercial design and constructio
1752966405800	ACUMEN ENTERPRISES, INC.	Wayne Boyter	DESOTO	wayne@acumen-enterprises.com	972-572-0701	Mechanical HVAC & plumbing contractor, mechanical insulation, & general construc
1760616493100	ADVACS, INC.	Francis Foyeku	HOUSTON	fofoyeku@aol.com	713-266-7200	IT Services/Facilities Maintenance Service/Construction Management of Division 9
1263904481200	AG CONSTRUCTION MANAGEMENT	Anthony Gutierrez	AUSTIN	info@agcm.us	512-579-6498	Service general contractors for the federal, state, public works projects
1741946544200	AIR STREAM GENERAL CONSTRUCTION, INC	Rebecca Flores	SAN ANTONIO	bflores@air-streamservices.com	210-533-3264	Air-Conditioning, HVAC Contracting, Mechanical Services, and Facilities Support Se
1811519383300	ALA SIGNATURE SERVICES, LLC	Linda Alexander	KATY	alasignatureservices@gmail.com	817-993-9905	Facility/Building Maintenance Services; Janitorial/Custodial Services; General Freig Local; Administrative Services

10:32 AM 11/17/2016

POTENTIAL HUB SUBCONTRACTORS PROVIDED WITH

Request for Proposal #POURING RIGHTS-2023

Issued by Stephen F. Austin State University

Closing Date/Time: December 19, 2023 at 5:00 PM

This list of potential HUB subcontractors is provided for information only and SFA does not endorse, recommend, nor attest to the capabilities of any company or individual listed. A complete list of State certified HUBs can be searched online at <https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>

The Respondent is responsible for compliance with the Good Faith Effort requirements outlined in the Invitation to Bid and HUB Subcontracting Plan documents.

NIGP Class Code – vendors in the following commodity class codes are identified on the following pages. The vendor is responsible to identify all commodity classes that may represent subcontracting opportunities.

961 - 07	Beverage Processing Services All Type
961-15	Concessions, Catering, Vending: Mobile and Stationary

APPENDIX FOUR

BEVERAGE MACHINE LOCATIONS AND CAMPUS MAP

Machine Location
Ag Building
Art Building
Austin Building
Campus Rec
Colliseum
Early Childhood
Ferguson Building
Field House
Forestry Building
Grounds & Transportation
Griffith Fine Arts Building
Griffith Hall
Griffith Hall
Hall 14
Hall 20
Hall 20 Kitchen
Housing Operations Building
HPE Building
HPE Building
Human Science North
Human Science South
Human Service Bldg
Kerr Hall
Kerr Hall
LIB STAFF 12OZ
Liberal Arts
Liberal Arts
Library Breakroom
Library Vending Area
Library Vending Area
Library Vending Area
Lumberjack Lodge 2
Lumberjack Landing
Lumberjack Landing
Lumberjack Landing
Lumberjack Lodge 1st floor
Lumberjack Village 1
Lumberjack Village 2
Lumberjack Village 3
Math Building
McGee Building
McKibben Building
Miller Science
Music Building
Nursing
Physical Plant
Rusk Building
South Hall
Steen
Steen Kitchen
Student Center
Student Center
Student Center
UPD
W CAMPUS BRKR #2
Wellness HUB
Wilson Parking
Wisely Hall

APPENDIX FOUR CONTINUED

(See Link Below to Campus Map.)

<https://www.sfasu.edu/map>

CERTIFICATE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. If not exempt under [Section 2252.908\(c\), Government Code](#), Contractor must use the Texas Ethics Commission electronic filing web page (at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University. **The Certificate of Interested Parties will be submitted only by Contractor to University with the signed Agreement.**

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.		OFFICE USE ONLY	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.		<div style="font-size: 2em; transform: rotate(-45deg); opacity: 0.5;"> Must file online at www.ethics.state.tx.us/File </div>	
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.			
4		5	
Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
5 Check only if there is NO Interested Party.		<input type="checkbox"/>	
6 UNSWORN DECLARATION			
My name is _____, and my date of birth is _____.			
My address is _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country).			
I declare under penalty of perjury that the foregoing is true and correct.			
Executed in _____ County, State of _____, on the _____ day of _____, 20____. <div style="text-align: right;"> (month) (year) </div>			
_____ Signature of authorized agent of contracting business entity (Declarant)			
ADD ADDITIONAL PAGES AS NECESSARY			

PERFORMANCE BOND

COUNTY OF _____ §

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and _____, as Surety, are hereby held and firmly bound unto the State of _____ Texas as Oblige in the penal sum of _____ (\$ _____) for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the principal entered into a certain contract, hereto attached, and made a part hereof, with the State of Texas, acting by and through _____, dated _____, 20, for _____.

NOW THEREFORE, the condition of this obligation is such that, if the Principal shall faithfully perform the said contract in accordance with the plans and specifications and contract documents, and shall fully indemnify and save harmless the State of Texas from all cost and damage which the State of Texas may suffer by reason of Principal's default or failure so to do and shall fully reimburse and repay the State of Texas all outlay and expense which the State of Texas may incur in making good any such default, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

In the event that the principal is declared in default under the said contract, the Surety will within Fifteen (15) days of the State of Texas' declaration of such default take over and assume completion of said contract and become entitled to the payment of the balance of the contract price. Conditioned upon the Surety's faithful performance of its obligations, the liability of the Surety for the Principal's default shall not exceed the penalty of this bond.

The Surety agrees to pay to the State of Texas upon demand all loss and expense, including attorney's fees, incurred by the State of Texas by reason of or on account of any breach of this obligation by the Surety.

Provided further, that if any legal action be filed upon this bond, venue shall lie in the county where the said contract is to be performed.

Provided further, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the said contract, or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the said contract or to the work or to the specifications.

By signature hereon, if the amount of this bond exceeds \$100,000, then the Surety attests that at the time the bond was executed (and Surety shall provide the Oblige with evidence of the following):

- (1) it was a holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or
- (2) had reinsured any liability in excess of \$100,000 by a reinsurer holding a certificate of authority from the United States Secretary of the Treasury.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____ in the year _____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

Principal

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

Surety

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

Surety's Texas Local Recording
or Resident Agent:

Surety's Home Office Agent or Servicing Agent:

(Signature)

Name: _____

(Typed Name)

Title: _____

License No. _____

File No. _____

Address: _____

Address: _____

Telephone No.: _____

Telephone No.: _

APPENDIX SEVEN
ACCESS BY INDIVIDUALS WITH DISABILITIES

Contractor represents and warrants (EIR Accessibility Warranty) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (EIRs) comply with applicable requirements set forth in [1 TAC Chapter 213](#), and [1 TAC §206.70](#) (Ref. [Subchapter M, Chapter 2054, Government Code](#).) To the extent Contractor becomes aware that EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to university, either (1) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Warranty or (2) replace EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to university all amounts University paid under this Agreement.