



REQUEST FOR QUALIFICATIONS
#24-12

Public Accounting Services
for the
Tyler Junior College Foundation

The TJC Foundation (“Foundation”) is soliciting submissions from Professionals having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this Request for Qualifications (Texas Government Code Chapter 2254).

Submissions are due by **Friday, June 14, 2024 @ 2:00 p.m. Central Daylight Time (CST)** and will be opened and the names read publicly. Submissions will be reviewed by the Procurement Department, the TJC Foundation, and then processed through appropriate channels for committee and/or Board review, if applicable, and approval. The Board of the TJC Foundation will make final approval of any award(s). Any procurement of services will be initiated by a valid, signed contract issued by the TJC Foundation.

All submissions and supporting documentation must be submitted by mail, or delivered by courier, or hand delivered by a vendor representative. If proposal is mailed, please mark “**RFQ #24-12**” on the front of the envelope; or deliver to:

TYLER JUNIOR COLLEGE FOUNDATION
Attn: Mitch Andrews, Executive Director
1327 South Baxter
Tyler, TX 75701

The submission must be received prior to the deadline. Submissions received after the deadline will not be opened, read, evaluated, or recorded; and will be returned to the vendor unopened.

The Tyler Junior College Foundation reserves the right to (a) enter into an agreement with one or more Professionals, (b) accept or reject any and/or all submissions, or waive any and/or all formalities, technicalities, and conditions, or (c) permanently abandon the RFQ if deemed to be in the best interest of the Foundation. The Foundation will have a minimum of ninety (90) days after the Submittal Deadline for evaluation, selection, and any unforeseen delays. Professionals shall not withdraw their submissions prior to the termination of this period. Tyler Junior College Foundation will accept the submission(s) determined by the Foundation to be in its best interest in accordance with applicable law (Texas Government Code Chapter 2254) and reserves the right to award multiple contracts as a result of this RFQ if deemed in the best interest of the Foundation. It is not the intent of any condition, specification, or other requirement in the proposal process to prohibit any responsible Professional from submitting qualifications.

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INTRODUCTION

The Tyler Junior College Foundation (TJC Foundation) was incorporated in 1965 as a separate 501 (c) (3) support organization for Tyler Junior College (TJC). Its mission is to enhance the overall reputation of TJC, to provide external resources to fund College priorities, and to create opportunities for the Foundation to build partnerships with alumni, friends, donors, corporations and foundations.

TJC is located in Tyler, Texas. Since 1926, TJC has been fulfilling three promises to its students and the Tyler area by providing a quality education, a vibrant student life, and service to the community. With more than 115+ degree and certificate programs, plus extensive training and technical programs, TJC is the best first step for any student, whether they plan to transfer to a four-year institution or gain the skills they need to go directly into the workforce.

TJC provides a friendly, smoke-free vapor-free environment at all of its campuses and satellite facilities. No alcohol will be permitted on campus grounds.

Tyler Junior College is committed to providing a safe environment for students, faculty, staff, and visitors, and to respecting the right of individuals who are licensed to carry a handgun where permitted by law. Individuals who are licensed to carry may do so on campus premises or in a college-owned vehicle except in locations and at activities prohibited by law or by this policy. Individuals who observe a violation of this policy are required to report the incident immediately to the Campus Police Department, so it can be documented and properly investigated. Campus Police can be contacted at 903-510-2222. Dial 911 for emergencies.

https://www.tjc.edu/downloads/file/1045/concealed_handguns_on_campus_policy

Tyler Junior College's web page is located at <http://www.tjc.edu/>.

SUBMISSION INSTRUCTIONS

By providing a submission of qualifications, Professional acknowledges the following with regard to the evaluation methodology: (1) Professional's acceptance of (a) the evaluation process, (b) the criteria for selection, (c) specifications and additional questions, and (d) all other requirements set forth in this RFQ, and (2) Professional's recognition that some subjective judgments must be made by the Foundation during this RFQ process.

Only individual firms or lawfully-formed business organizations may apply. This does not preclude a respondent from using consultants.

Entity Submitting RFQ: The terms "vendor", "proposer", "firm", "company", "respondent", or "professional" used in this RFQ or any subsequent documents or communications related to this RFQ are interchangeable and mean the entity submitting a proposal and seeking to enter into a contract for the goods and/or services requested in this RFQ.

Acquiring Documents: RFQ documents may be downloaded from the TJC website at <https://www.tjc.edu/rfp>, or picked up from the Procurement Department at the following location: Tyler Junior College, Campus & Procurement Services, 1327 S. Baxter, Tyler, TX 75701. Respondents may also obtain RFQ documents by emailing a request to Dana Ballard, dbal@tjc.edu.

Proposals submitted for consideration should follow the format and order of presentation described below:

Cover Letter: Contain a summary of Professional's ability to perform the services described in the RFQ and confirm that respondent is willing to perform those services and enter into a contract with the Tyler Junior College Foundation.

The person signing the proposal must be:

1. A current corporate officer, partnership member, or other individual specifically authorized to submit a proposal; or
2. An individual authorized to bind the company as reflected by a corporate resolution, certificate or affidavit; or other documents indicating authority which are acceptable to the public entity

The cover letter should also:

- Identify the submitting respondent;
- Identify the name, title, address, telephone number, and email address of each person authorized by the respondent to contractually obligate the respondent;
- Identify the name, address, telephone number, and email address of the contact person for technical and contractual clarifications throughout the evaluation period.

Number of Response Copies: Each respondent is required to submit and provide ten (10) complete, bound and identical copies of its entire proposal on letter-size paper, and one (1) thumb drive of the proposal. An original signature by an authorized officer of the firm must appear on at least one (1) copy of the submitted proposal. The original response is to be labeled “Original” on the first page or front cover of the proposal.

Legibility/Clarity: Responses to the requirements of this RFQ in the formats requested are required with all questions answered in as much detail as practicable and limited to thirty (30) typed pages. The respondent's response is to demonstrate an understanding of the requirements. Proposals prepared simply and economically, providing a straightforward, concise description of the Professional's ability to meet the requirements of the RFQ is also desired. Each respondent is solely responsible for the accuracy and completeness of its proposal.

Schedule of Events:

RFQ available to prospective respondents	May 22, 2024
Deadline to receive written inquiries	Monday, June 3, 2024, 10:00 am CST
Responses to inquiries, if any, via Addenda	https://www.tjc.edu/rfp
Proposal Due Date	Friday, June 14, 2024, 2:00 p.m.

The Tyler Junior College Foundation reserves the right to change the schedule of events to the RFQ at any time. Any changes will be issued via Addenda and posted online at <https://www.tjc.edu/rfp>.

Respondent Inquiry Periods: An initial inquiry period is hereby firmly set for all interested respondents to perform a detailed review of the proposal documents and to submit any written questions relative thereto. TJC Foundation is always conscious and extremely appreciative of your time and effort in preparing this proposal. Without exception, all questions regarding this RFQ MUST be submitted in writing by email only to Dana Ballard, Director, Campus & Procurement Services, at dbal@tjc.edu and received by the deadline to receive written inquiries date set forth above. Inquiries shall not be entertained thereafter. It is the Foundation’s intent to respond to all appropriate questions and concerns; however, the Foundation reserves the right to decline to respond to any question or concern. It is the respondent’s responsibility to make sure they have obtained all addenda and acknowledged receipt of such on the Vendor Certification Form.

Withdrawal of Proposal: A respondent may withdraw a proposal that has been submitted at any time up to the proposal closing date and time. To accomplish this, a written request signed by the authorized representative of the respondent must be submitted to the Procurement Department via the previously stated email address.

GENERAL REQUIREMENTS

By providing a submission, Professional certifies that it understands this RFQ and has full knowledge of the scope, nature, quality and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Except as otherwise provided in this RFQ, no submission of qualification may be changed, amended, or modified after it has been provided to the Foundation.

The contract between Tyler Junior College Foundation and the vendor may consist of (1) the Request for Qualifications (RFQ) and any amendments thereto, (2) the proposal submitted by the vendor in response to the RFQ, and (3) any subsequent contract for services. In the event of a conflict in language between the three documents referenced above, the provisions and requirements set forth and/or referenced in the RFQ shall govern. However, the Foundation reserves the right to clarify any contractual relationship in writing with the concurrence of the vendor and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFQ or the vendor's proposal. In all other matters not affected by the written clarifications, if any, the RFQ shall govern, along with the fully-executed contract.

SCOPE OF WORK

The Tyler Junior College Foundation ("TJC Foundation") is soliciting Public Accounting Firms ("Professional" or "Professionals") in response to this Request for Qualifications for selection of a vendor(s) to provide Professional Services, no minimum guaranteed amount of work. TJC Foundation makes no representation regarding the amount or type of services, if any, that Professional will be asked to provide to TJC Foundation during the term of any agreement.

The TJC Foundation is a nonprofit entity incorporated in Texas, with federal income tax exemption issued under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Foundation is classified as a public charity and, under Section 509(a)(3), as a Type I supporting organization.

The organization-wide audit for fiscal year 2024 will encompass the general-purpose financial statements, combining statements, and other schedules for the TJC Foundation for the fiscal year beginning September 1, 2023 and ending August 31, 2024. The Services may include but are not limited to the following:

Financial Statement Audit

The financial statement audit is to determine whether (1) the financial statements present fairly the financial position, results of operations, and cash flows or changes in financial positions in accordance with generally-accepted accounting principles, and (2) whether the TJC Foundation has complied with laws and regulations for those transactions and events that may have a material effect on the financial statements. The financial-related audit will also include determining whether (1) financial reports and related items are fairly presented, (2) financial information is presented in accordance with established or stated criteria, and (3) the TJC Foundation has adhered to specific financial compliance requirements.

As part of the audit of the general-purpose financial statements, the annual audit will also include obtaining an understanding of the Foundation's internal control structure and reporting any reportable conditions related to the internal control systems coming to the attention of the auditors. Any material weakness noted during the study and evaluation of internal accounting and administrative controls will be reported.

Internal Revenue Service Form 990

Preparation of Internal Revenue Service (IRS) Form 990 Return of Organization Exempt from Income Tax, as well as related schedules and reports.

Special Consideration: The scope of services for which Professional(s) is requested to submit qualifications for includes the following:

1. Audited TJC Foundation financial statements are included in the Tyler Junior College District annual comprehensive financial report as a discretely-presented component unit.
2. Management letter addressing internal control systems and procedures.
3. Presentation of the annual report submitted to the Tyler Junior College Foundation Board of Trustees at a board meeting after completion of the audit.
4. The audit firm will have availability to conduct, prior to the close of the fiscal year, interim or preliminary audit work and compliance testing.
5. Prior to submission of the completed annual audit report, the staff of the audit firm must review a draft of the proposed report and management letter with the Director of Foundation Accounting, and designee(s), if applicable, no later than 45 days following the August 31 close. The Foundation's accounting staff will be available to answer questions, to locate documents, and to assist in preparing letters, confirmations, etc.
6. The final audit report must be available no later than November 1 for inclusion in the Tyler Junior College District Annual Comprehensive Financial Report. The TJC Foundation audit report will be presented to the TJC Foundation Executive Committee in mid-October and to the TJC Foundation Board in late October.
7. Prior to the submission of the IRS Form 990, the staff of the audit firm must review a draft of the proposed report with the Director, Foundation Accounting, following the completion of the audit report, no later than December 1.
8. The final IRS 990 report must be available no later than December 15 and will be presented to the TJC Foundation Executive Committee in early January.
9. The selected firm must retain the audit working papers for a period of not less than five (5) years after the date of the auditor's opinion or until notified that all cognizant agency reviews have been accomplished. The working papers must be made available for review by the cognizant Federal or State audit agencies, by Tyler Junior College Foundation or by designated representatives thereof.
10. Tyler Junior College Foundation anticipates that financial records will be complete for purposes of a final audit by the end of the second week of September of each year.
11. Respondent should also include qualifications for other services that may be provided, including but not limited to assistance with implementation of new accounting standards, periodic questions related to accounting best practices, and specialized services such as: valuing pledges as assets, valuing complex, deferred assets as a result of planned gifts, and verifying percentage of annual earnings of investment pool as provided by investment management firm.
12. TJC Foundation can support both on-site and remote field work schedules.
13. A digital copy of both the Tyler Junior College Foundation Audit Report and IRS Form 990 will be required. The following information related to Tyler Junior College Foundation's background and historic financial reports is available online:
 - [About Tyler Junior College Foundation](#)
 - [Financial statements and reports](#)

TERMS AND CONDITIONS

Term of Contract: The initial contract term will be September 1, 2024 through August 31, 2027, with two (2) 1-year renewals at TJC Foundation's discretion.

Modifications of Proposal Terms and /or Amendments: Tyler Junior College Foundation reserves the right to change the schedule of events or issue Addenda to the RFQ at any time. Tyler Junior College Foundation also reserves the right to cancel or re-issue the RFQ. Only interpretations or corrections to the proposal provided in writing by the TJC Foundation by addenda shall be binding. Prospective vendors are advised that no other

source is authorized to provide information concerning, or explain or interpret, the proposal documents. If the respondent needs to submit changes or addenda, such shall be submitted in writing, signed by an authorized representative of the respondent, cross-reference clearly to the relevant proposal section, prior to the proposal opening, and should be submitted with proposal documents. Such shall meet all requirements for the proposal.

Addenda: All addenda will be posted on the TJC website <https://www.tjc.edu/rfp>. It is the Professional's responsibility to check this website for addenda postings prior to submitting responses and acknowledge receipt of such in the Vendor Certification Form. Proposers finding errors, requests for additional information, omissions, or corrections that need to be made in the proposal shall contact the Procurement Department no later than seven (7) days prior to the due date of this RFQ, or as soon as possible before proposal is due. You may submit this addenda information via email to Dana Ballard, Director, Campus & Procurement Services, dbal@tjc.edu.

Proposal Rejection: Issuance of this RFQ in no way constitutes a commitment by Tyler Junior College Foundation to award a contract. TJC Foundation reserves the right to accept or reject any or all proposals submitted or to cancel this RFQ if it is in the best interest of the Foundation to do so.

Cost of Offer Preparation: TJC Foundation is not liable for any costs incurred by respondents prior to issuance of or entering into a contract. Costs associated with developing the proposal and any other expenses incurred by the respondent in responding to the RFQ are entirely the responsibility of the respondent and shall not be reimbursed in any manner by the Foundation.

Professional Services: This RFQ is being issued under Chapter 2254 of the Texas Government Code.

Written or Oral Discussions/Presentations: Formal presentations, written or oral discussions for clarification may be conducted with respondents who submit proposals determined to be reasonably susceptible of being selected for award and to enhance the Foundation's understanding of any proposal. The Foundation reserves the right to enter into a contract without further discussion of the proposal submitted based on the initial offers received.

Any commitments or representations made during these discussions, if conducted, may become formally recorded in the final contract.

Acceptance of Proposal Content: By submitting a response, each respondent affirmatively accepts and consents to the terms and conditions of this RFQ in its entirety except to the extent specifically set forth in its response. The RFQ requirements may become contractual obligations if a contract ensues.

Deviations: If Professional intends to deviate from the any requirements associated with this solicitation or the attached Proposed Agreement, if any, the vendor must list or reference all such deviations, with complete and detailed information regarding the deviations, on a separate sheet of paper and submit it with the bid submittal. The Foundation will consider any deviations in its award decision, and reserves the right to accept or reject the bid based upon any submitted deviations.

In the absence of any deviation identified and described in accordance with this solicitation, the vendor asserts that it will fully comply with the RFQ requirements associated with this solicitation if awarded a contract.

Insurance: The selected vendor(s) will be required to provide TJC Foundation with a certificate of insurance with applicable coverages as outlined in Article 14 of the Proposed Agreement. Coverage is required for the duration of the agreement, for any renewal terms, and for purposes of indemnification obligations that are specified to survive termination or expiration of the agreement and shall be obtained at the vendor's sole expense and at no cost to the Foundation.

Indemnification: To the extent allowable by Texas Law and without waiving any rights or entitlement to governmental or sovereign immunity, the parties shall indemnify ad hold harmless each other and their respective officers, trustees, or employees, (hereafter referred to as "indemnified party") against any and all

liability (including reasonable attorneys' fees and court costs) to any persons or entities (except to the extent such liability is the fault of the indemnified party) arising from or related to the negligence or willful acts, omissions, or other misconduct of the indemnifying party or its agents, officers/trustees, and employees, in the performance of this contract. The provisions of this section will not be construed to waive immunity in any way nor to eliminate or reduce any other indemnification or right which any indemnified party has by law or equity and shall survive the termination of this agreement.

Limitation of Liability: Neither respondent nor the Foundation shall be responsible to the other for any special, indirect, or consequential damages. Neither party will be responsible to the other for damage, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes; (d) labor disputes; (e) fire; (f) explosions or other casualties; (g) thefts; (h) vandalism; (i) riots or war; or (j) unavailability of parts, materials, or supplies.

License and Permits: The vendor is responsible for obtaining all permits and licenses, if any, required by federal, state, city, and county. The Foundation will not be charged back for the price to obtain the permits and licenses.

Open Records: It is understood by submitting a proposal to Tyler Junior College Foundation, the document, if requested, will be available for review by any individual or business in accordance with the Public Information Act, Texas Government Code 552. Copies of your proposal will be supplied to the requesting party as allowed by law. TJC Foundation will consider all information, documentation, and other materials requested to be submitted in response to this RFQ to be of a non-confidential and non-proprietary nature and therefore subject to public disclosure. 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. TJC Foundation may seek to protect from disclosure all information submitted in response to this RFQ until the time of a final award.

Advertising: The vendor shall not advertise or publish, without the Foundation's prior written consent, the fact that the Foundation has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

The contractor(s) shall not use Tyler Junior College's logo or the TJC Foundation's logo unless granted expressed written permission from the Foundation and/or the College.

Ethics: The Professional shall not accept or propose gifts or anything of value nor enter into any business arrangement with any employee, official or agent of Tyler Junior College or the Foundation.

Universal & Commercial Code: This writing and subsequent information given and forwarded to the Foundation shall be a sole and final expression of the agreement between the Foundation and the vendor, and is intended also as a complete and exclusive statement of the terms of their agreement. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is controlling.

Discrimination: By submitting a signed proposal, Professional certifies that the company does not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, and certifies that the company complies with equal employment opportunities regulation.

Debarment: Any bidder or any principals of a bidding company that are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State Government entity shall be considered ineligible to be awarded a contract by TJC Foundation.

Force Majeure: Neither Contractor, its suppliers, Member or Lead Agency, nor Tyler Junior College Foundation will be liable for any failure or delay in this agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the negligence or willful misconduct of

contractor), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If contractor is unable to provide services for a period of ten (10) consecutive days as a result of a continuing force majeure event, the Foundation may cancel the purchase order without penalty.

Contract Negotiations and Execution: Award shall be made to the respondent whose proposal conforms to the RFQ, who is deemed most qualified, and is in the best interest of the Foundation. If for any reason the respondent(s) whose proposal is most responsive to the Foundation's needs, price and other evaluation factors set forth in the RFQ considered does not agree to a contract, that proposal shall be rejected and the Foundation may negotiate with the next most responsive respondent(s). Negotiation may include revision terms, conditions, or requirements. The Foundation may enter into a contract with more than one respondent.

The Foundation reserves the right to enter into an agreement without further discussion of the proposal based on the initial qualifications received.

If the contract negotiation period exceeds thirty (30) days or if the selected respondent(s) fails to sign any contract within ten (10) calendar days of delivery of it, the Foundation may elect to cancel the award and award the contract to the next-highest-ranked respondent(s).

Notice of Award: TJC Campus & Procurement Services Department or the TJC Foundation will notify respondent(s) of a potential award. The TJC Campus & Procurement Services Department or the TJC Foundation will also notify all unsuccessful respondent(s) as to the outcome of the evaluation process.

Award Protest: A vendor who has timely responded to an Invitation to Bid, Request for Qualifications, or Competitive Sealed Proposal, but is not awarded the bid, has the right to protest the bid award if the amount of the bid is over \$50,000 in the aggregate. A protest must be made in writing and submitted to the Director, Campus & Procurement Services, no later than five (5) business days after the award of the bid. The date of the bid award will not be counted as one of the five (5) business days. Any protest submitted after five (5) business days is untimely and will not be considered by the College or the Foundation.

The written protest must contain the following in order to be considered:

- (a) A specific identification of the statutory, regulatory, or policy provision(s) that the action complained of is alleged to have violated;
- (b) A specific description of each act alleged to have violated the statutory, regulatory, or policy provision(s) identified in "a" of this subsection;
- (c) A precise statement of the relevant facts;
- (d) An identification of the issue or issues to be resolved;
- (e) Arguments and authorities in support of the protest; and
- (f) An affidavit that the contents of the protest are true and accurate.

No amendments to the protest will be considered by the Foundation.

The Director, Campus & Procurement Services, legal counsel for the College or the Foundation, and/or a committee headed by and appointed by the Vice-President, Financial & Administrative Affairs/CFO, shall review the protest documentation and shall provide the protestor a final written determination regarding whether any statutes, regulations, or policies have been violated, the reasons for the determination, and remedial action to be taken, if any. This review and final determination may be made with the assistance of legal counsel. The written determination shall be made within ten (10) business days of the receipt of the protest, unless the Director, Campus & Procurement Services, notifies protestor that additional time is needed. The decision shall be final.

Venue: Both parties agree that venue for any litigation arising from any contract shall be in Tyler, Smith County, Texas.

Additional Items: Following the contract award, additional services of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added.

In accordance with applicable law, the Foundation is not obligated to purchase any products and/or services in the event that the State of Texas or the Foundation Board does not allocate funds.

Tax Exemption (if applicable): TJC Foundation is exempt from payment of federal excise taxes as well as all state and local sales taxes. These taxes are not to be included in the proposal nor on any invoices for goods or services. If taxes are included in the vendor’s proposal, it will not be included in the evaluation or award. Tax exemption certificates shall be furnished upon request.

Warranty (if applicable): Contractor shall provide warranty details for parts and labor on proposal form. All materials used on any project shall be new and, if applicable include a manufacturer’s warranty.

EVALUATION CRITERIA FOR AWARD OF CONTRACT(S)

The successful vendor(s) will be the Professional(s) that provides a submission of qualification in response to this RFQ on or before the submittal deadline, is selected by TJC Foundation in accordance with the requirements and specifications set forth in this RFQ as the most highly qualified to perform the Services, and with whom the Foundation is able to negotiate the Agreement with at a fair and reasonable price.

Evaluation: All responses received as a result of this RFQ will be evaluated by a selected Foundation committee and/or Board. The evaluation of submissions of qualification and the selection of the successful Professional(s) will be based on the information provided in the submission. TJC Foundation may consider additional information if the Foundation deems such information relevant.

The Foundation will use commercially-reasonable efforts to avoid public disclosure of the contents of a submission prior to selection of the successful Professional(s).

After the opening of the submissions and upon completion of the initial review and evaluation, TJC Foundation may invite one or more selected Professionals to participate in oral presentations. The Foundation will select, on the basis of demonstrated competence and qualifications to perform the services, the firm(s) it believes are best qualified. Once the successful Professional(s) has been selected, the Foundation will attempt to negotiate the Agreement with the most highly-qualified Professional(s) at a fair and reasonable price.

Step One: Qualifications Evaluation Criteria and Requirements

All qualifications will be evaluated based on the criteria listed below. The committee and/or Board shall consist of individuals who have knowledge or experience of the subject matter in the RFQ; beneficiaries and/or users of the RFQ’s subject matter; and individuals who provide a diversity of experience within the Foundation. The top scoring firms may be selected to participate in formal presentations, if requested by the Foundation.

Criteria	Score
Respondent’s Statement of Interest and Qualifications	15
Respondent’s Ability to Provide Services	30
Respondent’s Performance on Past Representative Projects	30
Respondent’s Knowledge of Best Practices	20
Completeness and Thoroughness of Qualifications	5
TOTAL SCORE	100

The following information is required to be included in the RFQ response for Step One at a minimum. The descriptions below correspond with the scoring factors outlined above.

INFORMATION REQUIRED FROM RESPONDENT

1. Respondent's Statement of Interest and Qualifications
 - a. Provide a brief history of the respondent and consultant(s) proposed for the project, including when the firms were established, type of ownership and office locations. If more than one office is listed, indicate the office that will manage the project. If the firm has changed name or ownership within the last three (3) years, indicate the former name.
 - b. Provide a statement on the availability and commitment of the respondent and its principal(s) and assigned professionals to undertake the project.
 - c. Provide a statement of interest for the project, including a narrative describing the respondent's and project team's unique qualifications as they pertain to this particular project.
 - d. The Foundation is seeking professionals with a background of providing the type of requested services specifically geared toward college and/or university workforce programs.

2. Respondent's Ability to Provide Services
 - a. Provide the following information for the respondent and any consultants:
 - i. Legal name of the company as registered with the Secretary of State of Texas
 - ii. Address of the office that will be providing services
 - iii. Number of years in business
 - iv. Type of operation (individual, partnership, corporation, etc.)
 - v. Number of employees by skill group
 - vi. Provide a list of all proposed personnel indicating the position they will hold within the project and their years of experience as it relates to this project.
 - vii. Provide an organizational chart that depicts all of your lead personnel. Include current domicile location for each person and employment duration with the firm.
 - viii. Provide resumes for all your lead personnel.
 - ix. Indicate where the office providing the services under this RFQ is located.
 - x. Indicate if any of the lead personnel are located in a different office and the location of that office.
 - b. Is your company pending, currently, or within the past ten (10) years been involved in litigation or claims filed against your company because of professional services rendered? If so, specify dates, details, circumstances, and resolution.
 - c. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify dates, details, circumstances, and prospects for resolution.
 - d. Does any relation exist by relative, business associate, capital funding agreement, or any other such kinship between your firm and any TJC and/or TJC Foundation employee, officer, or trustee? If so, please explain.
 - e. Provide a claims history under professional malpractice insurance for the past five (5) years for the Prime Firm and any team members proposed to provide professional services.

3. Respondent's Performance on Past Representative Projects
 - a. Provide an overview of a maximum of five (5) higher education projects involving similar services. Provide the following information for each:
 - i. Project name and location
 - ii. Description of professional services provided
 - iii. Client's name and contact information as a reference. References shall be considered relevant based on specific project participation and experience with the respondent. TJC Foundation may contact references during any part of the process.

4. Respondent's Knowledge of Best Practices
 - a. Describe the respondent's public account services philosophy and methodology.
 - b. Describe the respondent's quality assurance program explaining the method used and how the firm maintains quality control while providing the requested services.
5. Completeness and Thoroughness of Qualifications Package
 - a. RFQ submittal packet must be clear, concise and easy to follow. Provide materials in tabs that correspond with all requested information on the criteria factors.

Step Two: Presentation and Final Selection Process

The top ranked firm(s) may be asked to do an oral presentation to the committee and/or Board. Applicable members of the proposer shall be present and participation in the presentation. Following the presentation, a question and answer session will begin in which the committee will ask questions of the professional. Once the successful professional has been selected, TJC Foundation will attempt to negotiate the Agreement with the most highly-qualified professional at a fair and reasonable price.

Prime Contractor Responsibilities: The selected professional(s) shall be required to assume responsibility for all items and services offered in their proposal whether or not they produce or provide them. Tyler Junior College Foundation shall consider the selected respondent(s) to be the sole point of contact, with regard to contractual matters, including payment of any and all charges resulting from the contract.

Use of Subcontractors: Each contractor shall serve as the single prime contractor for all work performed pursuant to its contract. That prime contractor shall be responsible for all deliverables referenced in this RFQ. This general requirement notwithstanding, respondents may enter into subcontractor arrangements. Respondents may submit a proposal in response to this RFQ, which identifies subcontract(s) with others, provided that the prime contractor acknowledges total responsibility for the entire contract.

Vendor Information: Please submit the Vendor Information Form which identifies the legal name and address of your company, the account representative that will be assigned to the Foundation, acknowledgement of the terms and conditions, as well as other information and any additional fees.

Felony Conviction Notification: The following information is included in the terms and conditions of all bids, proposals and offers in accordance with applicable Texas law. Each vendor must respond to this section as a requirement of the law. On May 30, 1995, Senate Bill 1 was signed by Governor George Bush and made effective as follows:

• **Senate Bill 1, section 44.034, Notification of Criminal History of Contractor**

- a) A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony.
- b) A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before termination of the contract.
- c) This section does not apply to a publicly held corporation.

Conflict of Interest: The following information is included in the terms and conditions of all proposals in accordance with applicable State of Texas Government Code Chapter 176:

On May 23, 2005, the Texas Senate passed House Bill No. 914, adding Chapter 176 to the Local Government Code and imposing new disclosure and reporting obligations on vendors and potential vendors to local government entities beginning January 1, 2006. Vendors doing business with Tyler Junior College are subject to

Chapter 176 found in the Local Government Code. Failure to abide by these new statutory requirements can result in possible criminal penalties as a Class C misdemeanor.

- (a) An individual or business entity that contracts or seeks to contract for the sale or purchase of property, goods, or services with the Foundation must complete and submit a CIQ (Conflict of Interest Questionnaire).
- (b) The CIQ form must be filed within seven days of beginning contract negotiations, or submitting an application, bid, response to a Request for Qualifications, correspondence, or other writing related to a potential agreement with the Foundation.
- (c) Upon completion, CIQ forms should be returned to Tyler Junior College, Dana Ballard, Director, Campus & Procurement Services, P. O. Box 9020, Tyler, TX 75711, along with the proposal submittal.

Vendors are required to download the CIQ form from the College's website, then complete the form and return it with the proposal submittal. <https://www.tjc.edu/rfp>.

State of Texas Government Codes: (H.B. No. 89) Chapter 2270, Sec. 2270.002: A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The Foundation requires written verification located on the Vendor Information form, that your company does not boycott Israel and will not boycott Israel during the term of this contract.

(S.B. No. 252) Chapter 2252, Sec. 2252.152: Prohibits a governmental entity from contracting with companies engaged in business with Iran, Sudan, or any known terrorist organization. The Foundation will review the Texas Comptroller's website list of companies know to have contracts with or provide supplies or services to a foreign terrorist organization.

State of Texas Government Code 2252.908: Awarded contractor will be responsible for complying with Texas Government Code 2252.908 in regards to House Bill 1295 relating to the disclosure of research, research sponsors, and interested parties by persons contracting with governmental entities and state agencies, which applies to a contract entered into after December 31, 2015. A Texas governmental entity or state agency may not enter into a contract that either (1) requires an action or vote by the governing body of the entity or agency or (2) has a value of at least \$1 million, unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes a list of each interested party for the contract of which the contracting business entity is aware and the signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury. Not later than the 30th day after the date the governmental entity or state agency receives a disclosure of interested parties, the governmental entity or state agency shall submit a copy of the disclosure to the Texas Ethics Commission. A copy of the rules and Certificate of Interested Parties Form 1295 can be found at the commission's website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

The Conflict of Interested Parties Form 1295 that your company receives from the Texas Ethics Commission, which has the certificate number in the upper right-hand corner, must be signed, scanned, then submitted with any final award.

Boycotting Energy Companies Notification: The following information is included in the terms and conditions of all bids, proposals and offers in accordance with applicable Texas law. Each vendor must respond to this section as a requirement of the law. Pursuant to Section 2274.002 of the Texas Government Code, each respondent must verify it does not boycott energy companies and will not boycott energy companies during the term of any contract. If respondent does not make that verification, respondent must so indicate in its response and state why the certification is not required.

Exemption criteria includes the following:

1. Company employs less than 10 full-time employees; AND
2. Value of the contract is less than \$100,000
3. The term “company” does not include a sole proprietorship.

“Boycott energy company” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A).”

Discrimination Against Firearms Entity or Trade Association: The following information is included in the terms and conditions of all bids, proposals and offers in accordance with applicable Texas law. Each vendor must respond to this section as a requirement of the law. Pursuant to Section 2274.002 of the Texas Government Code, respondent is required to make a verification it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If respondent does not make that verification, respondent must so indicate in its response and state why the verification is not required.

Exemption criteria includes the following:

1. Company employs less than 10 full-time employees; AND
2. Value of the contract is less than \$100,000

“Discriminate against a firearm entity or firearm trade association:” means (A) with respect to the entity or association, to: (i) refuse to engage in the trade of goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restricts or prohibits the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association.”

Taxpayer Identification Number: As a business, Federal income tax law requires us to report certain payments we make to you if you are not exempted from this reporting responsibility. In order for us to properly meet the federal tax law requirements, Tyler Junior College Foundation requires you to complete the Request for Taxpayer Identification Number (W-9) form. Please complete the information on the form and return with your bid.

RFQ CHECKLIST

What must be returned with your RFQ Submittal:

Please make sure ALL pages that are to be returned with your submittal have been fully completed and legibly filled out and signed where applicable.

1. Cover Letter
2. Information Required from Respondent
3. Vendor Information Form
4. Vendor Certification Form
5. Conflict of Interest (CIQ) Form (Ref. Vendor Certification Form #2)
6. Your company's W-9
7. Reference Sheet

VENDOR INFORMATION

Please type or print legibly

Company Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ E-mail: _____

Representative assigned to TJC Foundation account: _____

Years in business: _____ Number of employees: _____

- Vendor has insurance as requested and can provide a Certificate of Liability? ___Yes / ___No
- Vendor agrees to comply with all terms, conditions and specifications of this RFQ? ___Yes / ___No
- Submission is according to specifications in the RFQ? ___Yes / ___No
- Where does your company prefer to receive purchase orders and/or invoices?
 - Email _____

Name of Officer or Representative

Signature

Title of Officer or Representative

Date

Email

VENDOR CERTIFICATION FORM

1. **State of Texas Government Code 2252.908 (Certificate of Interested Parties Form 1295):** Successful bidders **awarded** contracts that are valued at \$50,000.00 or more are required by state law to go to the Texas Ethics Commission website and create a login and complete the required Certificate of Interested Parties Form 1295. Once the complete form has been signed, the Certificate of Interested Parties Form 1295 must be notarized and submitted to Tyler Junior College Procurement Department's designated staff member listed in the solicitation. This will be required if you are awarded a contract.

Texas Ethics Commission Website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

2. **Conflict of Interest Questionnaire:** Respondents submitting a response to this solicitation must comply with applicable laws, ordinances and regulations including the State of Texas "Local Government Code Chapter 176". As applicable, the person submitting a response to this solicitation must complete and submit a Conflict of Interest Questionnaire form CIQ, in a formation approved the Texas Ethics Commission. **The form must be downloaded, completed and returned with this solicitation**, or sent via USPS to Dana Ballard, Director, Campus & Procurement Services, Tyler Junior College, P. O. Box 9020, Tyler, TX 75711. A copy of the form can be found on the TJC website: <https://www.tjc.edu/rfp>
3. **Felony Conviction Notification:** Company owner/operator has not been convicted of a felony, except as indicated on a separate attachment to this proposal, in accordance with sec. 44.034, Texas Education Code.
4. **Boycotting Energy Companies Notification:** Company owner/operator verifies respondent does not boycott energy companies and will not boycott energy companies during the term of any ensuing contract, or is exempt:
- a. Exemption claimed: _____
5. **Discrimination Against Firearms Entity or Trade Association:** Company owner/operator verifies respondent (1) does not have a practice, policy, guidance, or directive the discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association, or is exempt:
- a. Exemption claimed: _____
6. **Texas Government Code 2270 (Texas House Bill 89 and Texas Senate Bill 252):** By signing this document, vendor/company declares under penalty of perjury to be true and correct that my company (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract or it's renewals; and does not contract with companies engaged in business with Iran, Sudan, or Terrorist Organizations.
7. **Delinquent Franchise Taxes:** Vendor/Company certifies that its franchise taxes are current. If the corporation is exempt from payment of franchise taxes or is an out-of-state corporation not subject to Texas Franchise Tax, it shall certify to that effect.
- _____ I certify, the Corporation is exempt from payment of franchise taxes or is an out-of-state corporation.
- _____ I certify, there is not delinquent Texas franchise tax pending against the corporation.
- _____ I certify, there is delinquent Texas franchise taxes pending against the corporation.
8. **Texas Resident Information:** Chapter 2252, Subchapter A, of the Texas Government Code, establishes certain requirements applicable to proposers who are not Texas Residents. Under the Statute, a "Resident" vendor is one whose principal place of business is in Texas, including one whose ultimate parent company or majority owner has its principal place of business in Texas and employs at least 500 persons in the State of Texas:
- Location of Principal Place of Business (City/State) and or Number of employees based in Texas:
City/State: _____ Number of Employees that reside in Texas: _____
9. **Debarment Certification:** Vendor certifies neither the owner or principal owner has been debarred, suspended or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549 "Debarment and Suspension" as described in the Federal Register and Rules and Regulations:
- _____ No, Vendor is not currently debarred, suspended or otherwise ineligible.
- _____ Yes, Vendor is currently debarred, suspended or otherwise ineligible.

10. Addenda Acknowledgement: Vendor acknowledges receipt of and has reviewed (#) _____ addenda that have been issued and made a part of this RFQ.

VENDOR CERTIFICATION: The undersigned, on behalf of vendor, certifies that this proposal is made without previous understanding, agreement or connection with any person, firm, or corporation submitting a proposal on the same specifications, and is in all respects fair and without collusion, fraud or unlawful acts. Vendor hereby acknowledges that it is unlawful to offer, give, agree to give to any person, or solicit, demand, accept, or agree to accept from another person, a bribe, or unlawful gift, benefit, advantage, gratuity, payment, or an offer of employment in connection with or arising from this sealed solicitation or subsequent contract. Vendor certifies that no relationship, whether by relative, business associate, capital funding agreement, or by any other such kinship exists between respondent and TJC and/or TJC Foundation.

Vendor represents and warrants that respondent has the necessary experience, knowledge, abilities, skills and resources to satisfactorily perform the terms, conditions and requirements of the RFQ.

Vendor declares under penalty of perjury all of the above to be true and correct. It is further certified that the person whose signature appears below is legally and duly authorized to execute this contract and empowered to bind the Company in whose name the solicitation is entered.

Submitted this _____ day of _____, 2024 by and for the company identified as follows:

Company Name: _____

Signature: _____ Printed Name: _____

Title: _____

PROPOSED AGREEMENT

AGREEMENT
For
PROFESSIONAL SERVICES

This Agreement is made as of _____, (the “Effective Date”), by and between:

The Owner: **Tyler Junior College Foundation (“Foundation” or “Owner”)**
1327 South Baxter
Tyler, Texas 75701
and

The Services Provider: _____

This Agreement is for the provision of Public Accounting Services. Services Provider represents that it has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

The Owner and the Services Provider agree as follows:

**ARTICLE 1
TERM OF AGREEMENT**

1.01 **Initial Term:** The initial contract term will be September 1, 2024 through August 31, 2027, with two (2) 1-year renewals at TJC Foundation’s discretion.

1.02 **Completion of Work in Progress:** The Owner has the option to extend the term of this Agreement, or any renewal period, as necessary for Services Provider to complete work on any project approved by the Owner prior to the expiration of the Agreement.

**ARTICLE 2
CONTRACT SUM**

2.01 **No Minimum Amount of Work:** Owner makes no representations regarding the amount or type of services, if any, that Services Provider will be asked to provide to Owner during the term(s) of this Agreement. It is expressly understood that the Owner is under no obligation to request any services from Services Provider and no minimum amount of work is required or contemplated under this Agreement. All service requests will be made by the Owner on an as-needed basis subject to future agreement on the scope of the work and attached fee schedule (Exhibit A).

**ARTICLE 3
SCOPE OF WORK**

3.01 **Project Scope:** The Services Provider agrees to provide Public Accounting Services as requested by the Owner in accordance with the terms of this Agreement. The services may include, but are not limited to the following:

The TJC Foundation is a nonprofit entity incorporated in Texas, with federal income tax exemption issued under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Foundation is classified as a public charity and, under Section 509(a)(3), as a Type I supporting organization.

The organization-wide audit for fiscal year 2024 will encompass the general-purpose financial statements, combining statements, and other schedules for Tyler Junior College Foundation for the fiscal year beginning September 1, 2023 and ending August 31, 2024. The Services may include but are not limited to the following:

Financial Statement Audit

The financial statement audit is to determine whether (1) the financial statements present fairly the financial position, results of operations, and cash flows or changes in financial positions in accordance with generally-accepted accounting principles, and (2) whether the TJC Foundation has complied with laws and regulations for those transactions and events that may have a material effect on the financial statements. The financial-related audit will also include determining whether (1) financial reports and related items are fairly presented, (2) financial information is presented in accordance with established or stated criteria, and (3) the TJC Foundation has adhered to specific financial compliance requirements.

As part of the audit of the general-purpose financial statements, the annual audit will also include obtaining an understanding of the Foundation's internal control structure and reporting any reportable conditions related to the internal control systems coming to the attention of the auditors. Any material weakness noted during the study and evaluation of internal accounting and administrative controls will be reported.

Internal Revenue Service Form 990

Preparation of Internal Revenue Service (IRS) Form 990 Return of Organization Exempt from Income Tax, as well as related schedules and reports.

Special Consideration: The scope of services for which Professional(s) is requested to submit qualifications for includes the following:

1. Audited TJC Foundation financial statements are included in the Tyler Junior College District annual comprehensive financial report as a discretely-presented component unit.
2. Management letter addressing internal control systems and procedures.
3. Presentation of the annual report submitted to the Tyler Junior College Foundation Board of Trustees at a board meeting after completion of the audit.
4. The audit firm will have availability to conduct, prior to the close of the fiscal year, interim or preliminary audit work and compliance testing.
5. Prior to submission of the completed annual audit report, the staff of the audit firm must review a draft of the proposed report and management letter with the Director of Foundation Accounting, and designee(s), if applicable, no later than 45 days following the August 31 close. The Foundation's accounting staff will be available to answer questions, to locate documents, and to assist in preparing letters, confirmations, etc.
6. The final audit report must be available no later than November 1 for inclusion in the Tyler Junior College District Annual Comprehensive Financial Report. The TJC Foundation audit report will be presented to the TJC Foundation Executive Committee in mid-October and to the TJC Foundation Board in late October.
7. Prior to the submission of the IRS Form 990, the staff of the audit firm must review a draft of the proposed report with the Director, Foundation Accounting, following the completion of the audit report, no later than December 1.

8. The final IRS 990 report must be available no later than December 15 and will be presented to the TJC Foundation Executive Committee in early January.
9. The selected firm must retain the audit working papers for a period of not less than five (5) years after the date of the auditor's opinion or until notified that all cognizant agency reviews have been accomplished. The working papers must be made available for review by the cognizant Federal or State audit agencies, by Tyler Junior College Foundation or by designated representatives thereof.
10. Tyler Junior College Foundation anticipates that financial records will be complete for purposes of a final audit by the end of the second week of September of each year.
11. Respondent should also include qualifications for other services that may be provided, including but not limited to assistance with implementation of new accounting standards, periodic questions related to accounting best practices, and specialized services such as: valuing pledges as assets, valuing complex, deferred assets as a result of planned gifts, and verifying percentage of annual earnings of investment pool as provided by investment management firm.
12. TJC Foundation can support both on-site and remote field work schedules.
13. A digital copy of both the Tyler Junior College Foundation Audit Report and IRS Form 990 will be required. The following information related to Tyler Junior College Foundation's background and historic financial reports is available online:
 - a. <https://foundation.tjc.edu/s/1945/bp21/home.aspx?gid=2&pgid=61> (About Tyler Junior College Foundation)
 - b. <https://foundation.tjc.edu/s/1945/bp21/interior.aspx?sid=1945&gid=2&pgid=544> (Financial statements and reports)

ARTICLE 4

SERVICES PROVIDER'S GENERAL SERVICES AND RESPONSIBILITIES

- 4.01 **Project Manager:** The Project Manager shall manage the Services Provider's services and administer any project authorized pursuant to this Agreement. The Services Provider shall provide and/or coordinate the basic services necessary and reasonably inferable for the complete performance of any project authorized pursuant to this Agreement.
- 4.02 **Standard of Care:** Services Provider agrees to use its best professional efforts, skill, judgment, and abilities to perform Services Provider's services in an expeditious and timely manner as is consistent with accounting professional standards of care in the State of Texas and the orderly progress of any project authorized pursuant to this Agreement. Services Provider shall at all times provide a sufficient number of qualified personnel to accomplish Services Provider's services within the time limits set forth in the schedule.
- 4.03 **Compliance with Laws:** Service Provider is aware of, fully informed about and in full compliance with its obligations under with all applicable, federal, state and local, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction ("**Applicable Laws**"), including Title VI of the *Civil Rights Act of 1964*, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), *Vietnam Era Veterans Readjustment Act of 1974*, as amended (41 CFR 60-250), *Rehabilitation Act of 1973*, as amended (41 CFR 60-741), *Age Discrimination Act of 1975* (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), *Fair Labor Standards Act of 1938*, Sections 6, 7, and 12, as amended, *Immigration Reform and Control Act of 1986*, Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 95-507), *Americans with Disabilities Act of 1990* (42 USC 12101 et seq.), *Civil Rights Act of 1991*, *Occupational Safety and Health Act of 1970*, as amended (PL 91-596), *Immigration and Nationality Act* (8 *United States Code* 1324a) and all other applicable laws. Service Provider represents and warrants that neither Service Provider nor any firm, corporation or institution represented by Service Provider, nor anyone acting for that firm, corporation or institution, (1) has

violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Service Provider's response to TJC's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

- 4.04 **Correction of Work:** Services Provider's services shall be reasonably accurate and free from material errors or omissions. Upon notice, Services Provider shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to Owner.
- 4.05 **Representative:** Services Provider shall designate a representative primarily responsible for Services Provider's services under this Agreement. The designated representative shall act on behalf of Services Provider with respect to all phases of Services Provider's services and shall be available as required for the benefit of any project and the Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.
- 4.06 **Documentation:** The Services Provider shall fully document its project activities, in reports or other methods as appropriate to the scope of work.
- 4.07 **Presence on TJC Premises:** Service Provider agrees that it will ensure that all of its employees, subcontractors and agents whose duties bring them upon TJC's premises will obey the rules and regulations that are established by TJC and will comply with reasonable directions TJC's representatives may give to Service Provider. Service Provider is responsible for acts of its employees, subcontractors and agents while on TJC's premises. Accordingly, Service Provider agrees to take all necessary measures to prevent injury and loss to persons and property located on TJC's premises. Service Provider is responsible for all damages to persons or property caused by Service Provider or any of its employees, subcontractors and agents.

ARTICLE 5 THE OWNER'S RESPONSIBILITIES

- 5.01 **Project Scope:** The Owner shall provide a description of the project scope; schedule; objectives, characteristics and constraints; and a description of the basic services to be provided by the Services Provider for the project.
- 5.02 **Representative:** The Owner designates the Executive Director, TJC Foundation, or his designee, as its representative authorized to act in the Owner's behalf with respect to the Project. The Owner designates the Director of Contract Administration, or her designee, as its representative for the purpose of administering this contract.
- 5.03 **Review of Work:** The Owner will review the Services Provider's documents at the completion of each requested Scope of Work. Owner's review comments or decisions regarding the documents will be furnished to the Services Provider in a reasonably prompt manner. The Owner will notify the Services Provider in writing of any material error or omission or other defect in the project or any conflict in the contract documents that the Owner becomes aware of, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.
- 5.04 **Time for Response:** The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services Provider's services and of the Work.

**ARTICLE 6
ACCEPTANCE OF WORK**

- 6.01 **Owner's Satisfaction:** All work performed under this Agreement shall be completed to the satisfaction of the Owner's representative assigned to the project. The Owner's representative shall decide all questions regarding Services Provider's performance under the Agreement and such decisions shall be final and conclusive.
- 6.02 **Correction of Work:** Should Services Provider's services not conform to the requirements of this Agreement and the Project Proposal as determined by the Owner's representative or be satisfactory to Owner's representative as required by 6.01 above, Owner may order the Services Provider to re-perform such services at no additional expense to the Owner or deduct the fees for such services from any other fees payable to the Services Provider.
- 6.03 **Liability:** Owner's approval or acceptance of Services Provider's services will not release Services Provider from any liability for such services because Owner is, at all times, relying upon Services Provider's skill and knowledge in performing Services Provider's services.

**ARTICLE 7
COMPENSATION FOR SERVICES RENDERED**

- 7.01 **Owner's Approval Required:** Owner agrees to pay Services Provider for those services rendered at Owner's specific request.
- 7.02 **Scheduled Billing Rates:** Attached as Exhibit A, and incorporated herein, is Services Provider's Schedule of Billing Rates, including hourly billing rates and/or per service billing rates as applicable. The Billing Rates include all costs for any identified services and the Services Provider shall not be entitled to any additional compensation for providing those services. The Schedule of Billing rates shall remain in full force and effect for the term of this Agreement, including all renewal periods.
- 7.03 **Basic Service:** For Basic Services rendered in connection with any project authorized pursuant to this Agreement, Services Provider shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Exhibit A.
- 7.04 **Additional Services:** Additional Services are services not identified or reasonably inferable as Basic Services included in a Project Proposal. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. For approved Additional Services provided in connection with any project authorized by this Agreement, Services Provider shall be compensated on an hourly rate basis or on a per-service fee basis.
- 7.05 **Consultant Costs:** Unless approved in advance by the Owner, Services Provider shall pay for all consultant services and costs associated with his services under this Agreement, whether basic services or additional services, out of his fees. Owner is not responsible for any such consultant fees or costs unless otherwise agreed to in writing.

**ARTICLE 8
REIMBURSABLE EXPENSES**

- 8.01 **Reimbursable Expenses:** Reimbursable Expenses are in addition to compensation for basic and additional services. Reimbursable Expenses recoverable by the Services Provider under this Agreement are limited to the following:

- a. Expenses in connection with out-of-state travel, including coach class air fare and reasonable living expenses, as directed and approved in advance and in writing by the Owner;
- b. Expense of any additional insurance coverage or limits, requested by the Owner excluding professional liability and errors and omissions insurance required under Basic Services of this contract that exceed those normally carried by the Services Provider and the Services Provider's consultants.

8.02 Compensation for Reimbursable Expenses: The Services Provider and its employees and consultants, shall be compensated for the actual, out-of-pocket, reasonable costs for all approved Reimbursable Expenses that are incurred solely and directly in connection with the performance of the Services Provider's services and duties under this Agreement or in the interest of any particular project.

8.03 Proposal Costs Not Recoverable: Services Provider is solely responsible for any expenses or costs, including expenditures of time, incurred by the Services Provider and its employees and consultants in the development of the Scope of Work. Such expenses or costs are not Reimbursable Expenses.

ARTICLE 9 INVOICING

9.01 Monthly Invoices: If applicable, Services Provider shall submit a monthly record or invoice of services performed under this Agreement identifying all fees earned and reimbursable expenses incurred in the previous month. Invoices shall be submitted in a format approved by the Owner and must contain at least the following information:

- a. Project Name, PO Number, if any, and Work Order Number, if any;
- b. Identification of billing period, by calendar month, to which the invoice applies;
- c. Itemized description of services provided including the names, billing rates and amount of time per task expended by all persons who performed services on the project during the billing period.
- d. Total amount of invoice;
- e. Total amount of prior invoices;
- f. Copy of all receipts in support of any reimbursable expenses invoiced, if any;

9.02 Invoice Submittal: Invoices shall be submitted to:

Mitch Andrews, Executive Director
TJC Foundation
P. O. Box 9020
Tyler, Texas 75711
Mand@tjc.edu

9.03 Exceptions to Payment: Regardless of any other provision of this Agreement, Owner shall not be obligated to make any payment requested by Services Provider under this Agreement if any of the following conditions precedent exist:

- a. Services Provider is in breach or default under this Agreement;
- b. The requested payment includes services not performed in accordance with this Agreement; provided, however, payment shall be made the balance of the services that are performed in accordance with this Agreement;
- c. Services Provider has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Services Provider;

- d. Services Provider becomes insolvent, makes a general assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under the bankruptcy laws; or
- e. If Owner, in its good faith judgment, determines that the balance of unpaid compensation is insufficient to complete the services required under this Agreement.

9.04 **Partial Payment:** No partial payment by Owner shall constitute or be construed as final acceptance or approval of any services or as a release of any of Services Provider's obligations or liabilities with respect to such services.

9.05 **Subcontractor Payment:** Services Provider shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

9.06 **Final Payment and Release:** The acceptance by Services Provider or Services Provider's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Services Provider or Services Provider's successors have or may have against Owner pursuant to this Agreement except those claims specifically identified in writing by Services Provider as unsettled at the time of the final request for payment.

ARTICLE 10 SERVICES PROVIDER'S ACCOUNTING RECORDS

Services Provider shall maintain records of costs, expenses and billings pertaining to services performed under this Agreement in accordance with generally-accepted accounting principles. Such records shall be available to the Owner or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after expiration or termination of this Agreement. Owner shall have the right to audit and to verify the details set forth in Services Provider's billings, certificates, and statements, either before or after payment. The terms of this paragraph shall survive any termination of the Agreement.

ARTICLE 11 OWNERSHIP AND USE OF DOCUMENTS

11.01 All documents prepared by the Services Provider are instruments of service and shall remain the property of the Services Provider. The Owner shall be permitted to retain copies, including reproducible copies, of all documents prepared by the Services Provider for information and reference in connection with the Owner's use and occupancy of the project. Owner shall have an irrevocable, fully paid-up perpetual license and right, which shall survive the termination of this agreement, to use the documents, including the originals thereof, and the ideas and designs contained therein, for any purpose.

11.02 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as publication in derogation of the Services Provider's rights.

ARTICLE 12 TERMINATION OF AGREEMENT

12.01 **Termination for Cause:** This Agreement may be terminated by either party upon ten (10) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured prior to the expiration of the notice period.

12.02 **Termination for Convenience:** This agreement may be terminated for convenience by the Owner in whole or in part, upon at least ten (10) days written notice to the Services Provider.

- 12.03 **Fee Reimbursement:** In the event that this Agreement is terminated, then within thirty (30) days after termination, Services Provider will reimburse TJC for all fees paid by TJC to Services Provider that were (a) not earned by Services Provider prior to termination, or (b) for goods or services that TJC did not receive from Services Provider prior to termination.
- 12.04 **Compensation:** In the event of termination not the fault of the Services Provider, the Services Provider shall be entitled to compensation for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Services Provider delivers to Owner statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Services Provider prior to termination.

ARTICLE 13 BREACH OF CONTRACT CLAIMS

- 13.01 To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time (“**Chapter 2260**”), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by TJC and Services Provider to attempt to resolve any claim for breach of contract made by Services Provider.
- 13.02 Services Provider’s claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in Subchapter B of Chapter 2260. To initiate the process, Services Provider will submit written notice, as required by Subchapter B of Chapter 2260, to TJC Foundation in accordance with the notice provisions in this Agreement. Services Provider’s notice will specifically state that the provisions of Subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that TJC Foundation allegedly breached, the amount of damages Services Provider seeks, and the method used to calculate the damages. Compliance by Services Provider with Subchapter B of Chapter 2260 is a required prerequisite to Services Provider’s filing of a contested case proceeding under Subchapter C of Chapter 2260. The Executive Director, TJC Foundation, or the other officer of TJC Foundation as may be designated from time to time by the Foundation by written notice thereof to Services Provider in accordance with the notice provisions in this Agreement, will examine Services Provider’s claim and any counterclaim and negotiate with Services Provider in an effort to resolve the claims.
- 13.03 If the parties are unable to resolve their disputes under Section 52.1.1, the contested case process provided in Subchapter C of Chapter 2260 is Services Provider’s sole and exclusive process for seeking a remedy for any and all of Services Provider’s claims for breach of this Agreement by TJC Foundation.
- 13.04 Compliance with the contested case process provided in Subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by TJC Foundation or any other conduct, action or inaction of any representative of TJC Foundation relating to this Agreement constitutes or is intended to constitute a waiver of TJC Foundation’s or the state’s sovereign immunity to suit and (ii) TJC Foundation has not waived its right to seek redress in the courts.
- 13.05 The submission, processing and resolution of Services Provider’s claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.
- 13.06 TJC Foundation and Services Provider agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

13.07 **Owner's Representative:** The Owner designates the Executive Director, TJC Foundation and/or the Director of Contract Administration as its representative in dispute resolution procedures.

ARTICLE 14 INSURANCE

14.01 **Insurance (sections applicable):** For services performed on Owner's premises, the Services Provider shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement. All policies must include a waiver of subrogation and other rights in favor of Owner and must list Owner, its board and employees, as additional insureds.

Worker's Compensation	Statutory Limits
Employer's Liability	\$1,000,000 each occurrence \$1,000,000 aggregate
Comprehensive General Liability	
- Bodily Injury	\$1,000,000 each I \$2,000,000 aggregate
- Property Damage	\$1,000,000 each occurrence
Commercial Auto Liability	
- Bodily Injury	\$1,000,000 each occurrence \$2,000,000 aggregate
- Property Damage	\$1,000,000 each occurrence

14.02 **Professional Liability Insurance:** The Services Provider shall carry such professional liability and errors and omissions insurance—covering the services provided by the Services Provider and any and all consultants, as acceptable to and approved by the Owner. The fees for such insurance shall be at the expense of the Services Provider.

14.03 **Notice of Cancellation:** Required insurance shall not be cancelable without thirty (30) days prior written notice to Owner.

14.04 **Policy Review:** Upon request the Services Provider shall furnish complete sets of its insurance policies to Owner for review.

14.05 **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 and (i) providing coverage in excess of the coverages of, and (ii) "following form" subject to the same provisions as the underlying policies required in Sections 14.01 and 14.02.

14.06 Contractor will deliver to Owner:

14.06.1 Evidence, satisfactory to Owner, of the existence of all insurance promptly after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Services Provider under this Agreement.

14.06.2 Additional evidence, satisfactory to Owner, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation, and Employer's Liability, and Professional Liability, will name and the evidence will

reflect Owner (and its board and employees) as an Additional Insured and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to Owner.

14.07 The insurance policies required in this Agreement will be kept in force for the periods specified below:

14.07.1 Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Umbrella/Excess Liability Insurance, will be kept in force until receipt of Final Payment by Owner to Services Provider; and

14.07.2 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Services have been fully performed and accepted by Owner in writing.

ARTICLE 15 INDEMNIFICATION

To the extent allowable by Texas Law and without waiving any rights or entitlement to governmental or sovereign immunity, the parties shall indemnify and hold harmless each other and their respective officers, trustees, or employees (hereafter referred to as "indemnified party") against any and all liability (including reasonable attorneys' fees and court costs) to any persons or entities (except to the extent such liability is the fault of the indemnified party) arising from or related to the negligence or willful acts, omissions, or other misconduct of the indemnifying party or its agents, officers/trustees, and employees, in the performance of this contract. The provisions of this section will not be construed to waive immunity in any way nor to eliminate or reduce any other indemnification or right which any indemnified party has by law or equity and shall survive the termination of this agreement.

ARTICLE 16 CONFIDENTIALITY

16.01 CONFIDENTIALITY AND SAFEGUARDING OF TJC RECORDS; PRESS RELEASES; PUBLIC INFORMATION - Under this Agreement, Services Provider may (1) create, (2) receive from or on behalf of TJC Foundation, or (3) have access to, records or record systems (collectively, "**TJC Records**"). Among other things, TJC Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act (Public Law No: 106-102), the Texas Identity Theft Enforcement and Protection Act ("ITEPA") and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**"). If TJC Records are subject to FERPA, (1) TJC designates Services Provider as a TJC official with a legitimate educational interest in TJC Records, and (2) Services Provider acknowledges that its improper disclosure or redisclosure of personally identifiable information from TJC Records will result in Services Provider's exclusion from eligibility to contract with TJC for at least five (5) years. Services Provider represents, warrants, and agrees that it will: (1) hold TJC Records in strict confidence and will not use or disclose TJC Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by TJC in writing; (2) safeguard TJC Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) 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 Services Provider protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that TJC Records are safeguarded and the confidentiality of TJC Records is maintained in accordance with all Applicable Laws, including FERPA, ITEPA, and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with TJC's rules, policies, and procedures regarding access to and use of TJC's computer systems. At the request of TJC Foundation, Services Provider agrees to provide the Foundation with a written summary of the procedures Services Provider uses to safeguard and maintain the confidentiality of TJC Records.

- 16.02 **Notice of Impermissible Use.** If an impermissible use or disclosure of any TJC Records occurs, Services Provider will provide written notice to the Foundation within one (1) business day after Services Provider's discovery of that use or disclosure. Services Provider will promptly provide the Foundation with all information requested by the Foundation regarding the impermissible use or disclosure.
- 16.03 **Return of TJC Records.** Services Provider agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all TJC Records created or received from or on behalf of the Foundation will be (1) returned to the Foundation, with no copies retained by Services Provider; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any TJC Records, Services Provider will provide the Foundation with written notice of Services Provider's intent to destroy TJC Records. Within five (5) days after destruction, Services Provider will confirm to the Foundation in writing the destruction of TJC Records. Any such destruction will be done in compliance with the requirements of ITEPA or the Gramm-Leach Bliley Act.
- 16.04 **Disclosure.** If Services Provider discloses any TJC Records to a subcontractor or agent, Services Provider will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Services Provider by this Section.
- 16.05 **Press Releases.** Except when defined as part of the Services and pre-approved by Owner, Services Provider will not make any press releases, public statements, or advertisement referring to the engagement of Contractor as an independent contractor of the Foundation in connection with the Services, or release any information relative to the Services for publication, advertisement or any other purpose without the prior written approval of TJC Foundation.
- 16.06 **Public Information.** TJC Foundation 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*, Chapter 552, *Texas Government Code*.
- 16.07 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if TJC Foundation reasonably determines that Services Provider has breached any of the restrictions or obligations set forth in this Section, TJC Foundation may immediately terminate this Agreement without notice or opportunity to cure. Services Provider agrees that its violation of these confidentiality provisions entitles TJC Foundation to injunctive relief without the necessity of posting a bond, in order to prevent or remedy the breach.
- 16.08 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 16.09 **Indemnity.** To the extent Services Provider, its employees, agents, or representatives violate these confidentiality provisions, or cause TJC and/or TJC Foundation or its employees, students or board member's confidential or non-public information to be compromised, Services Provider agrees to defend (with TJC Foundation choosing defense counsel), hold harmless and indemnify TJC Foundation, its board, employees, agents and representatives, for any and all damages, claims, fines, causes of action, lawsuits, attorneys' fees, costs, injuries or liabilities related to or arising from same violation.

ARTICLE 17 MISCELLANEOUS PROVISIONS

- 17.01 **Appointment of Representative:** Owner may designate a representative to act partially or wholly for Owner in connection with this Agreement. Services Provider shall coordinate its services solely through the designated representative.

- 17.02 **Independent Contractor:** Services Provider recognizes and agrees that it is engaged as an independent Services Provider and acknowledges that TJC Foundation has no responsibility to provide transportation, insurance, vacation or other fringe benefits normally associated with employee status. Services Provider, in accordance with its status as an independent Services Provider, covenants and agrees that it will conduct itself consistent with that status, that it will neither hold itself out as, nor claim to be an officer, partner, employee, or agent of the Foundation, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer, representative, employee or agent of the Foundation, including unemployment insurance benefits, social security coverage or retirement benefits. Services Provider agrees to make its own arrangements for any fringe benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Laws. All of Services Provider's employees providing Services to TJC Foundation will be deemed employees solely of Services Provider and will not be deemed for any purpose whatsoever employees or agents of, acting for or on behalf of, TJC Foundation. No acts performed or representations, whether oral or written, made by Services Provider with respect to third parties will be binding upon TJC Foundation nor will same create any liability on the part of TJC Foundation.
- 17.03 **Successors and Assigns:** The Owner and the Services Provider, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this Agreement. This Agreement is a personal service contract for the services of Services Provider, and Services Provider's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without written consent of Owner. The benefits and burdens of this Agreement are, however, assignable by Owner.
- 17.04 **Subcontracting:** The Services Provider agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, the Services Provider must identify the subcontractor(s) to Owner prior to any subcontractor beginning work.
- 17.05 **Loss of Funding:** Performance by TJC and/or TJC Foundation under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and allocation of funds by TJC Foundation. If the Legislature fails to appropriate or allot the necessary funds, or TJC and/or TJC Foundation fails to allocate the necessary funds, then TJC and/or TJC Foundation will issue written notice to Services Provider and TJC Foundation may terminate this Agreement without further duty or obligation hereunder. Services Provider acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TJC and/or TJC Foundation.
- 17.06 **Records:** Services Provider agrees that TJC Foundation, or any of its duly authorized representatives, at any time during the term of this Agreement, will have access to, and the right to audit and examine, any pertinent books, documents, papers, and records of Services Provider (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related Services Provider's charges incurred in its performance under this Agreement. Such records will be kept by Services Provider for a period of four (4) years after Final Payment under this Agreement. Services Provider agrees to refund to the Foundation any overpayments disclosed by any audits.
- 17.07 **Franchise Tax Certification:** A corporate or limited liability company Services Provider certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

- 17.08 **Taxes:** Services Provider will pay when due all taxes or assessments applicable to Services Provider. Services Provider will comply with the provisions of all Applicable Laws related to taxes and taxing authority.
- 17.09 **Equal Opportunity:** Pursuant to Applicable Laws, Services Provider represents and warrants that it is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion, national origin, age, mental or physical disability, or sex.
- 17.10 **Captions:** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 17.11 **Severability:** Should any provisions(s) of this Agreement be held invalid or unenforceable in any respect, that provision shall not affect any other provisions and this Agreement shall be construed as if the invalid or unenforceable provision(s) had not been included.
- 17.12 **Waivers:** No delay or omission by either party in exercising any right or power provided under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver of the right or power. A written waiver granted by either of the parties of any provision of this Agreement shall not be construed as a future waiver of that provision or a waiver of any other provision of the Agreement.
- 17.13 **Force Majeure:** The performance of either party's obligations will be suspended to the extent and for the length of time that the party is prevented from performing due to acts of nature, fires, governmental actions, changes in the Service requirements which directly contribute to a delay, or other events beyond its reasonable control. In the event of any occurrence that a party considers to be the cause of a delay or failure of performance, the party affected shall promptly notify the other party.
- 17.14 **Venue, Governing Law:** Smith County, Tyler Texas, will be the proper place of venue for suit on or in respect to this Agreement. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 17.15 **Entire Agreement; Modifications:** This Agreement supersedes all prior agreements, written or oral, between Services Provider and Owner and will constitute the entire Agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Owner and Services Provider.
- 17.16 **Limitations:** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TJC AND/OR TJC FOUNDATION TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON TJC'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; ON; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON TJC OR TJC FOUNDATION EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

- 17.17 **Changes to the Agreement:** This agreement may not be modified, waived or amended unless mutually agreed to in writing by the persons who executed this Agreement or their replacements or designees.
- 17.18 **Prohibitions:** TJC provides a friendly, vapor-free smoke-free environment at all of its campuses and satellite facilities. Services Provider agrees to fully comply with Owner's no smoking policy and to ensure compliance of same by all employees or subcontractors of Services Provider or anyone else performing under this Agreement on its behalf. TJC is an alcohol, drug, and tobacco-free zone. These items are prohibited on the campus and satellite facilities.
- 17.19 **Representations and Warranties by Services Provider:** Services Provider warrants, represents, covenants, and agrees that it 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 Services Provider has been duly authorized to act for and bind Services Provider.
- 17.20 **Debarment:** Services Provider confirms that neither Services Provider nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government Procurement or Nonprocurement Programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Bidder further certifies that it is not identified on the Texas Comptroller's list of scrutinized companies doing business with Sudan or Iran or a list of companies known to have contracts with or to provide services or supplies to a foreign terrorist organization. Services Provider will provide immediate written notification to TJC if at any time prior to award Services Provider learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when TJC executes this Agreement. If it is later determined that Services Provider knowingly rendered an erroneous certification, in addition to the other remedies available to TJC, TJC may terminate this Agreement for default by Services Provider.
- 17.21 **Office of Inspector General Certification:** Services Provider acknowledges that TJC is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Services Provider to work on site at TJC's premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Services Provider will not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("**OIG**") to work on site at TJC's premises or facilities. Services Provider will perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time the employees, subcontractors and agents are assigned to work on site at TJC's premises or facilities. Services Provider acknowledges that TJC will require immediate removal of any employee, subcontractor or agent of Services Provider assigned to work at TJC's premises or facilities if the employee, subcontractor or agent is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp.
- 17.22 **Access to Documents:** To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Services Provider agrees to allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Services Provider and its subcontractors or related

organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

- 17.23 **Ethics Matters; No Financial Interest:** Services Provider represents and warrants that no employee of TJC or any member of the Board of Trustees has a direct or indirect financial interest in the transaction that is the subject of this Agreement. TGC Chapter 176.006 states: A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and; (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer; (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003 (a) (2) (B), excluding any gift described by Section 176.003 (a-1); or has a family relationship with a local government officer of that local governmental entity. A complete copy of Chapter 176.006 of the Local Government Code can be found at <https://statutes.capitol.texas.gov/Docs/LG/htm/LG.176.htm>.
- 17.24 **Firearms** - TJC is committed to providing a safe environment for students, faculty, staff, and visitors, and to respecting the right of individuals who are licensed to carry a handgun where permitted by law. Individuals who are licensed to carry may do so on campus premises or in a college-owned vehicle except in locations and at activities prohibited by law or by this policy. Individuals who observe a violation of this policy are required to report the incident immediately to the Campus Police Department, so it can be documented and properly investigated. Call 911 for emergencies. For non-emergencies contact at 903-510-2222. https://www.tjc.edu/downloads/file/1045/concealed_handguns_on_campus_policy
- 17.25 **Israel** – Services Provider represents and verifies that it does not, and will not during the term of the contract, if awarded, boycott Israel and that Service Provider is not identified by the Texas Comptroller as boycotting Israel. “Boycott” as used herein means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 17.26 **Exhibits** – All Exhibits attached hereto and are incorporated herein by reference for all purposes as part of this Agreement. To the extent of any conflict, the respective Exhibits will control.

ARTICLE 18 NOTICES

- 18.1 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may be delivered in person to the designated representative of the Services Provider or Owner; mailed by U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

18.2 The initially designated representatives of the parties for receipt of notices are as follows. Either party may change their designated representative for receipt of notices by written notice.

(1) If to Owner: Tyler Junior College Foundation
Attn: Mitch Andrews
Executive Director
P. O. Box 9020
Tyler Texas, 75711

(2) If to Services Provider: _____

By signature hereon, Services Provider certifies that no member of the Board of Trustees of Tyler Junior College Foundation who has authority to approve this Contract has a financial interest, directly or indirectly, in Service Provider's business or in the transaction that is the subject of this Agreement.

IN WITNESS WHEREOF, Owner and Services Provider have executed and delivered this Agreement effective as of the date identified above.

Contract Review:

Date

OWNER:

SERVICES PROVIDER:

TYLER JUNIOR COLLEGE FOUNDATION

By: _____

By: _____

Name: Mitch Andrews_____

Name: _____

Title: Executive Director _____

Title: _____

Date: _____

Date: _____

EXHIBITS

Exhibit A – Schedule of Billing Rates