

INSTRUCTIONS FOR COMPLETING THE CONSULTANT AGREEMENT FORM

IF REIMBURSING TRAVEL EXPENSES ONLY

Do not use this form. No consultant agreement is required.

PERFORMING AGENT

Provide the name of the party to whom the check is payable. If the party is an individual, then provide the party's social security number; if the party is a company, then provide the party's federal employer identification number. The address should be a permanent address to which the University will mail both the check and a 1099 form.

Obtain all necessary signatures before submitting the agreement to the University's Business Office for processing.

STATEMENT OF SERVICES

Do NOT use any abbreviation for any committee or project. Do NOT use the word "honorarium" to describe the fee being paid. Use words such as "studying" and "advising" in describing services unless the performing agent is either a guest speaker at a state sponsored conference or seminar, or providing any educational service including professionally conducted training.

TERM OF AGREEMENT

Include all days of service and travel. Do not overlap fiscal years.

INSTRUCTIONS FOR COMPLETING HUB SURVEY FORM

Add name of individual or business and check each item that applies.

CONSULTANT AGREEMENT

CONTRACTING PARTIES

Receiving Agency: Texas Southern University, 3100 Cleburne, Houston, Texas 77004 (“University”)

Performing Agent: _____

Payee Name	SSN or FEI of Payee
Permanent Mailing Address	City State Zip

STATEMENT OF SERVICES TO BE PERFORMED

PAYMENT FOR SERVICES

AGREEMENT AMOUNT

The total amount of this Agreement must not exceed \$ _____.

TERM OF AGREEMENT

This Agreement begins on _____ [start date] and ends on _____ [end date].
 Either party has a right to terminate this Agreement for any reason upon ten days’ written notice to the other party, which then immediately must cease to incur costs under this Agreement. University is not liable to the Performing Agent for any cost that Performing Agent incurs after the Agreement ends. Any alteration, addition or deletion to this Agreement’s provisions is valid only by amendment in writing and signed by both parties.

DISPUTE RESOLUTION PROCESS

This Agreement’s parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under this Agreement.

WITHHOLDING OF PAYMENT

If Performing Agent owes any debt or delinquent tax to the State of Texas, then any payment due under this Agreement must apply toward that debt or delinquent tax until each debt or delinquent tax is paid in full.

ACCOUNT NUMBER

This Agreement should be charged to Account Number _____.

REPRESENTATIONS OF THE OFFICE OR DEPARTMENT INITIATING THE AGREEMENT

This Agreement pertains to an appropriate service required by the University office or department that has initiated the Agreement. That office or department has determined both that it is necessary to use an outside contractor for this service rather than using existing staff or hiring additional staff, and that the Performing Agent's fee for the service is within appropriate rates for the type of service being provided. This Agreement conforms to state rules for contracts, and University has budgeted sufficient funds to pay for the service as provided in the Agreement.

Name/telephone number of Agreement Coordinator: _____

University approves the Agreement and must make payment to Performing Agent according to the Agreement's provisions upon the Performing Agent's satisfactory performance of the services specified in the Agreement.

By: _____

Title: _____ Date: _____

PERFORMING AGENT APPROVAL

Performing Agent approves the Agreement and must provide the services according to the Agreement's provisions and the laws of the State of Texas. Neither Performing Agent nor any of its employees presently has any interest or shall acquire any interest - direct or indirect - that would conflict in any manner or degree with performing any service required to be performed under this Agreement. Performing Agent must use only qualified employees if any Performing Agent employee is required to perform any obligation required under this Agreement. To the extent authorized under applicable law, Performing Agent will hold University harmless from and indemnify University against any and all claims, demands, or cause of action asserted by any third party as a result of or arising from Performing Agent's performance of this Agreement's duties.

By: _____

Title: _____ Date: _____

EXHIBIT 1
Required Clauses

The following provisions are incorporated into the parties' existing agreement ("*Agreement*"):

- I. **Alternative Dispute Resolution.** "*Chapter 2260*" means Chapter 2260 of the Texas Government Code.
 - A. **Performing Agent Breach Claim.** If Performing Agent asserts a contract breach claim under the Agreement, then each party must attempt to resolve the claim using a dispute resolution process set forth in Chapter 2260, as further described below.
 1. *If Informal Resolution Fails.* If the parties in the ordinary course of business fail to resolve any Performing Agent claim for breach of this Agreement, then the parties must submit the claim to negotiation under Chapter 2260 at subchapter B.
 - a. **Notice to University.** To initiate negotiation, Performing Agent must submit a written notice, specifically stating that Performing Agent invokes the provisions of Chapter 2260 at subchapter B, directed to the following address:

**General Counsel
Office of General Counsel
Texas Southern University
3100 Cleburne
Houston, Texas 77004.**
 - b. **Other Recipient.** Performing Agent also must give a copy of the notice to any person who is entitled to notice under the Agreement otherwise.
 - c. **Compliance.** Performing Agent must comply with subchapter B before filing a contested case proceeding under Chapter 2260 at subchapter C.
 2. *If Subchapter B Fails.* If the parties fail to resolve each dispute under subparagraph (1) above, then Performing Agent's exclusive process to remedy any alleged Agreement breach is a contested case process under Chapter 2260 at subchapter C.
 3. *Legislative Consent.* Performing Agent must comply with the contested case process under subchapter C before seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither University's signing this Agreement nor any other Agreement conduct of any representative of University is considered to waive sovereign immunity to suit.
 - B. **Governing Rules.** Chapter 2260's published rules under 22 TAC 501 *et seq.* – as currently effective or at any time later enacted or amended – govern any submission, processing or resolution of Performing Agent's claim.
 - C. **Performance Continues.** Neither an event's occurrence nor a claim's pendency constitutes a ground to suspend Performing Agent's performance, in whole or in part.
- II. **Assignment.** Because this Agreement is based upon the parties' skill and expertise, a party must obtain the other party's written consent – unless expressly set forth in this Agreement otherwise – before assigning or delegating the Agreement or its obligations.
- III. **Audit/Access To Records.** "*Books*" means any book, record, document or other evidence reasonably pertinent to performing any work under this Agreement, including any negotiated Agreement change or amendment.
 - A. **Availability.** Performing Agent must maintain and make available its Books for review,

inspection and audit according to accepted professional practice, and appropriate accounting procedures and practices. Performing Agent must maintain and make available any financial information and data that it has used to prepare or support any cost submission or cost, price or profit analysis.

- B. **Access.** Performing Agent must provide to University - or any of its duly authorized representatives - access to Performing Agent's Books for the purpose of review, inspection, and audit. Performing Agent must provide proper facilities in Texas for that access and inspection.
 - C. **Information Use.** In conducting any review, audit or inspection, University or any of its duly authorized representatives have a right to copy Performing Agent's Books upon prior conference with Performing Agent. Each party must handle that information according to good business ethics.
 - D. **Audit Cost.** Performing Agent must bear the cost of any audit that reveals that University has overpaid Performing Agent by more than ten percent of any amount that is due to Performing Agent under any controlling governmental or accounting industry standard.
- IV. **Authority.** Each person signing below represents that he or she has the authority to sign this Agreement on behalf of either University or Performing Agent.
- V. **Binding On Successors.** Each covenant, obligation, term, provision or condition in the Agreement applies to - and binds to the benefit of - each party's heirs, administrators, executors, legal representatives, trustees and successors.
- VI. **Compliance With Federal Regulations.** Performing Agent affirmatively must ensure that it conducts its employment practices without regard to any applicant's race, color, religion, sex, age or national origin. Affected practices include, without limitation: employment, upgrading, demotion or transfer, recruitment, advertising, layoffs, pay rates or other compensation forms, and selection for training including apprenticeship. Each party to this Agreement must have an equal employment opportunity program in effect.
- VII. **Compliance With State Law.** Performing Agent certifies that Performing Agent complies with all applicable state laws, including licensing or certification requirements. Under Section 231.006, *Texas Family Code*, Performing Agent additionally:
- A. certifies that it is eligible to receive the award of or payments under the Agreement; and
 - B. acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- VIII. **Entire Agreement.** This Agreement including each attachment constitutes an entire understanding between the parties, and supersedes each related agreement between the parties, whether prior, contemporaneous, written or oral. An oral representation not contained in the Agreement is binding on a party only if the party has acknowledged it in writing. This Agreement while in force is binding upon each party's respective successors and assigns.
- IX. **Extent Of Agreement.** Performing Agent has no authority at any time to act as an agent for University for any purpose unless expressly set forth in this Agreement.
- X. **Force Majeure.** "*Force Majeure*" means a fire, earthquake, flood, act of God, labor disruption, riot or civil commotion, litigation, terrorism, war or other act of any foreign nation, power of government or government agency or authority, or any other cause like or unlike any item above-mentioned that is beyond a party's control or authority. If any Force Majeure event or similar casualty renders the premises unsuitable to conduct any activity or event, then University:
- A. has a right to terminate this Agreement by written notice after that casualty; and
 - B. is not responsible for any damages sustained by any premises user, although that user

is entitled to either a *pro rata* return of any sum that the user has paid, or any other arrangement mutually accepted by that user and University.

- XI. **Governing Law.** The laws of the State of Texas govern this Agreement's validity and any interpretation of its provisions. Venue for any legal proceeding incident to this Agreement lies in Harris County, Texas.
- XII. **Legal Construction/Severability.** If any court or other competent tribunal for any reason holds any Agreement provision to be invalid, illegal or unenforceable in any respect, then:
 - A. that holding does not affect any other provision;
 - B. that tribunal must construe this Agreement as if it had never contained the invalid, illegal or unenforceable provision; and
 - C. each Agreement provision is severable.
- XIII. **Minority and Hub Participation.** "HUB" means historically-underutilized business as defined under applicable State of Texas statute. Performing Agent and its subcontractors must cause minority business enterprise participation in the Agreement to be approximately twenty-five percent of the Agreement's award. Performing Agent further must obtain and provide proper and necessary HUB certification or make a good faith effort to award at least forty percent of the total value of all purchases and contracts to certified HUBs.
- XIV. **Non-Appropriations.** As a Texas governmental entity, University is excused for all liability for payment if it fails to receive funding from the Texas Legislature for any period during this Agreement's term. University must notify Performing Agent in writing within thirty days after learning that the funds will not be available. This Agreement terminates automatically when Performing Agent receives that written notice from University.
- XV. **Non-Waiver.** No covenant or condition of this Agreement is waived except by a waiving party's written consent. One party's forbearance or indulgence in any regard does not constitute a waiver of a covenant or condition that the other party must perform to which the same may apply. Until the other party completes performance of that covenant or condition, an aggrieved party - despite any forbearance or indulgence - is entitled to invoke any remedy available to it, whether under this Agreement, by law or in equity.
- XVI. **Notices.** For any notice to another party under this Agreement, a party must provide delivery in writing either by hand or by mail, registered or certified postage prepaid with return receipt requested. The party must address any mailed notice to the other party's address as it appears in the Agreement. Any notice delivered personally is considered communicated at the time of actual receipt. Mailed notice is considered communicated three days after mailing.
- XVII. **Officials Not To Benefit.** No trustee, officer, director, regent, employee, administrator or representative of University has any right to be admitted to any share or part of this Agreement or to any benefit that arises from the Agreement.
- XVIII. **Subcontracts.** Performing Agent must obtain prior approval from University's authorized representative before substituting any subcontractor, associate or consultant. Any subcontractor, outside associate or consultant that Performing Agent requires in connection with any service covered by this Agreement must be only an individual or firm that:
 - A. University and Performing Agent have specifically identified and selected while negotiating to enter this Agreement; or
 - B. University's authorized representative specifically approves during the Agreement's performance.
- XIX. **Termination.** University has a right to terminate this Agreement in whole or in part in writing for its convenience, but must give Performing Agent not less than thirty days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.

- A. Adjustment Criteria. Upon effecting any termination for convenience, University equitably must adjust the price set forth in this Agreement, but:
1. no amount is allowed for anticipated profit on any unperformed service, task or other work; and
 2. University has discretion to adjust any payment due Performing Agent at the time of termination to the extent of any additional cost occasioned to University by reason of Performing Agent's default.

- B. Allowable Costs. The above equitable adjustment must provide for payment to Performing Agent for:

1. any service rendered and expense incurred before the termination; and
2. any termination settlement cost that Performing Agent reasonably incurs relating to any commitment that has become firm before the termination.

- XX. **Exhibit Controlling**. This Exhibit controls upon any conflict between the terms and conditions of the Agreement and this Exhibit.

HISTORICALLY UNDERUTILIZED BUSINESS SURVEY

Texas Southern University is committed to supporting economic diversification in the State of Texas by making every effort to assist women-owned and minority-owned businesses through the contract awards process. Please provide the information requested below with regard to your contract.

For background information, women-owned and minority-owned businesses are referred to in recent legislation as Historically Underutilized Businesses (HUBs). According to current legislation, a HUB includes: (a) a corporation formed for profit in which at least 51% of the equity is owned by one or more women, Black Americans, Hispanic Americans, Asian Pacific Americans, or American Indians; (b) a sole proprietorship 100% owned, operated and controlled by such person(s); (c) a partnership in which such person(s) owns at least 51% of its assets and interest and have proportionate control of partnership affairs; or (d) a joint venture of HUBs.

Name of individual or business:

Is your business:

- Black American Owned (includes persons having origins in any of the Black racial groups of Africa);
- Hispanic American Owned (includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin regardless of race);
- Asian-Pacific American Owned (includes persons whose origins are Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U. S. Trust Territories of the Pacific and the Northern Marianas);
- Native American Owned (includes persons who are American Indians, Eskimos, Aleut or Native Hawaiians); and
- Woman Owned (includes all women of any ethnicity).
- None of the above.