



**CENTRAL TEXAS
Regional Mobility Authority**

Meeting Date: September 30, 2015
AGENDA ITEM # 3

Approve a contract with Nortex Concrete Lift & Stabilization, Inc., under the state purchasing program of the Texas Comptroller to provide pavement maintenance services as needed

Strategic Plan Relevance: Regional Mobility
Department: Engineering
Contact: Wesley M. Burford, P.E., Director of Engineering
Associated Costs: Not to exceed \$100,000
Funding Source: Operating Fund
Action Requested: Consider and act on draft resolution

Summary:

This action approves entering into an agreement with Nortex Concrete Lift & Stabilization, Inc., under the state purchasing program of the Texas Comptroller of Public Accounts. Nortex provides concrete slab lifting and stabilization services through a foam injection method to correct ride quality on Mobility Authority roadways. Services under the contract will be provided as may be needed from time-to-time.

Prices for goods and services offered under the state purchasing program are competitively bid. Traffic control costs for this work are subsidiary to the item and are included in the price per unit. A two-year workmanship and a ten-year materials warranty are included as part of the contract associated with a purchase order.

Section 401.011 of the Policy Code provides that a purchase made through the purchasing program established by the Texas Comptroller satisfies procurement requirements and is exempt from any other procurement requirements in the Policy Code.

Backup provided: Copy of the Nortex state contract
Draft Resolution

**STATE OF TEXAS
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)**

THIS CONTRACT is by and between the TEXAS COMPTROLLER OF PUBLIC ACCOUNTS ("CPA"), with offices in the LBJ State Office Building, 111 E. 17th Street, Austin, Texas 78774 and: Nortex Concrete Lift + Stabilization, Inc. ("Contractor") with its principal place of business at the following address:

201 NW 26TH St. Fort Worth, TX 76164

This Contract is effective as of the date of signature by CPA after having first been signed by Contractor.

1. BACKGROUND

The Contractor has entered into a contract with the federal government or other governmental entity that was awarded using a competitive process ("Base Contract"). CPA has determined that the Base Contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Base Contract as a basis for a state multiple award schedule contract with the Contractor pursuant to Texas Government Code, Section 2155.501 et seq. This state multiple award schedule contract ("Contract") establishes terms and conditions under which state agencies or local governments ("Customers") may acquire the Contractor's goods or services, but it in no manner obligates any Customer to do so.

TERMS & CONDITIONS

2. BASE CONTRACT

- (a) This Contract consists of the terms of the Base Contract, as amended by this Contract (see Paragraph below entitled "ENTIRE AGREEMENT"), and identified as:

Base Contract Number: 15-6271

Governmental Entity that Awarded the Base Contract:
City of Kenner, LA

The Base Contract consists of all the documents and materials incorporated in that agreement with the entity that awarded the Base Contract. Those documents include, but are not limited to, all amendments and any authorized price list.

- (b) Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of the Base Contract contracting process are also included. This includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Base Contract, including, as applicable, all Federal Acquisition

Regulation (FAR), Defense Federal Acquisition Regulation (DFAR), Federal Information Processing Standards Publication (FIPS PUB), Federal Standards (FED-STD) and United States Code (USC) provisions, and any other applicable law or rule governing the contract relationship. By way of example, if the Base Contract is with the United States General Services Administration ("GSA"), such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among others.

- (c) Prices reflected on the Base Contract are maximum prices. A Customer may negotiate a lower price for goods and services than that listed on the Base Contract.

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. The 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

The 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. The 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 (Texas state agencies and local governments) under this Contract.

5. FUTURE NOTICE

The Contractor acknowledges that any continuing obligation to notify the awarding entity under the Base Contract of changes affecting the Base Contract, including by way of example only, notices required under any price reduction provisions of the Base Contract, imposes under this Contract a corresponding continuing obligation to notify CPA. Additionally, the Contractor agrees to notify CPA within thirty (30) calendar days of all changes in the status of or amendments to the Base Contract.

6. PARTIES TO THIS CONTRACT

- (a) For purposes of this Contract, all rights and obligations of the Contractor and the awarding entity under the Base Contract will be rights and obligations of the 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 under this Contract, but may, as a State Agency, also be a Customer under this Contract.
- (b) This Contract may be relied on by any "State Agency" as defined under §2151.002, Texas Government Code or any "Local Government" as defined under §271.101, Texas Local Government Code ("Customers"). 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 the Contractor and the Local Government. The Contractor will look solely to the Local Government for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Local Government.

- (c) Nothing in this Contract requires the Contractor to accept an order from a Local Government where the Contractor reasonably believes that the Local Government is or will be unable to perform its obligations in relation to that order.
- (d) 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 Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Contract.

7. SPECIFIC CHANGES TO PROVISIONS INCLUDED IN THE BASE CONTRACT

In addition to all other provisions in this Contract that constitute changes or modifications to the Base Contract, Contractor agrees to the following provisions, notwithstanding anything to the contrary contained in the Base Contract:

- (a) All equipment will be new and all replacement parts will be new.
- (b) The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.
- (c) Payments and invoicing will be in accordance with the terms discussed under the provisions in this Contract entitled "PAYMENT; TRAVEL EXPENSES" and "INVOICE REQUIREMENTS."
- (d) All shipping of equipment under warranty for repairs will be at the Contractor's expense.
- (e) All references to hours of the day will be deemed to be references to Central Standard Time.
- (f) Neither the State of Texas, nor CPA, nor Customers will purchase goods or services for overseas delivery or provide the Contractor with overseas support.

- (g) If the Base Contract is a GSA contract, orders under this Contract are not orders under the GSA schedule program. Therefore, the federal supply schedules for blanket purchase agreements and contractor team arrangements are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a Customer may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the GSA contract schedule to the extent permitted by applicable laws, rules, and regulations. The purchase of incidental, off schedule items will be treated as an open market purchase and clearly labeled on the schedule purchase order as open market items.
- (h) Contractor is not authorized to sell under this Contract any services available on Contractor's Base Contract that are subject to Texas Government Code, Chapter 2254.

8. TXSMARTBUY

CPA operates an online ordering system, TxSmartBuy, for statewide contracts. A 1.5% administrative fee is charged on all orders. Contractor is authorized to charge up to 1.5228% to recover this charge. Contractor shall remit this administrative fee to CPA on a monthly basis, as invoiced. Contractor's TXMAS catalog will be exclusively accessed via TxSmartBuy.

- (a) The Contractor shall remit to the State of Texas a TxSmartBuy Administrative Fee. The current TxSmartBuy Administrative Fee is 1.5%; however, the TxSmartBuy Administrative Fee is subject to change at the sole discretion of CPA. Contractor will be provided written notice of any increase to the TxSmartBuy Administrative Fee. The TxSmartBuy Administrative Fee shall be remitted on a monthly basis, using the State of Texas Fiscal Calendar, which starts on September 1 and ends on August 31 of each year. The TxSmartBuy Administrative Fee will be for the amount of sales (based on item or service delivery date) under this Contract for the previous month and is due upon receipt of the invoice which will be emailed to the Contractor the following month.
- (b) 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, TPASS, P.O. Box 13106, Austin, TX 78711-3106.
- (c) The 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%. The sales rebate shall be remitted 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 item or service delivery date) under this Contract for the previous quarter and is due upon receipt of the invoice which will be emailed to the contractor the week following the end of the quarter.
- (d) 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, TPASS, Attn: Accounts Receivable, P.O. Box 13186, Austin, TX 78711-3186.

- (e) The Contractor shall also submit a final closeout report within one hundred and twenty (120) calendar days after the expiration or termination of this Contract. This Contract shall expire upon the physical completion of the last outstanding task or delivery of the final order under this Contract.

9. DEALERS

- (a) Upon approval of CPA, the Contractor may designate one or more dealers to provide services under this Contract on behalf of the Contractor. To designate a dealer, the Contractor must provide a Letter of Authorization. The Contractor shall provide a separate Letter of Authorization for each designated dealer.
- (b) The Letter of Authorization must be submitted on the Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the Director of the Texas Procurement and Support Services Division at the address set forth in Paragraph below 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, the Contractor represents and warrants the following:
 - (1) The dealer has been given a copy of this Contract and the Base Contract, 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 the Contractor.
 - (2) The 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.
 - (3) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the 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 the Contractor, the Contractor will fully and unconditionally indemnify the State of Texas, CPA, and Customers for such liability.
 - (5) The Contractor's Letter of Authorization shall remain effective until CPA receives written notification from the Contractor, signed by an authorized representative of the 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 the 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 benefit of the

State of Texas, CPA, and Customers, as well as the Contractor. The Letter of Acceptance must also include the following information:

- (1) the dealer's name and address,
 - (2) the dealer's point of contact name, telephone number, fax number, and email address,
 - (3) the dealer's payment address,
 - (4) the dealer's purchase order email address
 - (5) the dealer's Federal Employer's Identification Number (FEIN),
 - (6) the dealer's completed W9, and
 - (7) the dealer's HUB Certificate, if the dealer is a Texas HUB.
- (d) Prior to CPA's approval of the Contractor's designated dealer, CPA will review the Letter of Authorization and the required documentation for compliance with this section and applicable state laws and regulations. If the submission of documentation is incomplete (i.e. does not include all required documentation), CPA reserves the right to reject the Letter of Authorization and require re-submission by the Contractor of the Letter of Authorization and all required documentation. Even if a submission is complete, CPA reserves the right to reject a Contractor's designation of a dealer to provide services under this Contract on behalf of the Contractor. Approval is at CPA's sole discretion.

10. POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

In accordance with Chapter 2161, Texas Government Code and 34 Texas Administrative Code (TAC) §20.10 et seq., state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services (including professional and consulting services), and commodities contracts.

Contractors are urged to utilize HUBs as defined in Texas Government Code, Section 2161.001 or small businesses as defined in Texas Government Code, Section 2155.505(a) to sell or provide services under the Base Contract. A Contractor's failure to make a good faith effort to use HUBs and small businesses under the Base Contract may result in exclusion of the Contractor from participation in TXMAS. A list of Certified Texas HUB Vendors can be accessed on CPA's website.

Contractor certifies the following:

- YES NO
1. Contractor is a HUB as defined in Texas Government Code, Section 2161.001 or a small business as defined in Texas Government Code, Section 2155.505(a).
- YES NO
2. Contractor is using HUBs as defined in Texas Government Code, Section 2161.001 or small businesses as defined in Texas Government Code, Section 2155.505(a) to sell or provide a service under the Base Contract.

YES NO

3. Contractor has and will continue to make a good faith effort to use HUBs as defined in Texas Government Code, Section 2161.001 or small businesses as defined in Texas Government Code, Section 2155.505(a) to sell or provide a service under the Base Contract.

11. LIMITATION ON AUTHORITY; LIMITATION OF LIABILITY

Contractor shall have no authority to act for or on behalf of the State of Texas, CPA, or Customers except as expressly provided for in this Contract; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas, CPA, or Customers.

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL THE STATE OF TEXAS, CPA, OR CUSTOMERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

12. PAYMENT; TRAVEL EXPENSES

- (a) Payment shall be made in accordance with Chapter 2251, Texas Government Code.
- (b) Except as provided for in Texas Government Code, §2251.021(b), 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 contact is completed
- (c) Except as provided for in §2251.021(b), 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 the Contractor to perform its obligations under this Contract and the Base Contract will be at the Contractor's expense. All travel and per diem that a Customer requests in addition to what this Contract or the Base Contract requires the Contractor to provide at the 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, the 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 the Contractor as designated in this Contract.
 - (2) The Contractor's Federal Employer's ID Number (FEIN) as designated in this Contract.
 - (3) The 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 the 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, the 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 the Contractor's information.

- (c) If an invoice does not meet this section's requirements or if the Contractor fails to give proper notice of a price increase (see Paragraph below entitled "NOTIFICATION OF PRICE INCREASE"), CPA will send the 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 the 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 §2262.154, Texas Gov't Code, the State Auditor's Office, or successor agency, may conduct an audit or investigation of the 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 the 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, the 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 §2262.154. **The Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the 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). The Contractor must give these notices no later than thirty (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. Contractor acknowledges that the ability of CPA and the Customers to make payments under this Contract is contingent upon the continued availability of funds. The 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. The 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 the Contractor of any such Contract or order termination. In the event of such a termination, the 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 the 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, Gov't Code, as are other potential Customers of this Contract. The Base Contract and other information submitted to the CPA by the 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 the Contractor to include proprietary or otherwise confidential information in its submitted information, the 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 the Contractor to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by the Contractor as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA and the 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 §2252.907(d), Gov't 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 the 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. The Contractor shall 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 the Contractor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

19. RECORDS RETENTION

The 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. The Contractor shall retain all such records for a period of four (4) 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. The 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

The 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. The 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.

The 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. The Contractor shall furnish proof of insurance upon request of a Customer or the CPA.

21. LIABILITY FOR AND PAYMENT OF TAXES

The CPA and certain Customers are exempt from certain taxes. Customers will furnish proof of tax exempt status to the Respondent upon request. Contractor shall pay all taxes resulting from this Contract and the Base Contract including, but not limited to, any federal, state, or local income, sales, excise, or property taxes. The State of Texas, CPA, and Customers shall not be liable to 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 and Contractor's invoice shall not include any amount for such taxes.

22. TERMINATION

This Contract shall become effective on the date signed by the appropriate official of CPA and, unless otherwise sooner terminated as provided in this Contract, shall terminate upon 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 accordance with all requirements of this Contract and the Base Contract, up to the termination date.

(a) 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) Cause/Default

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) 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.

(e) 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.

(f) 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.

23. AUTOMATIC EXTENSION/RENEWAL

This contract is extended/renewed on the date that the Base Contract is renewed. However, in order for CPA to facilitate the renewal, Contractor must furnish CPA with the necessary supporting documentation. All terms and conditions of this Contract will continue and apply to all extension/renewal periods unless modified in writing by mutual agreement of CPA and Contractor.

24. DELIVERIES

Unless stated otherwise in the Base Contract, all deliveries will 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.

25. EQUAL EMPLOYMENT OPPORTUNITY

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

26. DRUG FREE WORKPLACE

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

27. AMERICANS WITH DISABILITIES ACT

Contractor shall comply with the requirements of the Americans with Disabilities Act.

28. CIVIL RIGHTS

Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor.

29. IMMIGRATION

Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

30. U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- (a) All persons employed to perform duties within Texas, during the term of this Contract; and
- (b) All persons (including subcontractors) assigned by Contractor to perform work pursuant to this Contract, within the United States of America.

If this certification is falsely made, this Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. Contractor shall also be

responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

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 the 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 the Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

(iii) If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

(c). Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

(i) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, CPA, AND/OR THE CUSTOMER SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

(ii) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. 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. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

32. ADDITIONAL CONTRACTOR CERTIFICATIONS

- (a) The Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or the Base Contract.
- (b) Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business during the procurement process. The Contractor hereby assigns to the State of Texas all of Contractor's rights, title and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this Contract.
- (c) The Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that the Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.
- (d) Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to §231.006, Texas Government Code, must provide names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the application for inclusion in the TXMAS program. This information must be provided to CPA in writing signed by Contractor's duly authorized representative prior to execution of this Contract. By submission of this Contract signed by Contractor without submission of required identity disclosures pursuant to §231.006(d), Texas Family Code, constitutes a certification by Contractor that no individual or sole proprietor or partner, shareholder, or owner has an ownership interest of at least 25% of the business entity identified as the Contractor.
- (e) Pursuant to §2155.004(a), Texas Government Code, the Contractor certifies that neither it nor any person or entity which will participate financially in the Contract has received

compensation for participation in the preparation of specifications for this Contract. Under §2155.004, Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and/or payment withheld if this certification is inaccurate.

- (f) The Contractor acknowledges and agrees that, to the extent the Contractor owes any debt, including but not limited to delinquent taxes or child support to the State of Texas, any payments or other amounts the Contractor is otherwise owed under or related to any order resulting from this Contract may be applied by CPA toward any debt the Contractor owes the State of Texas until the debt is paid in full. These provisions are effective at any time the Contractor owes any such debt or delinquency. Contractor shall comply with all applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- (g) 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.
- (h) To the extent applicable, in accordance with §2155.4441, Texas Government Code, the 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.
- (i) The Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that the Contractor entering into this Contract will not reasonably create an appearance of impropriety.
- (j) The Contractor certifies that payment to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Texas Government Code.
- (k) Under §2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by §39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by §39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after

September 24, 2005. Under §2155.006, Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract and any order resulting from this Contract may be terminated and payment withheld if this certification is inaccurate.

- (l) 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.
- (m) 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 Texas Government Code, §2155.502 and all other applicable laws, rules, and regulations.
- (n) The Contractor agrees that all affirmations and certifications in this Contract apply to and are for the benefit of Customers. Furthermore, the Contractor agrees that by accepting an order under this Contract, the Contractor certifies to the Customer that the all affirmations and certifications are true and correct.

If any Contractor certification in this Contract or the Base Contract is untrue, CPA shall have the right to cancel this Contract in its entirety.

33. NO DEBT AGAINST THE STATE

This Contract shall not be construed as creating any debt by or on behalf of the State of Texas.

34. APPLICABLE LAWS, PERMITS, AND LICENSES

Contractor shall abide by all applicable laws, rules, and regulations and shall be responsible, at Contractor's expense, for obtaining any and all permits and licenses required by city, county, state, federal, or other applicable rules, regulations, law, or codes that pertain to the Contract.

35. COOPERATION

Contractor must ensure that it cooperates with CPA and other local, state, or federal administrative agencies, at no charge to the State of Texas, CPA, or Customers for purposes relating to the administration of this Contract. Contractor agrees to reasonably cooperate with and work with CPA's contractors, subcontractors, and third party representatives as requested by CPA.

36. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES

Contractor shall not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from CPA.

Contractor must provide CPA with written notification of all name changes and organizational changes relating to Contractor no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name (if applicable), provide the new Tax Identification Number (if applicable), and describe how the change will impact its ability to perform this Contract. If the change entails personnel changes for personnel performing the responsibilities of this Contract for Contractor, Contractor shall identify the new personnel. CPA may request other information about the change and its impact on this Contract and Contractor shall supply the requested information within five (5) working days of receipt of CPA's request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor, to maintain its status as a party to this Contract.

CPA may terminate this Contract due to any change to Contractor that materially alters Contractor's ability to perform under this Contract. The CPA has the sole discretion to determine if termination is appropriate. CPA may also, in its sole discretion, terminate this Contract for failure to provide notice or documentation or obtain approval as required in this Contract.

37. PUBLICITY

News releases pertaining to this Contract and advertisements, publications, declarations and any other pronouncements by Contractor using any means or media mentioning the State of Texas or CPA or a Customer must be approved in writing by the State of Texas, CPA, or the Customer, as applicable, prior to public dissemination. Contractor may not send out unsolicited electronic mail or facsimile transmissions to CPA or Customers without prior written approval of CPA, regardless of whether the proposed communication specifically references this Contract.

38. NOTICES

Any written notices required under this Contract shall be sent to the party at the respective address indicated below:

- (a) The address for the Contractor shall be the address specified on Page 1 of this Contract.
- (b) The address for CPA shall be as follows:

for hand delivery:

Texas Comptroller of Public Accounts
Attn: Director of Texas Procurement and Support Services Division
1711 San Jacinto Blvd., 3rd Floor
Austin, TX 78701

for U.S. mail:

Texas Comptroller of Public Accounts
Attn: Director of Texas Procurement and Support Services Division
P.O. Box 13186
Austin, TX 78711-3186

Notices will be by either hand delivery or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. The Contractor and CPA agree that either party may change the designated notice address in this Paragraph by written notification to the other party.

39. DISPUTE RESOLUTION

Disputes under this Contract and, by virtue of this Contract, the Base Contract, are subject to Chapter 2260, Texas Government Code as set forth below. Set forth below are terms and conditions for dispute resolution relating to claims involving Contractor and CPA. Except as otherwise provided by law or applicable rules, the same terms and conditions in this section shall apply to claims involving Contractor and any other Customer subject to Chapter 2260, Texas Government Code, substituting such other Customer for "CPA" when referenced below in this section.

The dispute resolution process provided for in Texas Government Code, Chapter 2260 and applicable CPA rules shall be used by CPA and Contractor to resolve any dispute arising under this Contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by the Contractor under this Contract. If the Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to 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 the 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 the 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, 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 the 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 the

Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. The 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 the 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 the 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, the 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, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of §2251.051, Gov't 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.

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, the 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 even 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.

47. CONTRACTOR INFORMATION

Name of Contractor's Representative / Point of Contact: Casey DeRosa
Mailing Address (Street): 201 NW 26TH ST
(City, State, Zip Code): Fort Worth, TX 76164
Telephone Number (with area code): (817) 831-1240

Corporate/Business address: 201 NW 26TH ST
Mailing Address (Street): " " " "
(City, State, Zip Code): Fort Worth, TX 76164

Purchase Orders will be sent to following email address: Casey@franklinfoam.com


TxSmartBuy Admin Fee and TXMAS Sales Rebate Invoices will be sent to the following email address: Casey@franklinfoam.com

Contractor's Federal Employer's ID Number (XX-XXXXXXX): 20-0291992

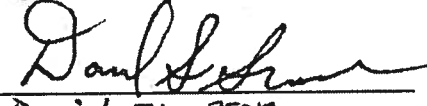
SIGNATORIES

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective counterparts. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

By: 
Mike R. Jessig
Deputy Comptroller
Date: 8/25/15

CONTRACTOR

By: 
Name: David Simpson
Title: General Manager
Date: 7/23/15

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 15-___

**APPROVING A CONTRACT WITH NORTEX CONCRETE LIFT & STABILIZATION,
INC., UNDER THE STATE PURCHASING PROGRAM OF THE TEXAS
COMPTROLLER TO PROVIDE PAVEMENT MAINTENANCE SERVICES AS
NEEDED.**

WHEREAS, Section 401.011 of the Policy Code provides that a purchase made through the purchasing program established by the Texas Comptroller satisfies the Mobility Authority's procurement requirements and is exempt from any other procurement requirements in the Policy Code; and

WHEREAS, from time to time the Mobility Authority requires pavement maintenance services, including concrete slab lifting and stabilization, to correct ride quality on Mobility Authority roadways; and

WHEREAS, these necessary pavement maintenance services are offered and available to the Mobility Authority through under the state purchasing program of the Texas Comptroller of Public Accounts through Nortex Concrete Lift & Stabilization, Inc.; and

WHEREAS, the Executive Director recommends Board approval of a contract for pavement maintenance services with Nortex Concrete Lift & Stabilization, Inc., through the state purchasing program.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves a contract with Nortex Concrete Lift & Stabilization, Inc., for pavement maintenance services through the state purchasing program in an amount not to exceed \$100,000; and

BE IT FURTHER RESOLVED that the Board authorizes the Executive Director to execute the contract with Nortex Concrete Lift & Stabilization, Inc., and all related documents required to comply with the purchasing program established by the Texas Comptroller.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of September, 2015.

Submitted and reviewed by:

Approved:

Andrew Martin, General Counsel

Ray A. Wilkerson
Chairman, Board of Directors