

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

Merrick & Company

1. Introduction

A. Parties

This Contract for Services ("Contract") is entered into between the State of Texas ("State"), acting by and through the Department of Information Resources ("DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Merrick & Company ("Vendor"), with its principal place of business at 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-CPO-TMP-444, on 12/20/2019, for Geographic Information Systems (GIS) Hardware, Software, and Services and Information Technology (IT) Based Surveying Hardware, Software and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-CPO-TMP-444 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Service Agreement Template; Exhibit 1, Vendor's Response to RFO DIR-CPO-TMP-444, including all addenda; and Exhibit 2, RFO DIR-CPO-TMP-444, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with one (1) optional two-year renewal and one (1) optional one-year renewal. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

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3. Service Offerings

Services available under this Contract are limited to Geographic Information Systems (GIS) Hardware, Software, and Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Hershel Becker or Successor in Office
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700

If sent to the Vendor:

Arron Lee
Merrick & Company
5970 Greenwood Plaza Blvd
Greenwood Village, CO 80111
Phone: (872) 588 - 8024
Email: arron.lee@merrick.com

7. Service Agreement Template or Applicable Statement of Work

A) Services provided under this Contract shall be in accordance with the Service Agreement Template as set forth in Appendix D of this Contract. No changes to the Service Agreement

terms and conditions may be made unless previously agreed to by Vendor and customer. If utilizing the Service Agreement Template or a Statement of Work, the Vendor and Customer may agree to terms and conditions that do not diminish or lessen the rights or protections of the Customer or the responsibilities or liabilities of the Vendor.

B) Conflicting or Additional Terms

1. In the event that conflicting or additional terms in Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.
2. In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.
3. In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.
4. Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.
5. If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.
6. The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

8. Authorized Exceptions to Contract and any Appendices.

- A. Section 5 Intellectual Property Matters, E. Continentality** is hereby replaced in its entirety as follows:

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All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer. Confidential information does not include information which is in or enters into the public domain through no fault of the Vendor.

(Remainder of page intentionally left blank)

This Contract is executed to be effective as of the date of last signature.

Merrick & Company

Authorized By: Signature on File

Name: Torin Haskell

Title: Senior Vice President - Geomatics

Date: 09/10/2020

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 09/15/2020

Office of General Counsel: Signature on File: 09/15/2020