



Amendment No. 2  
to  
Contract No. NC160000006  
for  
Repairs & Maintenance  
Gas Chromatograph (SN CN1327014) &  
Headspace Sample (SN CN13270012)  
between  
Full Spectrum Analytics, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be October 1, 2017 through September 30, 2017. Two options will remain.
- 2.0 The total contract amount is increased by \$3,708.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 10/01/2015 – 09/30/2016	\$3,708.00	\$3,708.00
Amendment No. 1: Option 1 – Extension 10/01/2016 – 09/30/2017	\$3,708.00	\$7,416.00
Amendment No. 2: Option 2 – Extension 10/01/2017 – 09/30/2018	\$3,708.00	\$11,124.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Printed Name: JOHN A. MARTIN  
Authorized Representative

Full Spectrum Analytics, Inc.  
1554 North Case Street  
Orange, California 92867  
(714) 279-3999  
[jmartin@fsaservice.com](mailto:jmartin@fsaservice.com)

Sign/Date:

~~Linell Goodin-Brown~~  
~~Contract Compliance Supervisor~~  
City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701

Mike Zambrano, Jr.  
Contract Management  
Specialist III



## **M E M O R A N D U M**

**City of Austin  
Financial Services Department  
Purchasing Office**

**DATE:** March 3, 2017  
**TO:** Memo to File  
**FROM:** Erin D'Vincent, Senior Buyer Specialist  
**RE:** MA 8700 NC160000006

This Master Agreement was awarded based off of TXMAS contract 12-66060 with Full Spectrum Analytics. Due to lack of sales, TXMAS decided to end this contract in February 2017. This contract will continue until City of Austin expiration based on the survivability clause within the TXMAS contract (currently located on page 151 of the EDIMS contract).

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

**19. TERMINATION; SURVIVAL:**

The State or the Contractor may cancel this Contract, in whole or in part, without cause on thirty (30) calendar day's written notice. The Contract shall terminate upon later to occur of (1) the expiration of the Contractor's Federal Schedule Contract or (2) the physical completion of the last outstanding task or delivery of the final order under the Contract. All applicable service agreements that were entered into between the Contractor and the ordering entity under the terms and conditions of the Contract shall survive the cancellation or termination of the Contract.

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")  
AND  
Full Spectrum Analytics, Inc. ("Contractor")  
for  
Repairs and Preventative Maintenance for Gas Chromatograph and Headspace Sample  
for the Austin Police Department**

This Contract is between Full Spectrum Analytics, Inc. having offices at 1252 Quarry Lane, Pleasanton, CA 94566 and the City, a home-rule municipality incorporated by the State of Texas, and is effective on October 1, 2015. Solicitation requirements are met by using Contractor's Texas Multiple Award Schedule (TXMAS) Contract No. 12-66060.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 TXMAS Contract Number: TXMAS-12-66060 including any and all supporting schedules
- 1.1.2 This Contract
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, Full Spectrum Analytics' Quotation and Service Agreement Terms and Conditions, dated September 17, 2015, including subsequent clarifications

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 TXMAS Contract Number: TXMAS-12-66060 as referenced in Section 1.1.1
- 1.2.2 This Contract
- 1.2.3 Supplemental Terms as referenced in Section 1.1.3
- 1.2.4 The Contractor's Quotation and Service Agreement Terms and Conditions as referenced in Section 1.1.4, including subsequent clarifications

**1.3 Quantity.** Quantity of goods or services as described in Exhibit B.

**1.4 Term of Contract.** The Contract shall become effective on October 1, 2015 and remain in effect for twelve (12) months, and thereafter may be renewed for four (4) twelve (12) month extension options subject to the approval of the Purchasing Officer or his designee and the Contractor. In no event shall the Contract Term extend beyond the cooperative agreement end date of July 31, 2018.

**1.5 Compensation.** The Contractor shall be paid as indicated in Exhibit B upon delivery of the goods and services a total not-to-exceed contract amount of \$3,708.00 for the initial contract term, and a total not-to-exceed amount of \$3,708.00 for each extension option for a total contract amount of \$18,540.00.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**FULL SPECTRUM ANALYTICS, INC.**

JOHN A. MARTIN

Printed Name of Authorized Person

John A. Martin

Signature

VICE PRESIDENT

Title:

10/5/2015

Date:

**CITY OF AUSTIN**

Erin Vincent

Printed Name of Authorized Person

Erin Vincent

Signature

Senior Buyer Specialist

Title:

10.8.15

Date:

Exhibit A - Supplemental Terms

Exhibit B - Full Spectrum Analytics, Inc.'s. Quotation and Service Agreement Terms and Conditions dated September 17, 2015

Exhibit C - City's Non-Discrimination Certificate



Amendment No. 1  
to  
Contract No. NC160000006  
for  
Repairs & Maintenance  
Gas Chromatograph (SN CN1327014) &  
Headspace Sample (SN CN13270012)  
between  
Full Spectrum Analytics, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective October 01, 2016 through September 30, 2017. Three options will remain.
- 2.0 The total contract amount is increased by \$3,708.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
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Amendment No. 1: Option 1 – Extension 10/01/2016 – 09/30/2017	\$3,708.00	\$7,416.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

John A. Martin 9/8/16  
Printed Name: John A. Martin  
Authorized Representative  
Full Spectrum Analytics, Inc.  
1554 North Case Street  
Orange, California 92867  
[jmartin@fsaservice.com](mailto:jmartin@fsaservice.com)  
714-279-3999

Sign/Date:

Joe Barrios  
Joe Barrios  
Contract Compliance Specialist Senior  
City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



**EXHIBIT A  
SUPPLEMENTAL TERMS**

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Eileen Ouellet; Phone: (800)795-6357; Email: EOuellet@fsaservice.com. The City's Contract Manager for the engagement shall be Alberto Banda; Phone: (512) 974-5273; Email: Alberto.Banda@austintexas.gov.

2. **Invoices/Payment.**

2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the address in which the deliverables were accepted by the City, or the City Department that created the Purchase Order.

2.1.1 Federal Excise Taxes, State taxes, or City sales tax must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3. **Payment.**

3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.1 delivery of defective or non-conforming services by the Contractor;

3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.7 failure of the Contractor to comply with any material provision of the Contract.

3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

4. **Contractor To Package Deliverables:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
5. **Shipment Under Reservation Prohibited:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
6. **Title & Risk of Loss:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
7. **Right Of Inspection And Rejection:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **No Replacement Of Defective Tender:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **Special Tools & Test Equipment:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.
10. **Right To Audit.**
- 10.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- 10.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.
11. **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:  
City of Austin, Purchasing Office  
ATTN: Contract Administrator  
P O Box 1088  
Austin, TX 78767

To the Contractor:  
Full Spectrum Analytics, Inc.  
ATTN: Eileen Ouellet  
1252 Quarry Lane  
Pleasanton, CA 94566

12. **Termination For Cause:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

13. **Termination Without Cause:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

14. **Insurance:** The following insurance requirement applies.

14.1 **General Requirements**

14.1.1. The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

14.1.1 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.

14.1.2 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

14.1.3 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

14.1.4 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

14.1.5 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.



14.1.6 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

14.1.7 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

14.1.8 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements herein, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

14.1.9 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

14.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

14.1.11 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

14.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

14.1.13 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

14.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

14.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

14.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

14.2.1.2 Contractor/Subcontracted Work.

14.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

14.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

14.2.2.5Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

14.2.2.6The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

- 14.3 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

14.3.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

14.3.1 Thirty (30) calendar days' Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

14.3.2 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

- 14.4 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

14.4.1 The Contractor's policy shall apply to the State of Texas.

14.4.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

14.4.3 Thirty (30) calendar days' Notice of Cancellation, Form WC 420601, or equivalent coverage.

- 14.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

15. **Equal Employment Opportunity:** No Contractor or Contractor's agent shall engage in any\ discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, or any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

16. **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program:**

16.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

16.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

16.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

17. **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty or removal fees charged to the City.

18 **Delivery Terms and Transportation Charges:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified. Unless otherwise stated, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Department".

19. **Warranty – Deliverables:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions of the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules and regulations, and industry codes and standards. Unless otherwise stated, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

19.1 Recycled Deliverables shall be clearly identified as such.

19.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

19.3 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of the acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

19.4 If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.

19.5 If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.



20. **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

20.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

20.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

20.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

21. **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by Contractor.

22. **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance when requested to do so by the City (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or any report or deliverable required to be submitted by the Contractor to the City.

23. **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending or the making of any determination with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold such amounts of the cost incurred by the Contractor in providing such gratuities.

24. **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for the employees of the City.



## EXHIBIT B



## QUOTATION

DATE	QUOTE#
9/17/2015	12342

Austin Police Department  
 812 Springdale Road Forensic Science Div  
 Austin, TX 78702  
 Attn: Albert Banda  
 alberto.banda@austintexas.gov

Full Spectrum Analytics, Inc.  
 1252 Quarry Lane  
 Pleasanton, CA 94566  
 Phone: 800-795-6357  
 Fax: 714-279-0506  
 Email:  
 equel@fsaservice.com

P.O. NO.		TERMS	REP	VALID FOR	QUOTATION TYPE	
P/N	DESCRIPTION			QTY	MO. AMT	ANNUAL AMT
	SERVICE AGREEMENT TXMAS# 12-66060					
AG-78905XXX-C1	Agilent 7890 (G3440, G3442) GC with single split/splitless inlet. S/N: CN13271014			12	84.00	1,008.00
AG-7697A-C1	Agilent 7697A Headspace Autosampler S/N: CN13270012			12	225.00	2,700.00
FS-CONT-01	SERVICE AGREEMENT INCLUDES: On-site response time within 48 hours Unlimited number of service calls All parts and labor Consumables as needed for repair Unlimited telephone technical support One (1) Preventive Maintenance visit per year, where applicable  BASE YEAR Annual Amount: \$3,708.00 Contract Term: 10/1/15 to 9/30/16  OPTION YEAR #1 Annual Amount: \$3,708.00 Contract Term: 10/1/16 to 9/30/17					
				TOTAL ANNUAL AMOUNT		

Page 1

Prepared by: Eileen Ouellet



## QUOTATION

DATE	QUOTE#
9/17/2015	12342

Austin Police Department  
812 Springdale Road Forensic Science Div  
Austin, TX 78702  
Attn: Albert Banda  
alberto.banda@austintexas.gov

Full Spectrum Analytics, Inc.  
1252 Quarry Lane  
Pleasanton, CA 94566  
Phone: 800-795-6357  
Fax: 714-279-0506  
Email:  
eoulet@fsaservice.com

P.O. NO.	TERMS	REP	VALID FOR	QUOTATION TYPE	
P/N	DESCRIPTION	QTY	MO. AMT	ANNUAL AMT	
	<p>OPTION YEAR #2 Annual Amount: \$3,708.00 Contract Term: 10/1/17 to 9/30/18</p> <p>OPTION YEAR #3 Annual Amount: \$3,708.00 Contract Term: 10/1/18 to 9/30/19</p> <p>OPTION YEAR #4 Annual Amount: \$3,708.00 Contract Term: 10/1/19 to 9/30/20</p>				
			TOTAL ANNUAL AMOUNT		\$3,708.00

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Prepared by: Eileen Ouellet



# Service Agreement Terms and Conditions Form

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Document No: Form 7.2.1-001

Document Name: Service Agreement Terms and Conditions Form

Revision: 3.0

Date Issued: 14NOV2014

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Document Title: <b>Service Agreement Terms and Conditions Form</b>	Document No: <b>FORM 7.2-1.001</b>	Revision: Date Issued: <b>3.0 14NOV2014</b>	Issued By: <b>Cindy Governor</b>
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### **Scope:**

- I. This Agreement is entered into and made effective as of the date set forth below, by and between Full Spectrum Analytics (FSA) and the party identified below.

### **Responsibilities of Full Spectrum Analytics:**

#### **I. ON-SITE SERVICE**

Unless otherwise stated, on-site response time will not be longer than 48-hours after a service call has been authorized by FSA. An FSA Representative may ask the analyst to try several troubleshooting techniques before opening a service call. The maximum telephone troubleshooting time is one full working day. On-site service calls and travel times are unlimited for as long as the account is kept current with FSA. A representative of the Customer's company must be on-site with the FSA Service Representative at all times. Laboratories located beyond 150 miles from FSA's service hub are subject to a 72 hour response time and extended travel charges.

FSA Service Hubs currently include:

California: Pleasanton, Los Angeles, San Diego  
Arizona: Phoenix, Tucson  
Texas: San Antonio, Houston  
New Jersey: Princeton  
Illinois: Chicago  
Maryland: Baltimore

Washington: Seattle  
Utah: Salt Lake City  
Colorado: Denver  
Pennsylvania: Philadelphia  
Massachusetts: Boston  
New York: New York City

#### **II. PARTS REPLACEMENT**

Service parts replacements are included in the price of the service agreement. FSA Service Representatives carry a complete line of parts for electronic, pneumatic, analytical and mechanical failures. If the required part is not in stock or available within FSA, a Company representative will place an order with the supplier and request next business day delivery. FSA reserves the right to use refurbished parts when available, necessary and applicable. Refurbished parts may include, but are not limited to; Mechanical Vacuum Pumps, Electronic Boards, Pneumatic Valves, Turbo Pumps and Controllers.

#### **III. CONSUMABLE PARTS**

FSA will not replace or repair any items considered to be consumable items, unless otherwise specified in the service agreement proposal. Examples are, but not limited to, GC injector liners, septa, columns, ferrules, glassware, needles, NPD beads, jets, traps, gas filters, electron multipliers, lamps, cells, filaments, dryers, and reaction tubes, Purge & Trap water management systems and analytical traps. Consumable parts for TOC analyzers are, but not limited to, peristaltic pump tubing, UV lamps, acid/oxidizer cartridges, glass fittings and glass assemblies.

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Document Title: <b>Service Agreement Terms and Conditions Form</b>	Document No: <b>FORM 7.2-1.001</b>	Revision: Date Issued: <b>3.0 14NOV2014</b>	Issued By: <b>Cindy Governor</b>
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Consumable parts for Dionex IC systems are, but not limited to, suppressors, column and eluant generator cartridges. Sciex/ABI MS consumable parts include PPG standards kit, o-rings, ferrules, TIS nozzle, TIS electrode, ionizer needle, and anti-static foam swabs. Customer Consumable items can be provided and installed on a time-and material basis.

Exceptions:

If you have purchased the Enhanced Service Package (along with a complete qualification program) your instrument support will include consumables during a routine preventative maintenance visit to your laboratory. The following is an example list of consumable items that will be replaced during a PM Service visit: Wear Retainers, Inlet Cap, Piston Seals, Needle Seats, Rotor Seals, Gaskets, Capillary Seat, Cell Springs, Needle Assemblies, Windows, Pistons, Valves, Seat Assemblies, Spacer FEP & Finger Caps. With the Enhanced Package the following lamps will be replaced once per year only: Deuterium, Xenon and Tungsten lamps.

It is highly recommended that PM visits coincide with Qualification visits in order to give the systems a much higher chance of passing Qualifications criteria.

#### IV. GOOD FAITH EFFORTS

FSA makes every effort to continue the repair and maintenance of instruments that have been deemed "obsolete" by the manufacturer. Over the years, FSA and manufacturers have been successful at utilizing alternate vendors for acquiring replacement parts and from instruments in inventory. Unfortunately, due to the age of some instruments, many parts become very scarce. Therefore, service agreement support for the following instruments will only be supplied on a "Good Faith Effort" basis: Tekmar LSC-2000, Autocan, Precept, 7000 Headspace, Varian 3400, 3800 GC, OI 1010 TOC, OI 4480 Purge & Trap, OI 5200, ELCD, HP/Agilent 1050/1090 HPLC, Agilent 4500 ICPMS, HP 7673A, HP 5971 and 5972 MSD, Sievers 800 TOC and Dionex DX 100/120. "Good Faith Effort" instrument list is subject to change and further additions.

HP 5971/5972 Analyzer Loaner Program: Due to the lack of availability of replacement parts for the Analyzer including the quadrupoles, FSA will retain ownership of all analyzers and quadrupoles that are replaced under this agreement. When the instrument is retired or taken off contract, FSA will return the original analyzer and reclaim the one that was installed into the Customer's instrument.

#### V. ENGINEERING UPGRADES

Engineering upgrades offered by the manufacturer may enhance the performance of certain instruments. If the original manufacturer offers these upgrade at no cost, FSA will install them onto systems covered by this agreement at no cost as long as there are no acquisition cost or other extended cost to FSA. If the upgrade is not free of cost from the manufacturer, and if the Customer would like to upgrade the instrument, the Customer will be responsible for purchasing the upgrade kit and contracting FSA for the installation service on a time and materials basis. Other components that may be upgraded such as software, computers and monitors will be paid for by the Customer.

FSA will replace items such as computers, printers, monitors and re-install software with same generation of systems if replacements are necessary and are part of the original contract agreement.

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Document Title	Document No.	Revision, Date Issued	Issued By
<b>Service Agreement Terms and Conditions Form</b>	<b>FORM 7.2-1.001</b>	<b>3.0 14NOV2014</b>	<b>Cindy Governor</b>

If system upgrades are required due to obsolescence or availability of certain parts, i.e., upgrading to a larger turbo or mechanical pump, FSA may, at its own discretion, may cover the upgrade, but only that portion of the obsolete part that needs to be replaced. FSA will also cover all the labor costs associated with the replacement of these parts.

#### VI. PERIOD OF COVERAGE

Telephone Technical Support and On-Site Service Calls are provided Monday through Friday between business hours of 8:00 a.m. to 5:00 p.m. local standard time, excluding National and FSA Holidays. Telephone support is limited to the above coverage period and to equipment listed on the service agreement.

#### VII. MISUSE AND CONTAMINATION

Instrumentation failure due to operator misuse, sample contamination or damage from repairs performed by any other party other than an FSA Representative is not covered under this service agreement. Instrument malfunctions that are a result of power failures, poor environmental controls, facility supply contamination, sample foam-over or analytical breakdown due to active sites not covered under this agreement. Examples are, but not limited to, the loss of 2-Chloroethyl-vinyl-ether, breakdown of Endrin or DDT and low recoveries of target compounds and poor analytical results as a result of a contaminated or failed system. FSA will be available for telephone technical support if an instrument has been contaminated or damaged. But parts, labor and travel required to repair the instrument will be charged on a time and materials basis.

FSA will verify that the instrument is in working condition according to the manufacturers' specifications by utilizing recommended set points, columns, standards and procedures. Specific Customer applications are not covered by FSA or this service agreement. It is the responsibility of the Customer to ensure complete understanding of each analysis, experiment, method and application performed on the instrument.

#### VIII. PREVENTIVE MAINTENANCE EXAMPLES

##### Mass Selective Detectors

Preventive maintenance (PM) service will be scheduled annually on all the Mass Selective Detectors listed on the quotation. The PM visits will include replacement of pump oils, source cleaning and electromechanical check-out and System Tunes

##### TOC Analyzers

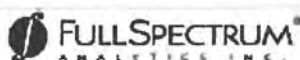
Preventive maintenance (PM) service will be scheduled annually on all the TOC Analyzers listed on the quotation. The PM visits will include replacement of gas scrubbers, permeation dryer tube, thorough cleaning and electromechanical, chemical standards check-out.

##### Liquid Chromatographs

Preventive maintenance (PM) service will be scheduled annually on all the Liquid Chromatographs listed on the quotation. The PM visits will include replacement of pump seals, needle seat, purge valve frit, thorough cleaning, electromechanical, caffeine standards check-out.

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#### Ion Chromatographs

Preventive maintenance (PM) service will be scheduled annually on all the Ion Chromatographs listed on the quotation. The PM visits will include replacement of pump seals, piston seals, active mixer filter, valve rotor, thorough cleaning, electromechanical, chemical standards check-out.

#### Headspace Instruments

Preventive maintenance (PM) service will be scheduled annually on all the Headspace Instruments listed on the quotation. The PM visit will include sensor cleaning, lubrication of all moving parts, thorough cleaning, electromechanical, chemical standards check-out.

#### ABI/Sciex Mass Spectrometers

Preventive maintenance (PM) service will be scheduled bi-annually on all ABI/Sciex instruments listed on the quotation. The PM visit will include a comprehensive series of tests which is recommended by the manufacturer including replacement of pump oils, cleaning and electromechanical check-out and System Tunes.

A detailed listing of services performed during a Preventive Maintenance visit will be provided to the Customer after each PM Service visit.

### ***Responsibilities of the Customer:***

#### **I. INSTRUMENT PREQUALIFICATION**

All instruments are subject to a prequalification review by FSA personnel prior to the commencement of the service agreement. Instruments must be fully functional according to the manufacturer's operating specifications and able to perform specific analytical test that the Customer requires. FSA reserves the right to not accept a customer's purchase order until instrument(s) have been completely prequalified by an FSA Service Representative. Customers will be invoiced for all repairs necessary to bring the system up to an acceptable level of performance to both parties, if necessary.

Instruments are also subject to a Requalification process should there be a lapse in the service agreement for more than 15 working days prior to a contract renewal. In the event repairs are necessary to bring the instruments to fully functional conditions, FSA will repair the instrument(s) and invoice the Customer separately on a time and materials basis.

#### **II. LABORATORY PERSONNEL**

It is the customer's responsibility to ensure that only adequately trained laboratory personnel will operate the instruments under this service agreement. Laboratory personnel must provide FSA Service Personnel details of all circumstances leading to an instrument failure. Consumable items required to complete the repair shall be provided by the Customer.

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### III. OPERATING CONDITIONS

A controlled climate must be maintained, as specified in the manufacturer's operating manual. A reliable power source must be supplied at all times, as per the manufacturers' requirements. Instrument failure(s) due to power fluctuations and or power loss are not covered under this agreement. FSA will repair the damaged instrument(s) and invoice the Customer separately on a time and materials basis.

### IV. RELOCATION OF INSTRUMENTS

Relocation services are available through FSA on a flat rate or time and materials basis. If the Customer finds it necessary to relocate an instrument, they may do so at their own risk and discretion. Damages resulting from the relocation of instruments relocated by the Customer or another contractor are not covered. System malfunctions occurring after the relocation services performed by FSA Service Representatives will be covered by this agreement.

The manufacturer required operating conditions apply for the instruments location. System failures or damage as a result of facilities power, environmental conditions or contamination are not covered by this contract or relocation service. All repairs will be performed at a time and materials basis.

### V. PAYMENT TERMS AND CANCELLATION

After acceptance of this agreement, all payments are due Net 30 days of invoice date.

Payment plans are available if an acceptable credit rating has been determined and maintained. Delinquent payments will cause delays with technical support and on-site response time. FSA reserves the right to refuse service and provide parts and technical support under this agreement if the customer's account becomes delinquent.

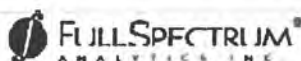
Customer may cancel this service agreement with a 30-day written notice. Provided FSA is aware of all service issues or other communications and FSA have been given a reasonable opportunity to correct the problems. In the event FS A has corrected the stated problems and Customer still cancels, Customer will be liable for the remaining balance of the contract price. Notice of cancellation must be delivered by certified mail or express courier. FSA will contact Customer after receiving the notice and will inform Customer of any outstanding balance due for the month(s) that service was provided. FSA reserves the right to cancel this service agreement at any time and shall provide the Customer with a written 30-day notice and inform the Customer of any outstanding balance due for the month(s) that service was provided.

Multi-year contract customers receive a discount from FSA's standard price. If a multi-year contract is canceled prior to the end of the agreed upon term, the Customer will be liable for the difference between the standard price and the discounted price for each instruments for the covered term, or the remaining contract balance, whichever is greater.

In the event that legal action is necessary by FSA to enforce any part of this agreement, including payment of invoices, FSA shall be entitled to recover all its reasonable attorney's fees and court costs from the Customer to the extent that Customer is found liable for.

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#### VI. LIMITATION OF LIABILITY

FSA's liability under this agreement is limited to repair of the instrument and the replacement of parts as provided for this agreement. It is understood that FSA does not warrant or represent that any equipment owned or utilized by Customer is fit for any particular purpose or method. Any other warranties and representations are hereby expressly denied by FSA and waived by the Customer.

In particular, FSA is not liable for the loss of irretrievable or damaged data, loss of revenue, profits, or any other cost to Customer or its affiliates. Including loss of employee or consultant time, damages to the facility and/or injury to the customer, it's personnel or third parties caused by the instrument, or any other injuries, property damage or consequential damages, whether due to the failure of the instrument or the services or parts provided by FSA. This agreement does not cover repair of instruments which have been damaged by the intentional negligent or misconduct of Customer's employees or third parties, or by fire, flood, vandalism, terrorism or other acts of violence including earthquakes and other Acts of God.

FSA is not responsible for any specialized, regulated or non-regulated methods or applications performed on instruments under contract. System calibrations, data acquisitions or data accuracy are the responsibility of the Customer. Archiving and recovery of data from computers and other media are also the responsibility of the customer.

If this service agreement is not renewed after its expiration date, all services that are currently being provided under this agreement will then be provided on a time and materials basis, i.e., repairs, PMs and Qualifications being conducted at the time of the expiration of this agreement.

*This agreement shall be governed by the laws of the State of California and it is of further covenant and mutually agreed that each party hereby consents to the jurisdiction and venue in the appropriate court of the State of California. The Customer and Full Spectrum Analytics, Inc. shall hold each other harmless, defend by counsel reasonably acceptable to, and fully indemnify each other, its shareholders, directors, officers and employees against expenses incurred by the either party in connection with any action, suit or proceeding to which either may be a party to.*

By signing below, the Customer accepts all aspects of this agreement and fully understands this document in its entirety.

#### **FULL SPECTRUM ANALYTICS, INC.**

John Martin                      11/14/2014  
Signed                                      Date

John Martin  
Name (please print)

Vice President of Sales and Marketing  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signed                                      Date

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title

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**EXHIBIT C**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 7th day of October, 2015

CONTRACTOR

Authorized Signature

Title

FULL SPECTRUM ANALYTICS  
J. A. Mast  
VICE PRESIDENT



## **MEMORANDUM**

**Austin Police Department  
Forensic Science Services  
Forensic Chemistry Section**

Instrument: Gas Chromatograph (GC) 7890A Series, 7697A Headspace sampler and their accessories.

Instrument Brand	part/Model/ name	S/N	Onsite / Off-site repairs	Loaner Unit
Agilent	G3440A / 7890A / Series GC	CN13271014	Onsite	no
Agilent	7697A Headspace	CN13270012	Onsite	no

### **Preventative Maintenance Minimum**

<b>All-inclusive repairs:</b> 1. On-site repair visits 2. Parts required for repair are genuine 3. Agilent parts or approved by buyer are covered under the cost of the plan 4. Consumables/Supplies required for repair are also included when needed for repair	<b>Scheduled Preventative maintenance:</b> Annual On-Site Preventative Maintenance includes costs for travel, parts and consumables/supplies required for preventative maintenance
<b>Contract dates/extension:</b> To be paid annually with 4 one year extension: September 2015-2016, extensions: 2016-2017, 2017-2018, 2018-2019, 2019-2020	

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## QUOTATION

DATE	QUOTE#
9/17/2015	12342

**Austin Police Department**  
**812 Springdale Road Forensic Science Div**  
**Austin, TX 78702**  
**Attn: Albert Banda**  
**alberto.banda@austintexas.gov**

Full Spectrum Analytics, Inc.  
 1252 Quarry Lane  
 Pleasanton, CA 94566  
 Phone: 800-795-6357  
 Fax: 714-279-0506  
 Email:  
 eouellet@fsaservice.com

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P/N	DESCRIPTION	QTY	MO. AMT	ANNUAL AMT	
	SERVICE AGREEMENT TXMAS# 12-66060				
AG-7890SXXX-C1	Agilent 7890 (G3440, G3442) GC with single split/splitless inlet. S/N: CN13271014	12	84.00	1,008.00	
AG-7697A-C1	Agilent 7697A Headspace Autosampler S/N: CN13270012	12	225.00	2,700.00	
FS-CONT-01	SERVICE AGREEMENT INCLUDES: On-site response time within 48 hours Unlimited number of service calls All parts and labor Consumables as needed for repair Unlimited telephone technical support One (1) Preventive Maintenance visit per year, where applicable  BASE YEAR Annual Amount: \$3,708.00 Contract Term: 10/1/15 to 9/30/16  OPTION YEAR #1 Annual Amount: \$3,708.00 Contract Term: 10/1/16 to 9/30/17				
			TOTAL ANNUAL AMOUNT		



## QUOTATION

DATE	QUOTE#
9/17/2015	12342

**Austin Police Department**  
**812 Springdale Road Forensic Science Div**  
**Austin, TX 78702**  
**Attn: Albert Banda**  
**alberto.banda@austintexas.gov**

Full Spectrum Analytics, Inc.  
 1252 Quarry Lane  
 Pleasanton, CA 94566  
 Phone: 800-795-6357  
 Fax: 714-279-0506  
 Email:  
 eouellet@fsaservice.com

P.O. NO.		TERMS	REP	VALID FOR	QUOTATION TYPE	
P/N	DESCRIPTION			QTY	MO. AMT	ANNUAL AMT
	<p>OPTION YEAR #2 Annual Amount: \$3,708.00 Contract Term: 10/1/17 to 9/30/18</p> <p>OPTION YEAR #3 Annual Amount: \$3,708.00 Contract Term: 10/1/18 to 9/30/19</p> <p>OPTION YEAR #4 Annual Amount: \$3,708.00 Contract Term: 10/1/19 to 9/30/20</p>					
				TOTAL ANNUAL AMOUNT		\$3,708.00



## Contract Details: # TXMAS-12-66060

Search for items in this contract (/ex\_search/false/contract\_number/TXMAS~12~66060)

Number	TXMAS-12-66060
Description	Laboratory Instruments
Category	TxSmartBuy
Type	TXMAS
Start Date	6/11/2012
End Date	7/31/2018
Fed	GS-07F-0486U
Purchase Category Code(Agencies Only)	PCC X
Optional Renewal Terms	This Texas Multiple Award Schedule (TXMAS) contract is renewed on the date that the governmental entity that awarded the underlying contract exercises any renewal options. All State of Texas terms and conditions will continue and apply to all renewal periods by mutual agreement. The contractor has certified that the prices reflected in the contractor's catalog are the same as the prices contained in the most current modification to the underlying contract.
Purchase Orders	Only purchase orders issued through TxSmartBuy are eligible for contract pricing. Contractors cannot ship any products or provide services until issuance through TxSmartBuy and receipt of a Purchase Order. If a TXMAS contract does not have items available in the TxSmartBuy system, a quote order line item should be added to the cart with an attachment that describes order details.
Order Limitation	<p>The contractor is not required to accept orders below the minimum listed below. Orders between the minimum and maximum listed below are subject to the pricing of the underlying contract. For orders above the maximum, purchasing entities are entitled to negotiate for lower prices than those listed.</p> <p>Minimum Order - NONE Maximum Order - \$150,000</p>
State Contracts	All Texas Council for Purchasing from People with Disabilities contracts and Texas Correctional Industries (TCI) term contracts take precedence over this TXMAS contract. If similar products or services are listed on this TXMAS contract and a CPA Term contract, a determination should be made that will result in a best value purchase.

<b>CPA Contract Management</b>	<p>Questions regarding contract management issues, price changes, amendments or other post-award concerns should be directed to:</p> <p>TPASS TXMAS Program  Texas Comptroller of Public Accounts (CPA)  Phone: (512) 463-3421  Email: <a href="mailto:txmas@cpa.state.tx.us">txmas@cpa.state.tx.us</a> (<a href="mailto:txmas@cpa.state.tx.us">mailto:txmas@cpa.state.tx.us</a>)</p>
<b>Approved Products/Services</b>	<p>Only products or services listed in the underlying contract may be purchased from this TXMAS contract, with one exception. Incidental, off-schedule items may be purchased as "best value, open market" items provided that they are necessary for product integration or product completeness. The purchasing entity is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items may be added to the TXMAS purchase order if they are clearly labeled as "open market (OM), best value" items.</p>
<b>Delivery</b>	<p>CONTACT CONTRACTOR FOR SPECIFICS; OVERNIGHT AND 2-DAY DELIVERY:  CONTACT CONTRACTOR FOR POSSIBLE AVAILABILITY</p>
<b>FOB Point</b>	<p>DESTINATION</p>
<b>Compliant Products by Contractor</b>	<p>Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.</p>
<b>Restocking Fee for Returned Products</b>	<p>Refer to contract upon which TXMAS contract is based.</p>
<b>Rebate Reporting Requirement for Federal</b>	<p>Pursuant to Texas Government Code Â§ 2155.510(b), rebates generated from TXMAS contract purchases made in whole or in part with federal funds must be reported by the purchasing agency for reporting, and reconciliation purposes with the appropriate federal funding agency. Each quarter of the State's fiscal year (September 1 through August 31), TXMAS contractors rebate 0.73875% of their TXMAS sales to the State of Texas via the Texas Comptroller of Public Accounts (CPA). It is the purchasing entity's responsibility to report the amount of rebate to the federal fund-provider using the above percent based on the total dollar value of the TXMAS purchase order.</p> <p>Example: A purchasing entity receives and uses federal funds of \$50,000 to purchase items/services on a TXMAS contract. The purchasing entity must report to the federal fund-provider that a sales rebate of \$369.37 (<math>\\$50,000 * 0.73875\% = \\$369.37</math>) will be paid to the State of Texas by the TXMAS contractor.</p>
<b>Contractor Performance</b>	<p>The Texas Procurement and Support Services (TPASS), a division of the Comptroller of Public Accounts (CPA), administers a vendor performance program for use by all customers per Texas Government Code (TGC), Â§2262.055, and 34 Texas Administrative Code (TAC), Â§20.108. The Vendor Performance relies on the customer's participation in gathering information on vendor performance. State agency customers shall report vendor performance on purchases over \$25,000 from contracts administered by CPA, or any other purchase over \$25,000 made through delegated authority granted by CPA (TAC 20.108), or purchases exempt from CPA procurement rules and procedures. State agencies are additionally encouraged to report vendor performance on purchases under \$25,000.</p> <p>Vendor Performance shall be reported through the CPA VENDOR PERFORMANCE TRACKING SYSTEM (<a href="http://www.window.state.tx.us/procurement/prog/vendor_performance/">http://www.window.state.tx.us/procurement/prog/vendor_performance/</a>).</p> <p>The purpose of the Vendor Performance Tracking System is to:</p> <ul style="list-style-type: none"> <li>* Identify vendors that have exceptional performance</li> <li>* Aid purchasers in making a best value determination based on vendor past performance</li> <li>* Protect the state from vendors with unethical business practices</li> <li>* Provide performance scores in four measurable categories for the CMBL vendors</li> <li>* Track vendor performance for delegated and exempt purchases</li> </ul>



## Contractor Information

**VID:** 16802827077

**Contractor:** Full Spectrum Analytics, Inc.

**Email:** [jmartin@fsaservice.com](mailto:jmartin@fsaservice.com)

**Phone:** (714) 279-3999

**Address:** John Martin Full Spectrum Analytics, Inc. 1252 Quarry Lane Pleasanton CA 94566

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[Texas.gov \(http://www.texas.gov/en/Pages/default.aspx\)](http://www.texas.gov/en/Pages/default.aspx) |  
[Statewide Search from the Texas State Library \(https://www.tsl.state.tx.us/trail/index.html\)](https://www.tsl.state.tx.us/trail/index.html) |  
[State Link Policy \(http://www.dir.texas.gov/pubs/pages/weblink-privacy.aspx\)](http://www.dir.texas.gov/pubs/pages/weblink-privacy.aspx) |  
[Texas Homeland Security \(http://governor.state.tx.us/homeland\)](http://governor.state.tx.us/homeland) | [Texas Transparency \(http://www.texas Transparency.org/\)](http://www.texas Transparency.org/) |  
[Report Fraud \(http://www.window.state.tx.us/fraud.html\)](http://www.window.state.tx.us/fraud.html)

**Glenn Hegar, Texas Comptroller • Window on State Government (<http://www.window.state.tx.us/>) • Contact Us (<http://www.window.state.tx.us/contact.html>)**

[Privacy and Security Policy \(http://www.window.state.tx.us/privacy.html\)](http://www.window.state.tx.us/privacy.html) |  
[Accessibility Policy \(http://www.window.state.tx.us/accessibility.html\)](http://www.window.state.tx.us/accessibility.html) | [Link Policy \(http://www.window.state.tx.us/linkpolicy.html\)](http://www.window.state.tx.us/linkpolicy.html) |  
[Public Information Act \(http://www.window.state.tx.us/pia.html\)](http://www.window.state.tx.us/pia.html) |  
[Texas Veterans Portal \(http://veterans.portal.texas.gov/en/Pages/default.aspx\)](http://veterans.portal.texas.gov/en/Pages/default.aspx) |  
[Compact with Texans \(http://www.window.state.tx.us/comptrol/compact/\)](http://www.window.state.tx.us/comptrol/compact/)

	S U S A N	TEXAS COMPTROLLER <i>of</i> PUBLIC ACCOUNTS WWW.WINDOW.STATE.TX.US	
	C O M B S		

**Texas Comptroller of Public Accounts**

June 11, 2012

John A. Martin  
Full Spectrum Analytics, Inc.  
1252 Quarry Lane  
Pleasanton, CA 94566

RE: Contract No. TXMAS-12-66060  
Contract Period 06/11/12 through 07/31/13

Dear Mr. Martin:

Your company has been awarded a contract under the Texas Multiple Award Schedule (TXMAS) program. The period of the contract is shown above and will coincide with the contract period of your contract, GS-07F-0486U, with the General Services Administration (GSA). As stated in your contract with the State of Texas, Terms and Conditions, you are responsible for notifying the Texas Comptroller of Public Accounts (CPA) within thirty (30) calendar days of any change in the status of your contract with GSA or amendments to the Federal Schedule Contract.

All terms and conditions set forth in the document that you signed as a part of your offer to the State are made a part of this TXMAS contract. Please note that any payment due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas. Additionally, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the CPA and the contractor to attempt to resolve all disputes arising under this contract.


As set forth in Section 8 of the Contract Terms and Conditions, a Monthly Sales Report is required under this contract. The reporting requirement will commence for the period June 2012.

Full Spectrum Analytics, Inc.  
June 11, 2012  
Page 2

In order to facilitate catalog access to TXMAS contractor catalogs, the CPA will maintain a web page exclusive to your TXMAS contract. In addition to user instructions and informational details relating to the contractor, a universal resource locator (URL) address is required for the contractor's catalog. The catalog may be the same as the catalog used for the GSA Advantage e-procurement program, but it must have a TXMAS identifying cover and a URL, exclusive to the TXMAS program. It is requested that your catalog web address be established within fourteen (14) calendar days and provided by e-mail to the TXMAS Program Unit at [txmas@CPA.state.tx.us](mailto:txmas@CPA.state.tx.us). If you have any questions regarding this or any of the other requirements relating to the TXMAS program, please contact Richard San Jose at 512-463-3421.

Respectfully,  
Signature on file

Martin A. Hubert  
Deputy Comptroller



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

THIS CONTRACT is by and between the STATE OF TEXAS ("State") acting through the TEXAS COMPTROLLER OF PUBLIC ACCOUNTS ("CPA"), with offices in the LBJ State Office Building, 111 E. 17<sup>th</sup> Street, Austin, Texas 78774 and FULL SPECTRUM ANALYTICS, INC. ("Contractor") with offices at 1252 QUARRY LANE, PLEASANTON, CA 94566.

**1. BACKGROUND:**

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The Texas Comptroller of Public Accounts has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a state multiple award schedule contract with the Contractor. This state multiple award schedule contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

**TERMS & CONDITIONS**

**2. COMPOSITION OF CONTRACT:**

- (a) This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number GS-07F-0486U (the "Federal Schedule Contract" or "Schedule Contract"), as amended by this Contract (*see Paragraph 36 "ENTIRE AGREEMENT"*). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List.
- (b) Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation (DFAR), Federal Information Processing Standards Publication (FIPS PUB), Federal Standards (FED-STD) and



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United States Code (USC) provisions, among others. By way of example, 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) It is recognized that prices reflected on GSA schedule contracts are most favored customer prices and are maximum prices. A State Agency or Local Government may negotiate a lower price for goods and services listed on a schedule contract. CPA operates an online ordering system. A 1.5% administrative fee is charged on all orders. The contractor is authorized to charge up to 1.5228% to recover this charge. The Contractor shall remit this administrative fee to the TexasOnline vendor on a monthly basis, as invoiced.

**3. CERTIFICATION OF ACCURACY:**

The Contractor hereby certifies that all copies of the Contractor's Authorized Schedule Price List that were submitted to the State as part of the negotiation of this Contract are true, correct, current, and complete copies of that Price List. The Contractor further represents and warrants that all future Price Lists submitted to revise this Contract will also be true, correct, current, and complete copies of the then-current Price List under the Contractor's then-current Federal Contract.

**4. FEDERAL REPRESENTATIONS:**

The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

**5. FUTURE NOTICE:**

The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. The State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor agrees to notify the State within thirty (30) calendar days of all changes in the status of or amendments to its Federal Schedule Contract.

**6. PARTIES TO THE CONTRACT:**

- (a) For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on

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

behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State.

- (b) This Contract may be relied on by any "State Agency" as defined under §2251.001(8), Texas Government Code and any "Local Government" as defined under §271.101, Texas Local Government Code. Whenever a Local Government relies upon this Contract to issue a purchase order, the Local Government will step into the shoes of the State under this Contract. 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) Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of the State. 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 is 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 CONTRACTOR'S SCHEDULE CONTRACT:**

The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal 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.

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

- (c) Payments and invoicing will be in accordance with the terms discussed under Paragraph 12 "PAYMENT; TRAVEL EXPENSES" and Paragraph 13 "INVOICE REQUIREMENTS", below.
- (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/Daylight Time.
- (f) The State will not purchase goods or services for overseas delivery, or provide the Contractor with overseas support.
- (g) The Contractor will not offer to the State any products that are not Year 2000 compliant. All such items listed in the Contractor's Authorized Price List are deleted for purposes of the State.
- (h) As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. Therefore, the federal supply schedules for blanket purchase agreements, contractor team arrangements are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a purchasing entity may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the GSA contract schedule. 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.
- (i) Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.
- (j) The Contractor will provide a Universal Resource Locator (URL) address that is exclusive to the Contractor's TXMAS contract and catalog. The "hot link" must allow users access to the Contractor's TXMAS catalog from the CPA website.

**8. CONTRACTOR MONTHLY SALES REPORT:**

- (a) The Contractor shall report to the State the monthly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract. The dollar value of the sale shall be the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.
- (b) The Contractor shall report the monthly dollar value of sales electronically in the on-line format provided by CPA (See Paragraph 8(e), below). If no sales occur, the

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TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)**

Contractor shall report "NO" sales. The report shall be submitted within ten (10) calendar days following the end of the calendar month.

- (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 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 under the Contract for the previous 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 Payable, 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. The contract shall expire upon the physical completion of the last outstanding task or delivery the final order under the Contract. The closeout report shall include all sales not shown in the final or most recent quarterly report and shall reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor shall report "zero" sales in the closeout report.
- (f) The Monthly Sales Report shall be submitted electronically online at:  
<http://portal.cpa.state.tx.us/txmas/vendor/>, (see Attachment A).
- (g) If the Contractor fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, the State may terminate or cancel this Contract in accordance with Paragraph 19 "TERMINATION; SURVIVAL".

**9. DEALERS/DISTRIBUTORS:**

- (a) Upon approval of CPA, the Contractor may designate one or more dealers or distributors to provide services under this Contract on behalf of the Contractor. To designate a dealer or distributor, the Contractor must provide a Letter of Authorization. The Contractor shall provide a separate Letter of Authorization for each designated dealer or distributor.
- (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 30 (Notices) of this Contract. The Letter of Authorization must include a Letter of Acceptance from the dealer/distributor and all supporting documentation. By submitting a Letter of Authorization, the Contractor represents and warrants the following:



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TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)**

- (1) The dealer/distributor has been given a copy of this Contract, a duly authorized representative of the dealer/distributor has agreed in writing to be bound by the terms and conditions of this Contract, and that such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
  - (2) The Contractor agrees to remain liable under this Contract for any failure of the dealer/distributor to perform and for any breach of the dealer/distributor 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 has paid the dealer.
  - (4) To the extent that there is any liability to the State arising from doing business with a dealer or distributor that has not signed the Letter of Acceptance required under this section with the Contractor, the Contractor will indemnify the State for such liability.
  - (5) The Contractor's Letter of Authorization shall remain effective until CPA receives written notification from the Contractor that the authorization to a dealer or distributor is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer/distributor's official letterhead, signed by an authorized representative of the dealer/distributor, and addressed to the attention of the Contractor. In the Letter of Acceptance, the dealer or distributor must represent and warrant that it has been given a copy of this Contract, it agrees to be bound by the terms and conditions of this Contract, and such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (1) For a dealer, the Letter of Acceptance must also include the following information:
    - i. the dealer's name and address,
    - ii. the dealer's point of contact name, telephone number, fax number, and email address,
    - iii. the dealer's purchase order, invoice, and payment address(es),
    - iv. the dealer's Federal Employer's Identification number (FEI),
    - v. the dealer's Dun and Bradstreet (DUNS) number, if available,
    - vi. the dealer's completed W9, and
    - vii. the dealer's HUB Certificate, if dealer is a Texas HUB.
  - (2) For a distributor, the Letter of Acceptance must also include the following information:
    - i. the distributor's name and address,
    - ii. the distributor's point of contact name, telephone number, fax number, and email address,
    - iii. the distributor's purchase order, invoice, and payment address(es),
    - iv. the distributor's Federal Employer's Identification number (FEI),
    - v. the distributor's Dun and Bradstreet (DUNS) number, if available, and

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vi. the distributor's HUB Certificate, if distributor is a Texas HUB.

- (d) Prior to CPA's approval of the Contractor's designated dealer or distributor, CPA will review the Letter of Authorization and the required documentation for compliance with this section and applicable state laws and regulations. If the Letter of Authorization is incomplete, e.g. does not include the Letter of Acceptance or other required documentation, then 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.

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

- (a) In accordance with §§2161.181-2161.182, Texas Government Code and 34 Texas Administrative Code (TAC) §20.11, 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. The Texas Comptroller of Public Accounts (CPA) HUB Rules, 34 TAC §§20.11-20.28 encourages the use of HUBs by implementing these policies through race-ethnic-and gender-neutral means.
- (b) The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study:
- (1) 11.9% for heavy construction other than building contracts;
  - (2) 26.1% for all building construction, including general contractors and operative builders contracts;
  - (3) 57.2% for all special trade construction contracts;
  - (4) 20% for professional services contracts;
  - (5) 33% for all other services contracts; and
  - (6) 12.6% for commodities contracts.
- (c) Each state agency shall make a good faith effort to meet or exceed these goals and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year.
- (d) Contractors are urged to utilize Texas Certified HUBs as dealers or distributors whenever possible to promote full and equal business opportunities and assist state agencies in meeting the goals listed above. Instructions for generating a list of Certified Texas HUB Vendors that are registered on the Texas Centralized Master Bidder List (CMBL) for the commodities included in the contract schedule are attached (see Attachment B). Contractors are also strongly encouraged to make a good faith effort within the basic terms of the GSA contract and consider engaging the service of a HUB to meet the contractual obligation in Texas. *The attached TXMAS HUB Good Faith*

**STATE OF TEXAS  
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TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)**

*Effort Certification must be completed and returned with this document (see Attachment C).*

**11. LIMITATION OF LIABILITY:**

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL EITHER PARTY 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 §2251.021(b), Texas Government Code payment by a State Agency or Local Government is due within thirty (30) calendar days after the later of:
  - (1) the date the State Agency or Local Government receives the goods under the contract;
  - (2) the date the State Agency or Local Government receives a proper invoice (*see Paragraph 13 "INVOICE REQUIREMENTS"*) for the goods or services; or
  - (3) the date the performance of the service under the contract is completed
- (c) Except as provided for in §2251.021(b), Texas Government Code, a payment will begin to accrue interest at a rate of one percent a month on the 31<sup>st</sup> 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 will be at the Contractor's expense. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with State of Texas Travel Allowance Guide.

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**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 Texas Identification Number (TIN) 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 15 "NOTIFICATION OF PRICE INCREASE"*), the State will send the Contractor written notice with the improper invoice to the address designated for receipt of purchase orders within twenty-one (21) calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice.

**14. AUDIT REQUIREMENTS:**

In addition to and without limitation on the other audit provisions of this Contract, pursuant to §2262.003, Texas Government Code, the state auditor 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, 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 by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Contract may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. The Contractor will 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 subcontract it awards.



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**15. NOTIFICATION OF PRICE INCREASES:**

For price increases authorized under this contract, notification of such must be given to the 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:**

This Contract and any order resulting from this Contract is subject to termination or cancellation, without penalty to the State, either in whole or in part, subject to the availability of state funds. If the Texas Legislature fails to continue funding for the payments due under a Purchase Order under this Contract, the Purchase Order will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, the State will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and the State will not be required to give prior notice.

**17. PUBLIC INFORMATION; SEARCH ENGINE KEYWORDS:**

- (a) Notwithstanding any provisions of this Contract to the contrary, Contractor understands that the State will comply with the Texas Public Information Act (Chapter 552, Texas Government Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation and other material in connection with this Contract may be subject to public disclosure pursuant to the Texas Public Information Act.
- (b) The CPA maintains a TXMAS-only search engine on the TXMAS Web site. This search engine allows State Agencies and participating Local Government to search TXMAS contractor catalogs. The Contractor may submit to the CPA a list of keywords that directly relate to the Contractor's catalog items/services. The Contractor may update this list of keywords at its discretion during the term of this Contract.

The CPA, at its sole discretion, may review the keywords submitted by the Contractor. If the CPA determines that the keywords submitted do not directly relate to the Contractor's catalog items/services, the CPA may terminate this Contract in accordance with Paragraph 19, TERMINATION; SURVIVAL.

**18. TAX EXEMPTION:**

The State is exempt from State Sales tax and Federal Excise tax. Ordering entities will furnish Tax Exemption Certificate(s) to the Contractor upon request.

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**19. TERMINATION; SURVIVAL:**

The State or the Contractor may cancel this Contract, in whole or in part, without cause on thirty (30) calendar day's written notice. The Contract shall terminate upon later to occur of (1) the expiration of the Contractor's Federal Schedule Contract or (2) the physical completion of the last outstanding task or delivery of the final order under the Contract. All applicable service agreements that were entered into between the Contractor and the ordering entity under the terms and conditions of the Contract shall survive the cancellation or termination of the Contract.

**20. AUTOMATIC RENEWAL:**

This contract is automatically renewed on the date that GSA exercises the renewal option. All State of Texas terms and conditions will continue and apply to all renewal periods unless modified by mutual agreement.

**21. DELIVERIES:**

Unless stated otherwise in the Contractor's Federal Schedule Contract, all deliveries will be F.O.B. Destination.

**22. EQUAL EMPLOYMENT OPPORTUNITY:**

The Contractor shall comply with all Federal and Texas laws regarding equal employment opportunity.

**23. DRUG FREE WORKPLACE:**

The Contractor shall make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

**24. AMERICANS WITH DISABILITIES ACT:**

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

**25. IMMIGRATION:**

The Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986 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.

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**26. CONTRACTOR AFFIRMATIONS:**

- (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 the submitted contract.
- (b) The Contractor certifies that, pursuant to 15 U.S.C. Sec. 1, *et seq.* and Tex. Bus. & Comm. Code Sec. 15.01, *et seq.*, neither the Contractor nor the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The Contractor hereby assigns to the ordering entity any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.* (1973) as amended, and the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Comm. Code Sec. 15.01, *et seq.* (1983).
- (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 <http://www.epls.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 include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.
- (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 SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES,**

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**AND CPA, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY CPA. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE THE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR CPA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CPA OR ITS EMPLOYEES.**

- (g) 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. The Contractor shall comply with rules adopted by CPA under §§403.055, 403.0551, and 2252.903, Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- (h) The Contractor certifies that this Contract is in compliance with §669.003, Texas Government Code, relating to contracting with executive head of a state agency. If §669.003, Texas Government Code applies, the Contractor will complete the following information in order for the offer to be evaluated:

Name of Former executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of separation from State Agency: \_\_\_\_\_

Position with the Contractor: \_\_\_\_\_

Date of Employment with the Contractor: \_\_\_\_\_

- (i) 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.



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- (j) The Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into the Contract, and that the Contractor entering into such Contract will not reasonably create an appearance of impropriety.
- (k) 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.
- (l) 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 the specified contract and acknowledges that this Contract and any order resulting from this Contract may be terminated and payment withheld if this certification is inaccurate.
- (m) The Contractor agrees that each of the above referenced affirmations apply to and is for the benefit of the ordering entities. Furthermore, the Contractor agrees that by accepting an order under this Contract the Contractor certifies to the ordering entity that the above listed affirmations are true and correct with respect to the specific ordering entity.

**27. PUBLICITY:**

The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

**28. TRAINING REQUIREMENTS:**

The Contractor will send at least one corporate representative and at least one dealer/distributor representative from each authorized dealer/distributor which is new to TXMAS, for training on TXMAS procedures upon receiving award of a TXMAS contract. The TXMAS Program in Austin, Texas will provide training. Training dates, location and times will be coordinated with the TXMAS Program.

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**29. ASSIGNMENT:**

The Contractor will not assign this Contract without the written consent of the State.

**30. 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., Room 104  
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.

**31. DISPUTE RESOLUTION:**

- (a) Chapter 2260, Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, CPA has adopted rules under Chapter 2260 for CPA's Texas Procurement and Support Services Division, codified at 34 Texas Administrative Code §20.384, and may adopt revisions to these rules throughout the term of this Contract, including any extensions. The Contractor and CPA shall comply with such rules.

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- (b) Disputes arising between an ordering entity and the Contractor shall be resolved in accordance with the dispute resolution process of the ordering entity that is not inconsistent with Chapter 2260. CPA shall not be a party to any such dispute unless CPA, the ordering entity, and the Contractor agree in writing.

**32. AMENDMENT:**

- (a) This Contract may be amended only upon written agreement between CPA and the 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) No additional term or condition in a purchase order issued by an ordering entity may weaken a term or condition of this Contract. However, additional terms and conditions that do not weaken the terms or conditions of this Contract and are acceptable to the Contractor may be added to the purchase order and given effect.

**33. NO WAIVER:**

No provision of the Contract will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the Contract or otherwise available to the State by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

**34. HEADINGS:**

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

**35. ORDER OF PRIORITY:**

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

**36. ENTIRE AGREEMENT:**

This Contract consists of the Contractor's Schedule Contract (*see Paragraph 2 "COMPOSITION OF CONTRACT"*), this Contract document together with Attachments A, B, and C (which are incorporated herein by this reference), the Contractor's State Offer Letter, and, if applicable, the Contractor's letter(s) designating dealers and/or distributors, 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.

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**37. GOVERNING LAW, VENUE:**

This Contract is governed by and will be construed under and in accordance with the laws of the State of Texas, and venue for any dispute will be in a court of competent jurisdiction in Travis County, Texas.

**38. SEVERABILITY:**

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

**TO SHOW THEIR AGREEMENT,** the parties have caused this Contract to be executed by their undersigned, duly authorized representatives on the date(s) below and this Contract is effective as of the date of signature by the State.

State of Texas,  
Texas Comptroller of Public Accounts  
*Signature on file*

Contractor  
*Signature on file*

BY [Signature]  
NAME Martin A. Hubert  
TITLE Deputy Comptroller  
DATE 6/11/12

BY [Signature]  
NAME JOHN A. MARTIN  
TITLE VICE PRESIDENT  
DATE 5/25/12



To Prospective Texas Multiple Award Schedule (TXMAS) Vendors

Subject: Historically Underutilized Business (HUB) Good Faith Effort Certification

As addressed in the basic Contract Terms and Conditions, contractors are strongly encouraged to engage the services of Texas Certified HUBs as distributors or dealers whenever possible to promote full and equal business opportunities and to assist state agencies in meeting the goals specified in the State of Texas Disparity Study. The decision to utilize the services of a currently Certified Texas HUB must be based on a good faith effort and as a potential contractor you are required to show documented evidence that an active participatory role for a HUB entity was considered. Should you elect to use the services of a Minority Business Enterprise (MBE) or Disadvantaged Business Enterprise (DBE) that may be eligible for Texas Hub certification, arrangements can be made to expedite the application process.

Please answer the following questions by selecting the response that applies to your good faith effort decision. Check the appropriate response(s).

- YES ☐ NO ☒ 1. Are the services of a Certified Texas HUB being utilized to perform the contract referred to in the Terms and Conditions?
- YES ☐ NO ☒ 2. Are the services of a MBE/DBE or equivalent that may be eligible for Texas HUB certification being utilized to perform the contract referred to in the Terms and Conditions?
- YES ☒ NO ☐ 3. Will a Small Business, as defined by regulations of the Small Business Administration (SBA) in 13 C.F.R., Section 121.201, perform the basic contract as awarded by the General Services Administration (GSA)?
- YES ☒ NO ☐ 4. Will the contract be performed by a company, under existing agreements approved by GSA, that includes Small Business/MBE/DBE/HUB participation?

Note: This document will become an attachment to the Contract Terms and Conditions and is affirmed by the signature on the Contract Terms and Conditions.

\*\* The attached randomly selected list of Certified Texas HUBs dealing in the goods and services included in this multiple award schedule contract opportunity should be considered in the selection/decision process.