

791 PURCHASING COOPERATIVE VENDOR AGREEMENT

Between _____ *Southeast Services Corporation* _____
(Company Name)

with the principal place of business at

1845 Midpark Road Suite 201 Knoxville, TN 37921 and

791 Purchasing Cooperative

For

Facilities Managed Services & Solutions RFP # 791-2020-03-004A

Issued: March 20,2020

General Information

The Vendor Agreement (“Agreement”) is made and entered into by and between 791 PURCHASING COOPERATIVE (hereinafter referred to as “791COOP”) a government cooperative purchasing program authorized by the Region 15 Education Service Center, having its principal place of business 612 Irene Street San Angelo TX 76903 and ***Southeast Service Corporation*** (hereinafter referred to as “Vendor”) a provider having its principal place of business as listed at the top of page one. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth below shall control.

The following pages, including the Terms and Conditions, Special Terms and Conditions, any agreed upon amendments, and the pricing portion of the awarded vendor’s proposal which is incorporated by reference, will constitute the Agreement between the successful vendors(s) and 791 PURCHASING COOPERATIVE.

Terms and Conditions

1. Assignment of Vendor Agreement

No assignment of the Agreement may be made without the prior written approval of 791 PURCHASING COOPERATIVE. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

2. 791 PURCHASING COOPERATIVE Contract

791 PURCHASING COOPERATIVE recognizes that a 791 PURCHASING COOPERATIVE Member shall utilize Vendor's standard client agreement to govern the sale of the services and may, in agreement with Vendor, make modifications to the vendor's agreement to reflect specific needs of the 791 PURCHASING COOPERATIVE Member. This agreement as mutually agreed between the 791 PURCHASING COOPERATIVE Member and the Vendor will still be referred to as the 791 PURCHASING COOPERATIVE Contract.

Vendor may only use the 791 PURCHASING COOPERATIVE Contract with 791 PURCHASING COOPERATIVE Members who have agreed to purchase managed facility services ("Services") from Vendor through the 791 PURCHASING COOPERATIVE preferred supplier program. If a 791 PURCHASING COOPERATIVE Member solicits proposals for Products and/or Services under this agreement from Vendor directly and has specifically provided notice that they will not be using 791 PURCHASING COOPERATIVE as their contract vehicle through the 791 PURCHASING COOPERATIVE preferred supplier program, Vendor cannot use the 791 PURCHASING COOPERATIVE Contract to serve the 791 PURCHASING COOPERATIVE Member. For the avoidance of doubt, if a vendor and a 791 PURCHASING COOPERATIVE Member, execute a 791 PURCHASING COOPERATIVE Contract, Vendor will be obligated to pay 791 PURCHASING COOPERATIVE the participation fee.

To further clarify, vendor may sell to a 791 PURCHASING COOPERATIVE member or potential 791 PURCHASING COOPERATIVE members, which is any governmental or other public entity in Texas through the 791 PURCHASING COOPERATIVE preferred supplier program. If a potential customer is not currently a 791 PURCHASING COOPERATIVE member, they may join 791 PURCHASING COOPERATIVE by contacting 791 PURCHASING COOPERATIVE at admin@791COOP.org. Awarded vendors are not restricted from responding to any Texas entity that issued a Request for Proposals and has chosen not to use the 791 PURCHASING COOPERATIVE interlocal cooperative method of procurement.

ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE MEMBER AND VENDOR THAT REQUIRES THE 791 PURCHASING COOPERATIVE MEMBER TO INDEMNIFY ANY OTHER PARTY, EXCEPT TO THE EXTENT PERMITTED BY THE APPLICABLE CONSTITUTION, LAWS OR REGULATIONS OF THE JURISDICTION OF THE LOCATION OF THE 791 PURCHASING COOPERATIVE MEMBER OR THE LOCATION OF THE PERFORMANCE OF THE CONTRACT UNDER THIS AGREEMENT, IS NOT PERMITTED UNDER THIS AGREEMENT AND RENDERS THE INDEMNITY PROVISION TO BE MODIFIED TO INCLUDE THE AN EXCEPTION AS TO THE APPLICABLE STATE CONSTITUTION.

3. Disclosures

- a) Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.

- b) Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with 791 PURCHASING COOPERATIVE under a 791 PURCHASING COOPERATIVE Contract if Vendor feels that such possible conflicts of interest exist.
- c) The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

4. Renewal of Agreements

The Agreement with 791 PURCHASING COOPERATIVE is for a three (3) year term with two (2), one (1) year extension options. Any extension of the initial term will be agreed to in writing between 791 PURCHASING COOPERATIVE and Vendor as a written amendment to this Agreement not less than thirty (30) days prior to the expiration of the current term. Nothing herein shall require either party to agree to an extension of the initial term.

NO AGREEMENT FOR GOODS OR SERVICES WITH A 791 PURCHASING COOPERATIVE MEMBER BY THE VENDOR MAY INCORPORATE AN AUTOMATIC RENEWAL CLAUSE WITH WHICH THE 791 PURCHASING COOPERATIVE MEMBER MUST COMPLY. ALL RENEWAL TERMS INCORPORATED IN AN 791 PURCHASING COOPERATIVE CONTRACT SHALL ONLY BE VALID AND ENFORCEABLE WHEN THE VENDOR RECEIVES WRITTEN CONFIRMATION BY PURCHASE ORDER OR EXECUTED AGREEMENT ISSUED BY THE 791 PURCHASING COOPERATIVE MEMBER FOR ANY RENEWAL PERIOD. THE PURPOSE OF THIS CLAUSE IS TO AVOID A 791 PURCHASING COOPERATIVE MEMBER INADVERTENTLY RENEWING AN AGREEMENT DURING A PERIOD IN WHICH THE GOVERNING BODY OF THE 791 PURCHASING COOPERATIVE MEMBER HAS NOT PROPERLY APPROPRIATED AND BUDGETED THE FUNDS TO SATISFY THE AGREEMENT RENEWAL. THIS TERM IS NOT NEGOTIABLE AND ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE MEMBER AND VENDOR WITH AN AUTOMATIC RENEWAL CLAUSE THAT CONFLICTS WITH THESE TERMS IS RENDERED VOID AND UNENFORCEABLE AS TO THE AUTOMATIC RENEWAL CLAUSE.

5. Invoices

Vendor is responsible for the invoicing and collection of all funds due from a 791 PURCHASING COOPERATIVE Member to Vendor.

6. Member Payments

791 PURCHASING COOPERATIVE Members will make payments directly to the Vendor for all funds owed as provided for in the 791 PURCHASING COOPERATIVE Contract.

7. Pricing

The price Vendor will charge a 791 PURCHASING COOPERATIVE Member will be defined in the 791 PURCHASING COOPERATIVE Contract and determined at the time Vendor and a 791 PURCHASING COOPERATIVE Member makes purchases through this 791 PURCHASING COOPERATIVE Contract. The price Vendor charges a 791 PURCHASING COOPERATIVE Member will include the 791 PURCHASING COOPERATIVE annual participation fee.

At no time during the initial term or extension term of this Agreement shall the price charged to a 791 PURCHASING COOPERATIVE Member exceed the contracted price per Facilities Managed Services & Solutions RFP # 791-2020-03-004A.

8. Participation Fees

Vendor agrees to pay 791 PURCHASING COOPERATIVE a 0.9% percent annual participation fee for all sales to 791 PURCHASING COOPERATIVE Members utilizing a 791 PURCHASING COOPERATIVE Contract. The participation fee will be the total dollars derived from 0.9% of total sales volume under 791 PURCHASING COOPERATIVE Contracts. The participation fee will be included in pricing between Vendor and a 791 PURCHASING COOPERATIVE Member.

The 791 PURCHASING COOPERATIVE participation fee will not be a provided as a separate line item to the 791 PURCHASING COOPERATIVE Member. Vendor will remit the portion of the participation fee to 791 PURCHASING COOPERATIVE attributed to the portion of the 791 PURCHASING COOPERATIVE Member payments received by Vendor under the 791 PURCHASING COOPERATIVE Contracts for any given month by the end of the following calendar month. Failure to pay the participation fee will result in termination of Agreement and 791 PURCHASING COOPERATIVE reserves the right to take any action under the law or equity for any breach of contract.

9. Sales Reporting Procedures for Vendor

Vendor will report any new sale under this Agreement that is made to a 791 PURCHASING COOPERATIVE Member with Vendor at the end of each month.

10. Indemnity

Vendor and 791 PURCHASING COOPERATIVE agree to indemnify and hold harmless and defend the other, and their respective officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, to the extent arising out of, or resulting from the other party's negligent acts or omissions under this Agreement. Vendor's total liability for damages, or otherwise, resulting from its performance or nonperformance under this Agreement or with regards to any obligations/responsibilities herein shall not exceed the amount of fees paid by Vendor to the 791 PURCHASING COOPERATIVE under this Agreement. Neither party will be liable to the other party or its representatives for special, indirect or consequential damages, including lost profits, whether or not foreseeable, or punitive damages.

11. State of Texas Franchise Tax

By signature hereon, the Vendor hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

12. Miscellaneous

Nothing in the Agreement or in any other communication between 791 PURCHASING COOPERATIVE and the Vendor may be construed as a guarantee that 791 PURCHASING COOPERATIVE Members will purchase Services under this Agreement from Vendor at any time.

13. Termination

Either party may terminate this Agreement for any reason or no reason with thirty (30) days prior written notice to the other party.

Upon termination of this Agreement between 791 PURCHASING COOPERATIVE and the Vendor, this Agreement shall survive only insofar as to govern all surviving 791 PURCHASING COOPERATIVE Contracts between the Vendor and 791 PURCHASING COOPERATIVE Members.

14. Marketing

Vendor agrees to allow 791 PURCHASING COOPERATIVE to use their name and logo within the 791 PURCHASING COOPERATIVE website, marketing materials and advertisement, upon written approval of Vendor. Vendor may use the 791 PURCHASING COOPERATIVE name and logo in marketing the 791

PURCHASING COOPERATIVE Contract to 791 PURCHASING COOPERATIVE Members or other government or public entities.

15. Legal obligations

The parties agree to comply with all local, state and federal laws relating to this Agreement. Applicable laws and regulations must be followed even if not specifically identified herein.

16. Audit rights

Vendor shall, at their sole expense, maintain appropriate due diligence of all 791 PURCHASING COOPERATIVE Contracts. 791 PURCHASING COOPERATIVE and Region 15 ESC each reserve the right to audit the accounting of such contracts for a period of four (4) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of four (4) years from the effective date of termination. 791 PURCHASING COOPERATIVE shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location reasonably designated by Region 15 ESC or 791 PURCHASING COOPERATIVE upon sufficient notice and not more than once annually. 791 PURCHASING COOPERATIVE shall bear the cost of such audit requested by Region 15 ESC or 791 PURCHASING COOPERATIVE, but all 791 PURCHASING COOPERATIVE Contracts maintained by the Vendor shall be produced and made available to 791 PURCHASING COOPERATIVE or its agents at no cost.

17. Force Majeure

If by reason of force majeure circumstances, including any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, or acts of God (“Force Majeure”), either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and cause of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

18. Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the ESC Region 15/791 PURCHASING COOPERATIVE to a binding arbitration resolution of any disagreement under any circumstances. Any claim arising out of or related to the Agreement, may, be subject to mediation at the request of either party. Non-binding mediation shall be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator’s fee and any associated filing fee equally. Mediation shall be held in Tom Green County, Texas or at any other location as mutually agreed. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the Region 15 ESC Board of Directors, signed by the both parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

19. Choice of Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

20. Jurisdiction (Venue) and Service of Process

Any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum.

21. Contract Governance

Any contract made or entered into by the ESC Region 15/791 PURCHASING COOPERATIVE is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, ESC Region 15/791 PURCHASING COOPERATIVE does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

22. Survival Clause

All contracts executed by a 791 PURCHASING COOPERATIVE Member and accepted by the Vendor prior to the expiration or termination of this Agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this Agreement.

23. Smoking

Persons working under Agreement shall adhere to the 791 PURCHASING COOPERATIVE Member's or local smoking statutes, codes or policies.

24. Novation

If Vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

25. Licenses

Vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the Services conducted by Vendor. Vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of Services. 791 PURCHASING COOPERATIVE reserves the right terminate this Agreement if Vendor's required license(s) expire, lapse, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

26. 791 PURCHASING COOPERATIVE Member Purchasing Procedures

The Vendor shall provide Services to the 791 PURCHASING COOPERATIVE Member as follows:

- a) Vendor delivers goods/services directly to the participating member.
- b) Vendor invoices the participating 791 PURCHASING COOPERATIVE Member directly.
- c) Vendor receives payment directly from the 791 PURCHASING COOPERATIVE Member.

27. Registered sex offender restrictions

For work to be performed at schools, Vendor agrees that no employee who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be,

present unless otherwise agreed by the 791 Purchasing Cooperative Member. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the termination of the Agreement at the 791 Purchasing Cooperative Member's discretion.

28. Safety measures

Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

29. Insurance Requirements

- a) **Contractor's Workers' Compensation and Employer's Liability Coverage**—The Contractor shall comply with the provisions of the Workers' Compensation Act, the subsequent Injury Act, and Contractor shall procure and maintain during the life of this Contract Workers' Compensation and Employer's Liability Insurance in accordance with Texas laws and regulations. If the Contractor elects to be self-insured, he shall comply with the applicable requirements and laws of Texas. Region 15 ESC, its officers, or employees will not be responsible for any claims or actions occasioned by the failure of the Contractor to comply with the provisions of this paragraph.
- b) **Coverage limits**—Insurance coverage limits required to be carried by the Contractor under this Section shall be as follows:
 - 1. Commercial General Liability Insurance limits of coverage shall be \$1,000,000 per occurrence, \$2,000,000 in the aggregate.
 - 2. Commercial Automobile Liability Insurance limits of coverage shall be a Combined Single Limit of \$1,000,000.
 - 3. Contractor's Workers' Compensation - coverage shall be those established by applicable statutes. Employer's liability coverages shall be the limits established by the State of Texas or \$1,000,000 per accident/per employee/policy limit.
 - 4. Umbrella Liability Insurance: Liability on a following form basis with a limit \$1,000,000 per occurrence in excess of all primary limits.
- c) **Vendor shall provide a valid Certificate of Liability Insurance showing REGION 15 ESC, 791 Purchasing Cooperative as a certificate holder.**

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

791 PURCHASING COOPERATIVE Vendor Agreement
Signature Form

Facilities Managed Services & Solutions RFP # 791-2020-03-004A

Vendor:

Company Name Southeast Service Corp d/b/a SSC Service Solutions

Address PO Box 52370

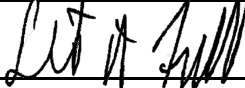
City Knoxville State TN Zip 37950

Phone 865-540-8880 Fax


Name of Authorized Representative Seth A Ferriell

Title CEO Date 5/13/20220

Email of Authorized Representative: Contact@sscserv.com

Signature of Authorized Representative 

791 PURCHASING COOPERATIVE:

Authorized Representative Signature: 

Name Jeff Shokrian

Title President

Email jeff@791coop.org

Address PO Box 592867

City San Antonio, TX 78259

Phone 832.752.5978

Date May 13, 2020