

EXHIBIT
"A"

CITY OF ROUND ROCK
AGREEMENT FOR THE DEMOLITION
AND DISPOSAL SERVICES
WITH
INTERCON ENVIRONMENTAL, INC.

THE STATE OF TEXAS §
§
CITY OF ROUND ROCK § **KNOW ALL BY THESE PRESENTS:**
§
COUNTY OF WILLIAMSON §
COUNTY OF TRAVIS §

THAT THIS Agreement for demolition and waste disposal services at a City of Round owned building located at 2800 Oakmont, Round Rock, Texas (referred to herein as the "Agreement"), is made and entered into on this the ____ day of the month of September, 2018, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664 (referred to herein as the "City") and INTERCON ENVIRONMENTAL, INC. whose offices are located at 210 South Walnut Creek Drive, Mansfield, Texas 76063 (referred to herein as the "Services Provider").

RECITALS:

WHEREAS, City desires to purchase demolition and waste disposal services for a City of Round Rock owned building located at 2800 Oakmont, Round Rock, Texas; and

WHEREAS, Services provider is an approved Texas Multiple Award Schedule (TXMAS) vendor; and

WHEREAS, City is permitted to purchase from a TXMAS contract and desires to purchase certain goods and services from Services Provider through the TXMAS Contract No: TXMAS-18-00CORP07; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Services Provider whereby City is obligated to buy specified services and Services Provider is obligated to pay for

said services. The Agreement includes any exhibits, addenda, and/or amendments thereto.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified services, supplies, materials, commodities, or equipment.

2.01 EFFECTIVE DATE; TERM

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect, unless and until it expires by operation of the term stated herein, or until terminated as provided herein.

B. The term of this Agreement shall be from the effective date of the Agreement until successful completion of the work. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement, with or without cause, or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

City selected Services Provider to supply the services as outlined in Exhibit "A," attached hereto and incorporated herein by reference.

The services which are the subject of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.01 SCOPE OF WORK

When taken together with the appended exhibits, this Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions. Services Provider shall satisfactorily provide all services described under the attached Exhibit "A." Service Provider's undertakings shall be limited to performing services for the City and/or advising City concerning those matters on which Services Provider has been specifically engaged. Services Provider shall perform its services in accordance with this Agreement, in accordance with the appended exhibits, in accordance with

due care, and in accordance with prevailing industry standards for comparable services.

5.01 COSTS

A. The costs listed in Exhibit “A” shall be the basis of any charges collected by Services Provider.

B. The City agrees to pay the Services Provider the amount of **One Hundred Three Thousand Sixty-Eight and 98/100 Dollars (\$103,068.98)** for Service Provider’s services set forth in Exhibit “A.”

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Services Provider;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- C. Delivery or performance dates.

7.01 INTERLOCAL COOPERATIVE CONTRACTING/PURCHASING

Authority for local governments to contract with one another to perform certain governmental functions and services, including but not limited to purchasing functions, is granted under Government Code, Title 7, Chapter 791, Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102.

Other governmental entities within the State of Texas may be extended the opportunity to purchase off of the City’s bid, with the consent and agreement of the successful vendor(s) and the City. Such agreement shall be conclusively inferred for the Services Provider from lack of exception to this clause in the Service Provider’s response. However, all parties hereby expressly agree that the City is not an agent of, partner to, or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that may arise out of such independently-negotiated “piggyback” procurements.

8.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City’s current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City’s budget for the fiscal year in question. City may effect such termination by

giving Services Provider a written notice of termination at the end of its then current fiscal year.

9.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Services Provider will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Services Provider may charge interest on an overdue payment at the “rate in effect” on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Services Provider, a contractor, a subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Services Provider and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

10.01 GRATUITIES AND BRIBES

City may, by written notice to Service Provider, cancel this Agreement without liability to Services Provider if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Services Provider or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Services Provider may be subject to penalties stated in Title 8 of the Texas Penal Code.

11.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Service Provider’s charges.

12.01 ORDERS PLACED WITH ALTERNATE SERVICE PROVIDERS

If Services Provider cannot provide the goods as specified, City reserves the right and option to obtain the products or services from another supplier or suppliers.

13.01 INSURANCE

Services Provider shall meet all requirements required by the City as set forth at: https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf.

14.01 CITY'S REPRESENTATIVE

City hereby designates the following representatives authorized to act in its behalf with regard to this Agreement:

Gary Hudder
Director of Transportation
2008 Enterprise Drive
Round Rock, Texas 78664
512-218-5560
ghudder@roundrocktexas.gov

15.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

16.01 DEFAULT

If Services Provider abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Services Provider agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Services Provider shall be declared in default of this Agreement if it does any of the following:

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;

- C. Fails to provide adequate assurance of performance under the “Right to Assurance” section herein; or
- D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

17.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days’ written notice to Services Provider.

B. In the event of any default by Services Provider, City has the right to terminate this Agreement for cause, upon ten (10) days’ written notice to Services Provider.

C. Services Provider has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City’s delivery of the referenced notice to Services Provider, Services Provider shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Services Provider shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Services Provider that portion of the charges, if undisputed. The parties agree that Services Provider is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

18.01 INDEMNIFICATION

Services Provider shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney’s fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Service Provider, or Service Provider’s agents, employees or subcontractors, in the performance of Services Provider’s obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Services Provider (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

19.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Services Provider, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. Services Provider acknowledges and understands that City has adopted a Storm Water Management Program (SWMP) and an Illicit Discharge Ordinance, Sections 14-139 through 14-152 of the City's Code of Ordinances, to manage the quality of the discharges from its Municipal Separate Storm Sewer System (MS4) and to be in compliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollutant Discharge Elimination System (TPDES). The Services Provider agrees to perform all operations on City-owned facilities in compliance with the City's Illicit Discharge Ordinance to minimize the release of pollutants into the MS4. The Services Provider agrees to comply with of the City's stormwater control measures, good housekeeping practices and any facility specific stormwater management operating procedures specific to a certain City facility. In addition, the Services Provider agrees to comply with any applicable TCEQ Total Maximum Daily Load (TMDL) Requirements and/or I-Plan requirements.

C. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Services Provider verifies Services Provider does not boycott Israel and will not boycott Israel at any term of this Agreement.

20.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

21.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Services Provider:

Intercon Environmental, Inc.
210 South Walnut Creek Drive
Mansfield, Texas 76063

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO: Stephen L. Sheets, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Services Provider.

22.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

23.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Services Provider and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

24.01 DISPUTE RESOLUTION

City and Services Provider hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

25.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the

stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

26.01 MISCELLANEOUS PROVISIONS

Standard of Care. Services Provider represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Services Provider understands and agrees that time is of the essence and that any failure of Services Provider to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Services Provider shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Service Provider's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Services Provider shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures are on the following page.]

IN WITNESS WHEREOF, City and Services Provider have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Intercon Environmental, Inc.

By: Karen Andrews
Printed Name: Karen Andrews
Title: President
Date Signed: September 7, 2018

Attest:

By: _____
Sara White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Exhibit "A"



210 South Walnut Creek Drive
Mansfield, Texas 76063
(817) 477-9995

TXMAS QUOTE



INTERCON ENVIRONMENTAL, INC. PROJECT #180367
DATE: 07/26/18

TO:
Mr. David Walther
City of Round Rock
221 E. Main St.
Round Rock, TX 78664
Phone: (512) 218-5400

PROJECT:
Mr. David Walther
City of Round Rock
Oakmont Center
2800 Oakmont Dr.
Round Rock, TX 78665
Phone: (512) 218-5400

COMMENTS OR SPECIAL INSTRUCTIONS:

- 1 Transportation of all waste is included in the TXMAS Item's Quote. However, the cost of the disposal is an additional cost and is outlined in each item's description as "All disposal will be paid at vendor's cost". Disposal site invoice will be attached to our TXMAS Invoice for payment.
- 2 The cost of the Backfill is an additional cost that has no line item but is outlined in each items description as "All backfill will be paid at vendor's cost plus a percentage mark-up not to exceed 10%". A copy of the Vendors invoice and the 10% markup will be attached to our TXMAS Invoice for payment.
- 3 For your convenience when placing your order with TXMAS we have included an estimate for these costs which you will need to add to your TXMAS Orders.

| PROJECT MANAGER | TXMAS CONTRACT# | REQUISITIONER | | TERMS |
|-----------------|-------------------|---------------|--|--------|
| Keith Flowers | TXMAS-18-00CORP07 | David Walther | | Net 30 |

| QUANTITY | ITEM NUMBER | DESCRIPTION | UNIT PRICE | TOTAL |
|----------|-------------|---|------------|----------|
| 12512 | NRD1.2e | Commercial – Up to and including <u>4 stories. Includng</u> clean-up and removal of debris as a result of demolition 3001 plus Square feet, not including slab | 2.13 | 26650.56 |
| 12512 | NRD1.7 | Commercial slab including footers, beams, piers, etc. | 1.26 | 15765.12 |
| 18571 | NRD1.10 | Concrete and asphalt removal, driveway, sidewalk, patio, parking lot, etc. with or without reinforcement up to 6 inches thick | 0.76 | 14113.96 |
| 306 | NRD1.11 | Saw cut slab – bisected improvements | 2.03 | 621.18 |

Exhibit "A"

| QUANTITY | ITEM NUMBER | DESCRIPTION | UNIT PRICE | TOTAL |
|----------|--------------|--|------------|-----------|
| 550 | NRD1.12 | Miscellaneous debris removal, i.e. trash, trees, shrubs, above ground pools, etc. Does not include debris as a result of demolition. | 12.18 | 6699.00 |
| 1 | NRD1.17 | Mobilization Fee (includes disconnect, equipment, generators, traffic control etc. | 507.61 | 507.61 |
| 40 | NRD1.18 | Freon Recovery | 50.76 | 2030.40 |
| 901 | NRD1.23 | Special (temporary) site protection needs, fencing, barricades, etc. | 2.28 | 2054.28 |
| 1019 | NRD1.24 | Silk screen fencing (permanent placement) | 2.13 | 2170.47 |
| 1410 | NRD1.27 | Removal of Commercial Canopies | 3.04 | 4286.40 |
| 28170 | NRD DISPOSAL | All disposal will be paid at vendor's cost | 1.00 | 28170.00 |
| | | | TOTAL DUE | 103068.98 |

Make all checks payable to Intercon Environmental, Inc.
 If you have any questions concerning this quote, contact:
 Keith Flowers, (817) 477-9995, keith@intercon-environmental.com
 Thank you for your business!



Texas Comptroller of Public Accounts
Glenn Hegar

Exhibit "A"



(http://www.txsmartbuy.com)

[Contracts](#)

[SPD Applications](#)

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1 item

Contract Details: # TXMAS-18-00CORP07

Search for items in this contract (/ex_search/false/contract_number/TXMAS-18-00CORP07)

| | |
|--|---|
| Number | TXMAS-18-00CORP07 |
| Description | Demolition and Disposal of Improvements on Right-of-Way and Abatement and Removal of Asbestos |
| Category | TxSmartBuy |
| Type | TXMAS |
| Start Date | 3/6/2018 |
| End Date | 5/21/2019 |
| Fed | TxDOT #601000000000000000000000000000007223 |
| Purchase Category Code(Agencies Only) | PCC X |

Contract Details
Only purchase orders issued through Texas SmartBuy (TSB) are eligible for contract pricing. The Contractor cannot ship any products or provide services until receipt of a Purchase Order generated by the TSB system.

EXHIBIT A

All purchase orders that include a quote order line (excluding linked item quotes) will be placed on hold pending Statewide Procurement Division (SPD) review.

Quote order requirements:

1. Items that are available in TSB must be placed through the TSB shopping cart. The TSB shopping cart allows up to 45 line items. Once 45 line items are added to the TSB shopping cart, the additional order items must be totaled and entered using the quote order line.
2. State agencies must enter no less than 20 items into the TSB shopping cart before utilizing the quote line option. Texas SmartBuy Members are encouraged to add items to the TSB cart before utilizing the quote line option.
3. All purchase orders that include a quote order line require the attachment of a completed contractor quote containing the following:
 - Detailed, unit pricing of all contracted items and services.
 - The contractor's TXMAS contract number clearly identified.
 - Open market, or incidental, items clearly identified.
4. Validation of contract pricing and item availability is the responsibility of the purchaser in determining best value. When the attachment is confirmed, SPD will release the purchase order to the TXMAS contractor for fulfillment.
5. If approval is requested prior to the order being inputted in TSB, or SPD assistance is requested to validate pricing or item availability, the information may be submitted to txmasquote@cpa.texas.gov.

Customers may only purchase TXMAS goods or services from a TXMAS Contractor online through Texas SmartBuy. CPA does not authorize any offline sales of this TXMAS contract's goods or services.

Order Limitation

IMPORTANT: The services provided by this contract may be a service subject to the provisions of Texas Government Code Chapter 2254, Subchapter B. A state agency, as defined by Texas Government Code Chapter 2254, may only acquire the services subject to Texas Government Code Chapter 2254, Subchapter B according to the procedures identified in that subchapter. Failure to comply with the provisions of Texas Government Code Chapter 2254, Subchapter B could result in a void contract.

The contractor is not required to accept orders below the minimum listed below. Orders between the minimum and maximum listed below are subject to the pricing of the underlying contract.

Minimum order: \$2,000

Maximum order: None

State Contracts

All TIBH term contracts and Texas Correctional Industries (TCI) term contracts take precedence over this TXMAS contract. If similar products or services are listed on this TXMAS contract and a CPA Term contract, a determination should be made that will result in a best value purchase.

CPA Contract Management

Questions regarding contract management issues, price changes, amendments or other post-award concerns should be directed to:

SPD TXMAS Program
Texas Comptroller of Public Accounts (CPA)
Phone: (512) 463-3034 option 3
Email: txmas@cpa.texas.gov (<mailto:txmas@cpa.texas.gov>)

Approved Products/Services

Only products or services listed in the underlying contract may be purchased from this TXMAS contract, with one exception. Incidental, off-schedule items may be purchased as "best value, open market" items provided that they are necessary for product integration or product completeness. The purchasing entity is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items may be added to the TXMAS purchase order if they are clearly labeled as "open market (OM), best value" items.

Incidental items may not exceed \$5,000.00 OR 50% of the purchase order total, whichever is less.

If the pending order includes incidental items that exceed the stated limits, a request may be submitted by the Customer to the Statewide Procurement Division for review and consideration of an exception. **Exception requests shall be submitted to txmasquote@cpa.texas.gov (<mailto:txmasquote@cpa.texas.gov>).** The request must include a copy of the complete contractor quote listing all core items and a detailed incidental charge breakdown.

**Contract
Specifics/Notes**

TXMAS prices may be validated against the base contract's price list. TXMAS contractors are authorized to charge up to 1.5228% more than their base contract price. **EXHIBIT A**

Base Contract Price List (<http://www.txsmartbuy.com/SSP Applications/NetSuite Inc. - Shopping/Custom ShopFlow/Documents/Contract Attachments/TXMAS-18-00CORP07 - Base Contract Price List - Intercon Environmental, Inc..xlsx>)

Delivery

14 days ARO

Compliant Products by Contractor

Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.

Rebate Reporting Requirement for Federal

Pursuant to Texas Government Code §2155.510(b), rebates generated from TXMAS contract purchases made in whole or in part with federal funds must be reported by the purchasing agency for reporting, and reconciliation purposes with the appropriate federal funding agency. Each quarter of the State's fiscal year (September 1 through August 31), TXMAS contractors rebate 0.73875% of their TXMAS sales to the State of Texas via the Texas Comptroller of Public Accounts (CPA). It is the purchasing entity's responsibility to report the amount of rebate to the federal fund-provider using the above percent based on the total dollar value of the TXMAS purchase order.

Example: A purchasing entity receives and uses federal funds of \$50,000 to purchase items/services on a TXMAS contract. The purchasing entity must report to the federal fund-provider that a sales rebate of \$369.37 ($\$50,000 \times 0.73875\% = \369.37) will be paid to the State of Texas by the TXMAS contractor.

Contractor Performance

The Statewide Procurement Division Contract Management Office (SCMO), a division of the Comptroller of Public Accounts (CPA), administers a vendor performance program for use by all customers per Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108. The Vendor Performance relies on the customer's participation in gathering information on vendor performance. State agency customers shall report vendor performance on purchases of \$25,000 or more from contracts administered by CPA, or any other purchase of \$25,000 or more made through delegated authority granted by CPA (TAC 20.108), or purchases exempt from CPA procurement rules and procedures. State agencies are additionally encouraged to report vendor performance on purchases under \$25,000.

Vendor Performance shall be reported through the CPA VENDOR PERFORMANCE TRACKING SYSTEM (<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>).

The purpose of the Vendor Performance Tracking System is to:

- Identify vendors that have exceptional performance
- Aid purchasers in making a best value determination based on vendor past performance
- Protect the state from vendors with unethical business practices
- Track vendor performance for delegated and exempt purchases

Contractor Information

VID: 15224377745

Contractor: Intercon Environmental, Inc.

Contact Name: Karen Andrews

Email: karen@intercon-environmental.com

Phone: (817) 477-9995

Address: 210 South Walnut Creek Drive Mansfield TX 76063

HUB Eligibility: WO

HUB Gender: F



Texas Comptroller of Public Accounts
Glenn Hegar

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POLICIES

- Privacy and Security Policy (<https://comptroller.texas.gov/about/policies/privacy.php>)
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- Link Policy (<https://comptroller.texas.gov/about/policies/links.php>)
- Texas.gov (<http://texas.gov>)
- Search from the Texas State Library (<https://www.tsl.texas.gov/trail/index.html>)
- Texas Homeland Security (<http://www.dhs.gov/geography/texas>)

- Texas Veterans Portal (<https://veterans.portal.texas.gov/>)
- Public Information Act (<https://comptroller.texas.gov/about/policies/public-information-act.php>)
- Texas Secretary of State (<http://www.sos.state.tx.us/>)
- HB855 Browser Statement

EXHIBIT A

OTHER STATE SITES

- [texas.gov](https://www.texas.gov/) (<https://www.texas.gov/>)
- Texas Records and Information Locator (TRAIL) (<http://www.tsl.state.tx.us/trail/>)
- State Link Policy
(<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/State%20Website%20Linking%20and%20Privacy%20Policy.pdf>)
- Texas Veterans Portal (<http://veterans.portal.texas.gov>)

Exhibit "A"

3. CERTIFICATION OF ACCURACY

Contractor hereby certifies that all copies of the Base Contract documents that were submitted to CPA are true, correct, current, and complete. Contractor further represents and warrants that all future Base Contract revisions submitted to revise this Contract will also be true, correct, current, and complete.

4. REPRESENTATIONS

Contractor warrants that all certifications and representations made as a basis for obtaining or as a part of the Base Contract were and still are true and accurate. Contractor further agrees that such representations are a basis for CPA entering into this Contract and that such representation and certifications inure to the benefit of the State of Texas, CPA, and all Customers under this Contract.

5. FUTURE NOTICE

- (a) Contractor acknowledges that any continuing obligation to notify the governmental entity that awarded Contractor's Base Contract of changes affecting the Base Contract (including, by way of example only, notices required under any price change provisions of the Base Contract) imposes a corresponding continuing obligation to notify CPA under this TXMAS Contract.
- (b) Contractor agrees to notify CPA within 30 calendar days of all changes in the status of or amendments to the Base Contract.
- (c) Contractor shall promptly notify CPA of any modifications to the Base Contract. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.

6. PARTIES TO THIS CONTRACT

- (a) For purposes of this Contract, all rights and obligations of Contractor and the governmental entity that awarded Contractor's Base Contract will be rights and obligations of Contractor and the State of Texas, CPA, and Customers, except to the extent that such would create an absurdity, are modified by this Contract, or would violate state or federal law. CPA is the contracting agency that is a party to this Contract, but may, as a state agency, also be a Customer under this Contract.
- (b) Unless expressly stated otherwise or unless the context clearly indicates otherwise, all Customers of this Contract will have the same rights and remedies of the State of Texas and CPA under this Contract including, but not limited to, the provisions regarding indemnification. Any order placed by a local government under this Contract will be between Contractor and the local government. Contractor will look solely to the local government for performance, including but not limited to, payment, and will hold the State of Texas harmless with regard to such orders. The State of Texas, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should Contractor fail to honor its obligations under an order from a local government.
- (c) In performing this Contract, Contractor and Contractor's employees, representatives, agents and any subcontractors are not employees of the State of Texas, CPA, or Customers. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the State of Texas, CPA, and Customers are in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve

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Contract or pursue any other available contract remedy.

- (k) Contractor must submit a TxSmartBuy catalog to CPA with the exact same list of goods and services that the Base Contract permits Contractor to sell for uploading into the TxSmartBuy online ordering system. The TxSmartBuy catalog must reflect the goods and services listed on the base contract website. If a good or service is not visible online, then CPA will not list the good or service on the TxSmartBuy online ordering system.

8. TXSMARTBUY

- (a) **Online ordering.** CPA operates the TxSmartBuy online ordering system to allow Customers to order from the TXMAS Contract online. Customers may search for available goods and services, compare prices, and place orders through TxSmartBuy. Customers will exclusively access the goods or services available under Contractor's TXMAS contract through TxSmartBuy.
- (b) **Pricing and related information not confidential or proprietary.** The operation of TxSmartBuy requires CPA to publish all pricing information and other related information online. Consequently, by signing this agreement, Contractor agrees that the pricing (and other related information) submitted as part of Contractor's offer packet is not confidential or proprietary. By submitting an offer packet, Contractor consents to the publication of Contractor's pricing and related information on TxSmartBuy.
- (c) **TxSmartBuy administrative fee.** To cover the costs of operating TxSmartBuy, CPA will charge Contractor a 1.5% TxSmartBuy administrative fee. If Contractor wishes to recover this fee, CPA authorizes Contractor to charge up to 1.5228% additionally on its offer of goods or services. In CPA's review and evaluation of Contractor's pricing in its submitted offer packet, CPA assumes that Contractor has already considered and factored in no more than a 1.5228% maximum recoupment of the TxSmartBuy administrative fee.
 - (i) Contractor shall remit the 1.5% TxSmartBuy administrative fee on a monthly basis. The TxSmartBuy administrative fee is based on the amount of sales (based on the good's or service's delivery date) under this Contract for the previous month and is due upon receipt of the invoice that CPA will e-mail to Contractor the following month.
 - (ii) CPA will bill Contractor for this fee based on all sales under the Contract.
 - (iii) The TxSmartBuy administrative fee remittance should be identified as "TxSmartBuy Admin Fee" and made payable to **CPA**. The remittance address is: Texas Comptroller of Public Accounts, Attn: TxSmartBuy Administrative Fee, P.O. Box 13106, Austin, TX 78711-3106.
 - (iv) The TxSmartBuy administrative fee is subject to change at the sole discretion of CPA. CPA will provide Contractor with written notice of any increase to the TxSmartBuy administrative fee.
- (d) **TXMAS sales rebate.** Contractor shall remit to the State of Texas a sales rebate which will not exceed the GSA Industrial Funding Fee (IFF) that is in effect at the time of the submission. The current sales rebate is 0.73875%. Contractor shall remit the sales rebate on a quarterly basis, using the State of Texas Fiscal Calendar, which starts on September 1 and ends on August 31 of each year. The sales rebate will be for the amount of sales (based on the good's or service's delivery date) under this Contract for the previous quarter and is due upon receipt of the invoice that CPA will e-mail to Contractor the week following the end of the quarter.

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- (i) The Sales Rebate remittance should be identified as "TXMAS Sales Rebate" and made payable to **CPA**. The remittance address is: Texas Comptroller of Public Accounts, TXMAS Sales Rebate, P.O. Box 13186, Austin, TX 78711-3186.
- (e) **Warrant hold for non-payment of fees or rebates.** Texas Government Code § 403.055 prohibits CPA from making payments to anyone indebted to the State of Texas. Payments to Contractor may be held and applied to the Contractor's debt in accordance with Texas Government Code § 403.0551.

9. DEALERS

- (a) Upon CPA approval, Contractor may designate one or more dealers to provide goods or services under this Contract on behalf of Contractor. To designate a dealer, Contractor must provide a Letter of Authorization. Contractor shall provide a separate Letter of Authorization for each designated dealer.
- (b) The Letter of Authorization must be submitted on Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the Statewide Procurement Division Director at the address set forth in Contract section entitled "Notices." The Letter of Authorization must include a Letter of Acceptance from the dealer and all supporting documentation. By submitting a Letter of Authorization, Contractor represents and warrants the following:
 - (1) The dealer has been given a copy of this Contract (and all incorporated documents), a duly authorized representative of the dealer has agreed in writing to be bound by the terms and conditions of this Contract and the Base Contract as modified by this Contract, and that such agreement specifically provides that it is for the benefit of the State of Texas, CPA, and Customers, as well as Contractor.
 - (2) Contractor agrees to remain liable under this Contract for any failure of the dealer to perform and for any breach of the dealer under this Contract. Any items sold by an authorized Dealer is subject to the fees set forth in Section 8 above. CPA will look solely to Contractor for payment of all applicable fees and Contractor will be responsible for payment of all applicable fees regardless of whether a dealer provided the goods or services to Customer.
 - (3) Payments under this Contract for the services of any dealer may be made directly to that dealer, and Contractor will look solely to the dealer for any payments due Contractor once the State of Texas, CPA, or a Customer has paid the dealer.
 - (4) To the extent that there is any liability to the State of Texas, CPA, or any Customer arising from doing business with a dealer that has not signed the Letter of Acceptance required under this section with Contractor, Contractor will fully and unconditionally indemnify the State of Texas, CPA, and Customers for such liability.
 - (5) Contractor's Letter of Authorization shall remain effective until CPA receives written notification from Contractor, signed by an authorized representative of Contractor, that the authorization to a dealer is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer's official letterhead, signed by an authorized representative of the dealer, and addressed to the attention of Contractor. In the Letter of Acceptance, the dealer must represent and warrant that it has been given a copy of this Contract and the Base Contract, it agrees to be bound by the terms and conditions of this Contract and the Base Contract, as both may be amended from time to time, and such agreement specifically provides that it is for the

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- (a) Payment shall be made in accordance with Chapter 2251 of the Texas Government Code.
- (b) Except as provided for in Section 2251.021(b) of the Texas Government Code, payment by a state agency or local government is due within thirty (30) calendar days after the later of:
 - (1) the date the state agency or local government receives the goods under this Contract;
 - (2) the date the state agency or local government receives a proper invoice (see Paragraph below entitled "INVOICE REQUIREMENTS") for the goods or services; or
 - (3) the date the performance of the service under the contract is completed
- (c) Except as provided for in Section 2251.021(b) of the Texas Government Code, a payment will begin to accrue interest at a rate by CPA pursuant to the statute on the 31st day after the later event described by subsections (b)(1) through (3) above. Interest stops accruing on the date the state agency or local government mails (postmark) or electronically transmits the payment.
- (d) Any travel or per diem required by Contractor to perform its obligations under this Contract and the Base Contract will be at Contractor's expense. All travel and per diem that a Customer requests in addition to what this Contract or the Base Contract requires Contractor to provide at Contractor's expense are subject to, and shall not exceed, the reimbursement limitations applicable to Texas state employees in conducting official state business as prescribed by applicable law, rules, and regulations including, but not limited to, Chapter 660 of the Texas Government Code, the General Appropriations Act and rules adopted by the Comptroller.

13. INVOICE REQUIREMENTS

- (a) In order to receive payment, Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. To be a proper invoice, the invoice must include the following information and/or attachments:
 - (1) Name and address of Contractor as designated in this Contract.
 - (2) Contractor's Federal Employer's ID Number (FEIN) as designated in this Contract.
 - (3) Contractor's invoice remittance address as designated in this Contract.
 - (4) The purchase order number authorizing the delivery of products or services.
 - (5) A description of what Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of Contractor's information.
- (c) If an invoice does not meet this section's requirements or if Contractor fails to give proper notice of a price increase (see Paragraph below entitled "NOTIFICATION OF PRICE INCREASE"), CPA will

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send Contractor written notice with the improper invoice to the address designated for receipt of purchase orders. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.

- (d) In submitting an invoice to a Customer, Contractor certifies: that the invoice has been carefully reviewed for detailed description of the services performed or goods delivered; that the services have been performed or goods delivered in compliance with this Contract and the Base Contract; that the amount of the invoice and all previous invoices together do not exceed the contractual cap of this Contract, the Base Contract, or Contractor's negotiated fees; that the charges and expenses shown on the invoices are reasonable and necessary; and that all appropriate and required supporting documentation is attached. Customer may, in its sole discretion, require additional documentation to support payment and Contractor shall respond to any such requests within five (5) calendar days of receipt. Customer reserves the right to make payments only upon receipt of a correct invoice, including all of the required supporting documentation. Customer also reserves the right to refuse payments for invoices that exceed the rates specified in this Contract or the Base Contract or Contractor's negotiated fees.

14. AUDIT REQUIREMENTS

Pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. This Contract may be amended unilaterally by the CPA to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Section 2262.154 of the Texas Government Code. **Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any dealer agreement or subcontract.**

Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by state or federal law or regulation. Those additional requirements will be included on the purchase order for that particular order.

15. NOTIFICATION OF PRICE INCREASES

For price increases authorized under this Contract, notification of such must be given to CPA and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). Contractor must give these notices no later than 30 calendar days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

16. NON-APPROPRIATION OF FUNDS

All obligations of CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to this Contract.

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Contractor acknowledges that the ability of CPA and the Customers to make payments under this Contract is contingent upon the continued availability of funds. Contractor further acknowledges that funds may not be specifically appropriated for the Contract and CPA's or Customers' continual ability to make payments under this Contract is contingent upon the funding levels appropriated for each particular appropriation period. CPA and the Customers will use all reasonable efforts to ensure that such funds are available. Contractor agrees that if future levels of funding for CPA or a Customer are not sufficient to continue operations without any operational reductions, CPA, in its discretion, may terminate this Contract, either in whole or in part, or the Customer, in its discretion, may terminate a pending order under this Contract, either in whole or in part. In the event of such termination, neither CPA nor Customers will be considered to be in default or breach under this Contract, nor shall CPA or Customers be liable for any further payments ordinarily due under this Contract, nor shall CPA or Customers be liable for any damages or any other amounts which are caused by or associated with such termination. CPA and Customers shall make best efforts to provide reasonable written advance notice to Contractor of any such Contract or order termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or this Contract, if this Contract is being terminated. CPA or the Customer, as applicable, shall be liable for payments limited only to the portion of work CPA or the Customer authorized in writing and which Contractor has completed, delivered to CPA or Customer, and which has been accepted by CPA or Customer. All such work shall have been completed, per Contract requirements of this Contract and the Base Contract, prior to the effective date of termination.

17. PUBLIC INFORMATION

The CPA is a governmental body subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code, as are other potential Customers of this Contract. The Base Contract and other information submitted to the CPA by Contractor are subject to release as public information by the CPA and by any Customer that is also subject to the PIA. The Base Contract and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for Contractor to include proprietary or otherwise confidential information in its submitted information, Contractor must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire submission is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire submission subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the submitted information that are considered by Contractor to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by Contractor as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA and Contractor shall thereby be irrevocably deemed to have waived, and Contractor agrees to fully indemnify the State of Texas, CPA, and any Customer subject to the PIA from, any claim of infringement by CPA and any Customer subject to the PIA regarding the intellectual property rights of Contractor or any third party for any materials appearing in the submitted information.

Contractor is required to make any information created or exchanged with a state governmental entity (as defined by Section 2252.907(d) of the Texas Government Code) pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas, CPA, or Customers: portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

18. CONFIDENTIALITY AND SECURITY

Any information Contractor receives, compiles, or creates as a result of this Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall

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establish a method to secure the confidentiality of records and other information relating to Customers in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

19. RECORDS RETENTION

Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in this Contract. Contractor shall retain all such records for a period of seven (7) years after the expiration of this Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor shall grant access to all books, records and documents pertinent to this Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under this Contract.

20. INSURANCE AND OTHER SECURITY

Contractor represents and warrants that it will obtain and maintain for the term of this Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. Contractor shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with all statutory requirements of all states in which Contractor performs under this Contract and must cover any cargo being delivered to Customers.

Contractor represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. Contractor shall furnish proof of insurance upon request of a Customer or the CPA.

21. LIABILITY FOR AND PAYMENT OF TAXES

CPA and certain Customers are exempt from certain taxes. Customers will furnish proof of tax exempt status to Contractor upon request. Contractor shall pay all taxes resulting from this Contract and the Base Contract including any federal, state, or local income, sales, excise, or property taxes. The State of Texas, CPA, and Customers does not have tax liability under this Contract and will not reimburse Contractor for the payment of such taxes incurred by Contractor in acquiring any goods or services as a part of any work called for in this Contract or the Base Contract. Contractor's invoice may not include any amount for such taxes.

22. TERM AND TERMINATION

This Contract shall become effective on the date countersigned by the appropriate CPA official. Unless otherwise sooner terminated as provided in this Contract, this Contract will terminate no later than five years from the date of execution. If the Base Contract expires less than five years from the date of Contract execution, this Contract will terminate upon the later to occur of (1) the expiration of the Base Contract or (2) the physical completion of the last outstanding task or delivery of the final order placed under, and prior to the expiration of, the Base Contract through this Contract. Except as otherwise provided in this Contract or the Base Contract or as determined by Customer, at Customer's sole option, all applicable service agreements that were entered into between Contractor and Customers under the terms and conditions of this Contract shall survive the cancellation or termination of this Contract and the cancellation or termination of the Base Contract. Absent Customer agreement to the contrary, in the event of termination of this Contract, Customers' sole and maximum obligation shall be to authorize payment to Contractor for previously authorized goods or services performed in

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accordance with all requirements of this Contract and the Base Contract, up to the termination date.

(a) Termination for Convenience of the State of Texas

The CPA reserves the right to terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the CPA determines that such termination is in the best interest of the state. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination.

(b) Termination for Cause

If Contractor fails to provide the goods or services contracted for according to the provisions of this Contract or the Base Contract, or fails to comply with any of the terms or conditions of this Contract or the Base Contract, the CPA may, upon written notice of default to Contractor, immediately terminate all or any part of this Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under this Contract and the Base Contract.

The CPA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of this Contract or the Base Contract, or to recover damages for the breach of any agreement being derived from this Contract or the Base Contract. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless the CPA notifies Contractor in writing prior to the exercise of such remedy. Contractor shall remain liable for all covenants and indemnities under this Contract and the Base Contract. Contractor shall be liable for all costs and expenses, including court costs, incurred by the CPA with respect to the enforcement of any of the remedies listed herein.

(c) Change in Federal or State Requirements

If federal or state laws, rules, regulations, or requirements applicable to this Contract are amended, performance under this Contract will be subject to the laws, rules, regulations, or requirements applicable at the time of performance under this Contract. If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either the CPA or Contractor cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of this Contract, the Parties shall be discharged from any further obligations under this Contract.

(d) Termination for Non-Appropriation of Funds

CPA may terminate the Contract immediately for non-appropriation of funds as further detailed in the Contract section entitled, "Non-Appropriation of Funds."

(e) Property Rights upon Termination

For purposes of this Contract, the term "Work Product" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by Contractor. In the event that this Contract or the Base Contract is terminated for any reason, or upon the expiration of either this Contract or the Base Contract, Customers shall retain ownership of all associated Work Product and documentation obtained from Contractor under the Base Contract through this Contract. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to Customers, Contractor shall grant to Customers an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses.

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(f) No Liability Upon Termination

If this Contract is terminated for any reason, the State of Texas, CPA, and Customers shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. In the event of termination of this Contract, the sole and maximum obligation of the State of Texas, CPA, and Customers shall be to authorize payment to Contractor for previously authorized goods or services performed in accordance with all requirements of this Contract and the Base Contract, up to the termination date.

(g) Survival of Terms

Termination of this Contract or the Base Contract for any reason shall not release Contractor from any liability or obligation set forth in this Contract or the Base Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

(h) Lack of Contract Sales

If the Contract has a limited amount of sales over a period of 12 consecutive months, the contract may be subject to termination in CPA's sole discretion. CPA may, upon written notice to Contractor, immediately terminate the Contract. Contractor may not submit a new TXMAS offer packet within 12 months from the date of the termination notice.

(i) Misrepresentation of goods and services available under Base Contract

If Contractor sells goods or services through TXMAS that are not available on the Base Contract, excluding permitted incidental goods and services as further defined in this Contract, CPA may immediately terminate the Contract.

23. FORCE MAJEURE

CPA, any Customer, and Contractor will not be responsible for delays in performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of CPA, Customer, or Contractor. In the event of an occurrence under this Section, the CPA, Customer, or Contractor (Parties) will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Party will immediately notify the other Party(ies) by telephone (to be confirmed in writing within five calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

24. VENDOR PERFORMANCE

- (a) CPA may use vendor performance to analyze whether a vendor is eligible for a TXMAS contract. CPA may conduct reference checks with other entities regarding past performance both prior to awarding a contract to Contractor and during the entire term of a TXMAS contract.
- (b) CPA may consider the following conditions when awarding a TXMAS contract or when considering continued contract existence:
 - (i) A score of less than a C or Legacy Unsatisfactory in the Vendor Performance Tracking System (VPTS);

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- (ii) Whether the vendor or Contractor is under a Corrective Action Plan with CPA or another state agency;
 - (iii) Having repeated negative vendor performance reports;
 - (iv) Having a record of repeated non-responsiveness to vendor performance issues; and
 - (v) Having purchase orders that have been cancelled in the previous 12 months for non-performance (such as late delivery or not meeting specifications).
- (c) In addition to evaluating performance through VPTS as authorized by 34 Texas Administrative Code § 20.217, CPA may examine other sources of Contractor performance including notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. These sources of Contractor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the federal government. Further, CPA may initiate these examinations of Contractor's performance based upon media reports. Any investigations are at CPA's sole discretion, and any negative findings, as determined by CPA, may result in not awarding a TXMAS contract or enforcing remedies against Contractor, including contract termination. Information pertaining to VPTS is located on CPA's website at: http://www.window.texas.gov/procurement/prog/vendor_performance/.
- (d) Additionally, in accordance with Section 2155.089 of the Texas Government Code, CPA or state agency Customers will review successful Contractor's performance under a contract resulting from this solicitation after the Contract is completed or otherwise terminated. These reviews and any resulting classification grades will be posted on VPTS as noted in Section 2262.055 of the Texas Government Code.

25. DELIVERIES

All deliveries for orders placed under this Contract shall be F.O.B. Destination.

If delivery delay is foreseen, Contractor shall give written notice to the Customer. Customer has the right to extend delivery or service date if reasons appear valid. Contractor shall keep Customer advised at all times of the status of the order. Default in promised delivery (without accepted reasons), service date, or failure to meet specifications, authorizes the Customer to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to Contractor.

26. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall comply with all federal and state laws regarding equal employment opportunity.

27. DRUG-FREE WORKPLACE ACT

Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act.

28. AMERICANS WITH DISABILITIES ACT

Contractor represents and warrants that it will comply with the requirements of the Americans with Disabilities Act (ADA).

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29. CIVIL RIGHTS

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

30. IMMIGRATION

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

31. INDEMNIFICATION

(a) Acts or Omissions

Contractor shall indemnify and hold harmless the State of Texas, CPA, and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

(b) Infringements

(i) Contractor shall indemnify and hold harmless the State of Texas, CPA, and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

(ii) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or

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- (h) **Contracting with executive head of a state agency.** In accordance with Texas Government Code §669.003 (relating to contracting with executive head of a state agency), by signature hereon, Contractor certifies that it (1) is not the executive head of CPA; (2) was not at any time during the past four years the executive head of CPA; and (3) does not employ a current or former executive head of a state agency. Contractor acknowledges that this Contract may be terminated at any time, and payments withheld, if this information is false.
- (i) **Buy Texas.** To the extent applicable, in accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- (j) **Conflicts of interest.** Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into this Contract will not reasonably create an appearance of impropriety.
- (k) **Receipt of appropriated funds not prohibited.** Contractor certifies that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Texas Government Code.
- (l) **Disaster Relief Violation.** Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (m) **Fixed prices for term.** Contractor hereby certifies that all prices under the Base Contract are current prices and that such prices are guaranteed to remain current with any approved Base Contract pricing changes for the entire term of this Contract. In the event of a decrease in prices offered under the Base Contract, Contractor agrees to notify CPA within thirty (30) working days of such decrease and offer such pricing to the State of Texas, CPA, and Customers. If Contractor fails to notify CPA of such decrease in pricing as specified herein, CPA shall have the right to cancel this Contract and Contractor shall issue a refund for items procured under this Contract. Such refund shall be equal to the difference between the prices offered under the Base Contract submitted as a basis for this Contract and the lower price.
- (n) **Competitively awarded contract.** Contractor hereby certifies that the Base Contract was previously awarded using a competitive process by the federal government or another governmental entity in accordance with Section 2155.502 of the Texas Government Code and all other applicable laws, rules, and regulations.
- (o) **Franchise tax requirements.** Contractor certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code. If Contractor is a qualifying business entity type per CPA guidelines and is not set up in the Texas Franchise Tax system, Contractor must do so prior to contracting with the State of Texas.
- (p) **Certifications apply to Customer purchase orders.** Contractor agrees that all affirmations and

Exhibit "A"

the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in this Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the CPA if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by the CPA nor any other conduct of any representative of the CPA relating to this Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Contract, the CPA and Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the CPA and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless the CPA, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the CPA and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the CPA and Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The CPA's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the CPA of (1) any rights, privileges, defenses, remedies or immunities available to the CPA as an agency of the State of Texas or otherwise available to the CPA; (2) the CPA's termination rights; or (3) other termination provisions or expiration dates of this Contract.

Notwithstanding any other provision to the contrary, unless otherwise requested or approved in writing by the CPA, Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

40. AMENDMENT

- (a) This Contract may be amended only upon written agreement between CPA and Contractor, but in no case shall this Contract be amended so as to make it conflict with the laws of the State of Texas.
- (b) Customers (other than CPA as set forth in this Contract) shall not have the authority to modify the terms of this Contract; however, additional Customer terms and conditions that do not conflict with this Contract and are acceptable to Contractor may be added in a Purchase Order and given effect. No term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of this Contract, regardless of whether such term or condition is acceptable to Contractor. In the event of a conflict between a Customer's Purchase Order and this Contract, this Contract shall control.
- (c) Comptroller reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for compliance with all applicable state and federal laws, regulations, requirements, and guidelines.

Exhibit "A"

(d) Contractor agrees to comply with the TXMAS standard terms and conditions as the terms may be amended in the future and as are published on the TXMAS website. Any sales under the Contract are made according to the standard terms and conditions for TXMAS at the time of the sale.

41. NO WAIVER

No provision of this Contract or the Base Contract is in any way intended to constitute a waiver by the CPA or the State of Texas or any Customer of any immunities from suit or from liability of the CPA or the State of Texas or any Customer.

Nothing in this Contract or the Base Contract shall be construed as a waiver of the sovereign immunity of the State of Texas, CPA, or Customers. Neither this Contract nor the Base Contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, CPA, or Customers. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas, CPA, or Customers under this Contract or the Base Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. CPA does not waive any privileges, rights, defenses, or immunities available to CPA by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

42. HEADINGS

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

43. ORDER OF PRIORITY

If there is any inconsistency or conflict between this document and the Base Contract or any provision of any document incorporated by reference, this document will prevail.

44. ENTIRE AGREEMENT

This Contract consists of the Base Contract (see Paragraph entitled "BASE CONTRACT AND ADMINISTRATIVE FEE"), this Contract, any amendments approved by CPA and, if applicable, Contractor's dealer Letter(s) of Authorization and dealer Letter(s) of Acceptance, and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing and signed by CPA.

45. GOVERNING LAW, VENUE

This Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Contractor agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the CPA under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.

46. SEVERABILITY

In the event that any term, provision, covenant, or condition of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

