

**EXHIBIT**  
**"A"**

**CITY OF ROUND ROCK  
AGREEMENT FOR THE PURCHASE OF  
UTILITY PUMP MOTOR REPAIR SERVICE  
WITH  
SMITH PUMP COMPANY, INC.**

<b>THE STATE OF TEXAS</b>	§	
	§	
<b>CITY OF ROUND ROCK</b>	§	<b>KNOW ALL BY THESE PRESENTS:</b>
	§	
<b>COUNTY OF WILLIAMSON</b>	§	
<b>COUNTY OF TRAVIS</b>	§	

This Agreement is for the purchase of utility pump motor repair service, and for related goods and services, and is referred to herein as the "Agreement." This Agreement is made and entered into on this the \_\_\_\_ day of the month of \_\_\_\_\_, 2020, 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 SMITH PUMP COMPANY, whose offices are located at 301 MB Industrial, Waco, Texas 76712, referred to herein as the "Services Provider." This Agreement supersedes and replaces any previous agreement between the named parties, whether oral or written, and whether or not established by custom and practice.

**RECITALS:**

WHEREAS, City desires to purchase services for the repair of a utility pump motor, and City desires to purchase same from Services Provider; and

WHEREAS, City is a member of the Buy Board Cooperative Purchasing Program ("Buy Board") and Services Provider is an approved Buy Board vendor; and

WHEREAS, City desires to purchase certain services and related goods from Services Provider through Buy Board Contract No. 589-19; 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, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

## 1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Services Provider whereby City is obligated to buy specified goods and services and Services Provider is obligated to sell specified goods and services. The Agreement includes Services Provider's Proposal, attached as Exhibit "A," and incorporated herein by reference for all purposes, and any other 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.

F. **Services Provider** means Smith Pump Company, Inc. or any successors or assigns.

## 2.01 EFFECTIVE DATE AND 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 until the services set forth in Exhibit "A" are completed to the satisfaction of the City.

B. Prices shall be firm for the duration of this Agreement and for any renewal periods. No separate line item charges shall be permitted for invoicing purposes, including but not limited to equipment rental, demurrage, costs associated with obtaining permits, or any other extraneous charges.

C. 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

Services Provider's Proposal is set forth in Exhibit "A," which together with this Agreement comprise the total Agreement as if repeated herein in full.

#### **4.01 SCOPE OF WORK**

Services Provider shall satisfactorily provide for the repair of the pump motor described in Exhibit "A." Services 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 the Agreement, in accordance with the appended exhibits, in accordance with due care, and in accordance with prevailing industry standards for comparable services.

#### **5.01 CONTRACT AMOUNT**

In consideration for the services set forth in Exhibit "A," the City agrees to pay Services Provider an amount not-to-exceed **Ninety-Six Thousand One Hundred Seventy-Five and No/100 Dollars (\$96,175.00)**.

#### **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; and
- D. Delivery dates.

#### **7.01 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 affect such termination by giving Services Provider a written notice of termination at the end of its then-current fiscal year.

#### **8.01 PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Services Provider will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods 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). This Prompt Payment 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, subcontractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. 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
- C. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- D. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

#### **9.01 GRATUITIES AND BRIBES**

City may, by written notice to Services Provider, cancel this Agreement without incurring 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.

#### **10.01 TAXES**

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

#### **11.01 ORDERS PLACED WITH ALTERNATE SERVICES PROVIDERS**

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

#### **12.01 INSURANCE**

Services Provider shall meet all of City's insurance requirements as set forth at the City's website:

[http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr\\_insurance\\_07.201112.pdf](http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.201112.pdf).

#### **13.01 CITY'S REPRESENTATIVE**

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

Mark Hurd  
Utilities and Environmental Services Department  
System Mechanic Supervisor  
3400 Sunrise Road  
Round Rock, Texas 78664  
(512) 341-3155

#### **14.01 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.

#### **15.01 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.

#### **16.01 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.

#### **17.01 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 Services Provider, or Services 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.

#### **18.01 COMPLIANCE WITH LAWS, CHARTER, ORDINANCES AND PROGRAMS**

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. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel and 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 during the term of this Agreement.

#### **19.01 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.

**20.01 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 herein; 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:**

Smith Pump Company, Inc.  
301 MB Industrial  
Waco, TX 76712

**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.

**21.01 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.

**22.01 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.

**23.01 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.

#### **24.01 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.

#### **25.01 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 Services 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 on the following page.]

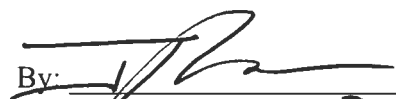


IN WITNESS WHEREOF, City and Services Provider have executed this Agreement on the dates indicated.

City of Round Rock, Texas

Smith Pump Company, Inc.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

By:   
Printed Name: JASON POPKO  
Title: PMG/ENGINEERING MANAGER  
Date Signed: 12/9/2020

Attest:

By: \_\_\_\_\_  
Sara L. White, City Clerk

For City, Approved as to Form:

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

Exhibit "A"



**SMITH  
PUMP  
COMPANY, INC.**

Remit to .....: 3500 Comsouth Dr. Bldg. 4, Ste 500  
Austin, TX 78744

Phone .....: (512) 310-1480  
Fax .....: (512) 310-1417

Bill to : City of Round Rock  
apinvoices@roundrocktexas.gov  
221 East Main  
Round Rock, TX 78664

Contact : Mark Hurd  
Phone : 512 218 5433  
Fax : 512 218 7097

**QUOTATION**

Number .....: SQ028592-1      Page : 1 of 4  
Sales order .....:                      Date : 10/2/2020  
Your ref. ....: Raw Water Intake      Our ref: 341  
Requisition .....:                      Payme: Net 30 Days  
Quotation deadline :                      Sales : TXCEN  
Delivery Term .....:                      Name : Darrel R. Mize

Ship to : City of Round Rock - Raw Water Intake Station  
2050 Cedar Breaks Rd.  
Georgetown, TX 78628

Contact : Mark Hurd  
Phone : 512 341 3155  
Fax : 512 218 7097

**Per BuyBoard 589-19**

UNIT	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL	
1.0000	Motor Repair	1.00	56,988.00	56,988.00	
	1. Inspect, reassemble, test & paint:				
	a. Initial inspection, disassembly, cleaning, testing, and measurement of all component parts. Mount stator on mandrel and check TIR and concentricity.				
	b. Repair of all components as required. Including, but not limited to: straightening and balancing of rotor, Reconditioning of bearings and painting of Internal components with suitable water-resistant coating				
	c. Reassembly of motor using all new gaskets, new Bergman seal, filters, nuts, lock washers, Fluids, lead assembly and diaphragm.				
	d. All tolerances shall be per specification.				
	e. Test run motor per specification.				
	f. Warranty for one year against defects in Workmanship and materials.				
	2. Replacement of guide bearings				
	a. Replacement of guide bearings				
	b. Warranty for one year against defects in workmanship and materials.				
	3. Additional required material and labor:				
	a. Cable splice				
	b. P7341 EPR/NEO 5KV cable (130ft)				
2.0000	*Optional* Stator Rewind	1.00	39,187.00	39,187.00	
	Rewind of stator: (optional)				
	a. Removal of old insulation and winding.				
	b. Cleaning of stator				
	c. Lamination repair within limits of spec.				
	d. Check and repair stator ends per spec.				
	e. Reinsulate and rewind using class y or Better materials.				
	f. Final electrical testing of stator before Motor assembly.				
	g. Warranty for one year against defects in Workmanship and materials.				
Sales balance	Total discount	Misc. charges	Sales tax	Round-off	Total
96,175.00	0.00	0.00	0.00	0.00	96,175.00 USD

## Exhibit "A"



**SMITH  
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**Ship to** : City of Round Rock - Raw Water Intake Station  
2050 Cedar Breaks Rd.  
Georgetown, TX 78628

Contact : Mark Hurd  
Phone : 512 341 3155  
Fax : 512 218 7097

## QUOTATION

### TERMS AND CONDITIONS

1. **Applicability** – These Terms and Conditions of Sale ("Terms") shall govern all sales of equipment or services to Customer. These Terms supersede any prior written or oral agreement, understanding, representation or promise and any pre-printed or standard terms and conditions contained in Customer's request for quote, purchase order, invoice, order acknowledgement or similar document. These Terms may not be amended, supplemented, changed or modified except by concurrent or subsequent written agreement signed by an authorized representative of both Smith Pump Company ("SPCO") and Customer. SPCO's acknowledgement of Customer's purchase order shall not constitute acceptance of any terms or conditions contained therein which are in any way inconsistent with the Terms. Any additional or different terms or conditions included in any acceptance of this quotation are expressly disclaimed and rejected in advance, and unless there is prior mutual agreement otherwise, shall not become a part of any contract resulting from this quotation.

2. **Price** – Unless otherwise stated in this quotation, all prices are FOB shipping point. All transportation, insurance and similar charges incident to delivery shall be borne by the customer. Shipping dates are approximate and are based on prompt receipt of all necessary information. In the case of delay in furnishing complete information to SPCO, dates of shipment may be extended for a reasonable time. In the event SPCO provides transport services, these will be quoted as a lump sum price based on destination and shipping mode.

In the event Customer requests a delay or suspension in the completion and/or shipment of equipment or services covered by this quotation, or any part thereof, for any reason, the parties shall agree upon any cost and/or scheduling impact of such delay and all such costs to Customer's account. Any delay period beyond thirty (30) days after original scheduled shipment date shall require Customer to (i) take title and risk of loss of any equipment covered by this quotation, and (ii) make arrangements for the storage of such equipment with SPCO or other party. SPCO's invoice, which is contractually based on shipment, shall be issued upon SPCO's readiness to ship the equipment covered by this quotation.

SPCO shall not be liable for delay and delivery due to causes beyond its reasonable control including, but not limited to, acts of God, acts of government, acts of Customer, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, terrorism, riot, civil or military authority, freight embargos, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of the delay.

3. **Warranty** – SPCO warrants new equipment or parts to be free from defects in materials and workmanship for a period of eighteen (18) months from the date of shipment or twelve (12) months from the date of startup or initial use, whichever comes first. SPCO SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR LIQUIDATED DAMAGES. NO EXPRESSED OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. Repairs performed by SPCO are warranted against defects in workmanship and/or materials for a period of twelve (12) months from the date of shipment. SPCO will not be responsible for any removal or reinstallation charges or transportation charges in cases where equipment has failed under these warranty conditions. SPCO's sole obligation and Customer's sole remedy under this warranty is repair or replacement at SPCO's election. Customer agrees to provide SPCO reasonable and clear access to any equipment covered by this warranty which may include removal of materials or structures as well as supplying any equipment, materials or structures which are necessary to provide reasonable access to the equipment being repaired or replaced. Costs to remove and/or reinstall equipment for warranty purposes shall be the responsibility of Customer.

Replacement parts or repairs furnished under this warranty shall be subject to warranty provisions herein for the remaining warranty period. All equipment repaired or replaced will be re-warranted only for the remainder of the original warranty period. SPCO does not warrant the equipment covered by this quotation or any repair/replacement part against the effects of erosion, corrosion, or normal wear and tear due to operation or the environment. The warranty and remedies set forth herein are conditioned upon proper storage, installation, use and maintenance of the equipment covered by this quotation in all material respects, and in accordance with SPCO's written recommendations. Customer must notify SPCO in writing of any warranty claim during the warranty period or within thirty (30) days thereafter.

SPCO will not be liable under this warranty if warranted goods have been exposed or subjected to any (1) maintenance, repair, installation, handling, packaging, transportation, storage, operation, or use which is improper or otherwise not in compliance with SPCO's instructions, (2) alteration, modification or repair by anyone other than SPCO or those specifically authorized by SPCO, (3) accident, contamination, foreign object damage, abuse, neglect, or negligence after shipment to Customer, (4) damage caused by failure of an SPCO supplied product not under warranty or by any hardware or software not supplied by SPCO, (5) use of counterfeit or replacement parts that are not manufactured by the manufacturer of goods provided by SPCO or approved by SPCO for use in goods provided by SPCO, or (6) goods which are normally consumed in operation or which have normal life inherently shorter than the warranty period including, but not limited to, consumables (e.g. lamps, batteries, storage capacitors).

## Exhibit "A"



**SMITH  
PUMP  
COMPANY, INC.**

**Remit to .....: 3500 Comsouth Dr. Bldg. 4, Ste 500  
Austin, TX 78744**

**Phone .....: (512) 310-1480  
Fax .....: (512) 310-1417**

**Bill to : City of Round Rock  
apinvoices@roundrocktexas.gov  
221 East Main  
Round Rock, TX 78664**

## QUOTATION

**Contact : Mark Hurd  
Phone : 512 218 5433  
Fax : 512 218 7097**

**Ship to : City of Round Rock - Raw Water Intake Station  
2050 Cedar Breaks Rd.  
Georgetown, TX 78628**

**Contact : Mark Hurd  
Phone : 512 341 3155  
Fax : 512 218 7097**

4. **Payment** – All prices are net cash to be paid thirty (30) days after date of invoice. Customer agrees to make payment within that period. Discounts will apply only as stated on the invoice. Invoices unpaid for thirty (30) days after issuance shall bear interest at the highest lawful rate due and payable on any invoiced account, which is delinquent and not paid within the stated terms. Should Customer for any reason fail to pay in accordance with these terms, Customer agrees to pay all collection costs, attorney's fees and expenses incurred in collecting payment.  
If Customer's financial condition is or becomes unsatisfactory to SPCO, SPCO reserves the right to (a) require payment from Customer on a cash in advance basis, (b) require a letter of credit or other acceptable security before shipment, (c) cancel shipment at any time prior to delivery without further obligation or liability on SPCO's part, (d) terminate any contract or obligation on the part of SPCO, or (e) require other special payment terms acceptable to SPCO to assure payment. All extensions of credit are subject to the approval of SPCO's credit department and management.
5. **Joint Check Agreement**– If Customer fails to pay laborers and materialmen within thirty (30) days after payment by SPCO, SPCO will have the right to make future payments by check payable jointly to Customer and laborers or materialmen to the extent of unpaid indebtedness arising out of the job. SPCO will credit joint checks against the contract sum on the next payment application.
6. **Taxes** – The amount of all federal, state or local taxes applicable to the sale, use, delivery or transportation of the equipment or services sold hereunder and all duties, imports, tariffs, and other similar levies shall be added to the contract price and paid by the Customer except where the Customer shall furnish an appropriate certificate of exemption.
7. **Property Damage** – SPCO shall not be responsible for damage to topsoil or groundcover in connection with the work or service performed under this contract. SPCO shall not be responsible for claims arising from the pumping of water onto the ground which is necessary in connection with the service or work provided by SPCO. The customer agrees to hold SPCO harmless from claims arising out of damage caused by the pumping of water onto the ground.
8. **Startup** – If the equipment supplied pursuant to this quotation has a warranty requirement, qualified SPCO personnel must be present during the initial equipment startup and commissioning. Failure to request and assure the presence of qualified SPCO personnel will void any warranty herein. Requests for startup must occur at least seven (7) days prior to the scheduled date of the startup.
9. **Limitation of Liability** – The remedies set forth herein are exclusive and the total liability of SPCO with respect to this quotation, and any contract for goods or services arising from this quotation, or for any breach thereof, whether based on contract, warranty, torts (including negligence), indemnity, strict liability or otherwise, shall not exceed the quotation or sales price of the specific equipment or service which gives rise to the claim.
10. **Setoff** – All amounts that Customer owes SPCO under this quotation shall be due and payable in accordance with the terms of the quotation. Customer shall not setoff such amounts or any portion thereof, whether or not liquidated, against sums which Customer asserts are due to it, its parent, affiliates, subsidiaries or other division under other transactions with SPCO.
11. **Customer Cancellation** – Customer may cancel this order only upon written notice and payment to SPCO of reasonable and proper cancellation charges. In the event of cancellation, Customer must pay for all material, expense and labor costs incurred by SPCO in connection with the materials and services to be provided pursuant to this quotation, as well as all expenses relating to any specially fabricated materials and restocking charges.
12. **Assignment** – Neither party may assign this order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld.
13. **Waiver/Severability** – Failure by SPCO to assert all or any of its rights upon any breach by Customer shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment. No waiver of any right shall extend to or affect any other right Customer may possess nor shall such waiver extend to any subsequent similar or dissimilar breach.  
If any portion of these Terms are determined to be illegal, invalid or unenforceable for any reason, such provision shall be deemed stricken for the purposes of the dispute in question and all other provisions shall remain in full force and effect.

Exhibit "A"



**SMITH  
PUMP  
COMPANY, INC.**

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2050 Cedar Breaks Rd.  
Georgetown, TX 78628**

Contact : Mark Hurd  
Phone : 512 341 3155  
Fax ....: 512 218 7097

14. Applicable Law – The contract involving the sale of the equipment and services covered by this quotation shall be interpreted in accordance with the laws of the State of Texas. This contract is performable in McLennan County, Texas and venue for any court action in any way relating to or arising out of this contract shall be McLennan County, Texas.

ACCEPTED BY:  
COMPANY NAME: \_\_\_\_\_

PROJECT REFERENCE: \_\_\_\_\_

SIGNED ON DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_