

September 27, 2007

*Via Email and Hand Delivery*

Mr. Jess R. Castilleja  
Senior Purchaser  
TX DOT  
3800 Jackson Avenue – Bldg. #5  
Austin, Texas 78731-2483

Re: My Plates, Inc.'s Best and Final Offer related to RFP B44 2007 005563000

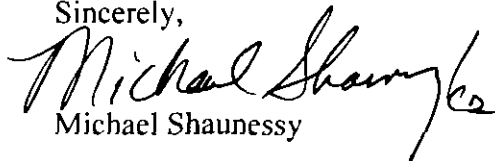
Jess,

Enclosed is the revised Best and Final Offers by My Plates, Inc., to include the missing exhibit.

If you have any questions or need additional information, please do not hesitate to contact me.

I look forward to hearing from you.

Sincerely,

  
Michael Shaunessy

MAS/cg  
Enclosure

**BEST AND FINAL OFFER  
FROM  
MYPLATES, INC.**

B44 2007 005563000  
BEST AND FINAL OFFER

OF

MY PLATES, INC.

TO

TEXAS DEPARTMENT OF TRANSPORTATION

FOR THE

MARKETING, SALE AND DESIGN OF SPECIALTY LICENSE PLATES IN TEXAS

TEXAS DEPARTMENT OF TRANSPORTATION  
MARKETING, SALE AND DESIGN OF SPECIALTY LICENSE PLATES IN TEXAS  
BEST AND FINAL OFFER

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# BEST AND FINAL OFFER

## 1. PROGRAM ADMINISTRATION

**1.1. Engagement of MPI.** Texas Department of Transportation ("TxDOT") engages My Plates, Inc. ("MPI") to implement the Program and perform the Services as stated in this Purchase Order. MPI accepts such engagement and agrees to implement the program and perform the services as stated in this Purchase Order. In connection with such engagement and during the term this Purchase Order is in effect, TxDOT grants to MPI the right to market and sell Plates to customers. TxDOT will not grant to any other private entity the right to market and sell Plates to customers during the term of this Purchase Order.

**1.2. Purpose and Intent.** The purpose and intent of the parties is to create and maintain a long term, mutually beneficial relationship designed to maximize revenues realized by the State of Texas through the sale of Plates; maintain the safety and legibility of license plate designs; and provide high quality customer service.

**1.3. Implementation of the Purchase Order.** This Purchase Order is authorized and issued by TxDOT pursuant to its statutory authority. To facilitate the timely, efficient and appropriate securing of approvals, authorizations and decisions necessary to implement and conduct the program and services described in this Purchase Order, the parties have designated certain representatives to agree as follows.

**1.3.1. Primary TxDOT Representative.** TxDOT has assigned its Director, Vehicle Titles and Registration or their designee to function as its manager of activities under this Purchase Order ("**Program Director**") and to represent TxDOT in connection with the implementation and operation of the program. Unless otherwise notified by TxDOT, the Program Director is designated as the authorized representative of TxDOT through whom TxDOT's responsibilities under this Purchase Order will be directed and coordinated. TxDOT may remove any Program Director at any time and appoint a new Program Director upon prior written notice to MPI. The Program Director shall be available to consult with MPI at all reasonable times, and MPI will be entitled to act in reliance upon the instructions, interpretations, and decisions of the Program Director relating to this Purchase Order. The Program Director shall provide MPI with access to other personnel within TxDOT as MPI reasonably requests. The Program Director, upon approval by TxDOT, may delegate any of his or her functions to one or more TxDOT staff members.

**1.3.2. Primary MPI Representative.** MPI has assigned its General Manager to function as its manager of activities under this Purchase Order ("**Operations Manager**") and to represent MPI in connection with the implementation and operation of the Program. Unless otherwise notified by MPI, the Operations Manager is designated as the authorized representative of MPI through whom MPI's responsibilities under this Purchase Order will be directed and coordinated. MPI may remove any Operations Manager at any time and appoint a new Operations Manager upon prior written notice to TxDOT. The Operations Manager shall be

available to consult with TxDOT at all reasonable times, and TxDOT will be entitled to act in reliance upon the instructions, interpretations, and decisions of the Operations Manager relating to this Purchase Order. The Operations Manager shall provide TxDOT with access to other personnel within MPI as TxDOT reasonably requests. The Operations Manager, upon approval by MPI, may delegate any of his or her functions to one or more MPI staff members.

**1.3.3. Formation of Working Group.** Promptly following the execution of this Purchase Order and thereafter throughout the term of this Purchase Order, TxDOT and MPI will establish and maintain a Specialty Plates Project Management Working Group ("**Working Group**") to facilitate implementation and operation of the program. The purpose of the Working Group is to create a structure for a working relationship between TxDOT and MPI that will facilitate sharing of ideas and expertise, provide flexibility and clear mechanisms for soliciting input in the implementation and operation of the program, encourage innovation in the production, marketing and sale of Plates, provide clear mechanisms for the provision of information and regular reporting, and to describe appropriate decision making procedures.

The composition, powers and duties, decision making authority, conduct and other terms of the Working Group are more particularly described in the Operating Agreement attached as Exhibit A.

All decisions of the Working Group shall be unanimous. All decisions of the Working Group shall be reflected in writing signed by the Executives of the Working Group or their designees.

**1.3.4. Executive Decision Making.** The Operating Agreement describes certain decisions to be made and issues to be resolved by designated executives of the parties. In this regard the TxDOT Executive shall be the Director of Vehicle Titles and Registration. TxDOT may remove any TxDOT Executive at any time and appoint a new TxDOT Executive upon prior written notice to MPI. The TxDOT Executive shall be available to consult with the MPI Executive at all reasonable times, and MPI Executive will be entitled to act in reliance upon the instructions, interpretations, and decisions of the TxDOT Executive relating to this Purchase Order.

The MPI Executive shall be the President of MPI. MPI may remove any MPI Executive at any time and appoint a new MPI Executive with prior written notice to TxDOT; provided, however that such MPI Executive shall be reasonably acceptable to TxDOT. The MPI Executive shall be available to consult with the TxDOT Executive at all reasonable times, and TxDOT Executive will be entitled to act in reliance upon the instructions, interpretations, and decisions of the MPI Executive relating to this Purchase Order.

**1.4. Relationship Between TxDOT and MPI.** This Purchase Order represents an agreement between an independent contractor and TxDOT. MPI and the agents, employees, officers and subconsultants of MPI shall act in an independent capacity and not as officers, employees or agents of TxDOT. Neither TxDOT nor its employees and agents are employees or agents of MPI, and neither MPI nor any employee or agent of MPI is an employee or agent of TxDOT. In no event shall this

Purchase Order be construed, and the parties hereto expressly disclaim any intention, to create an employer-employee relationship, a partnership, joint venture or joint enterprise by reason of the provisions of this Purchase Order. The parties understand and agree that MPI is the agent of TxDOT solely for the purpose of marketing and selling Plates to customers in accordance with this Purchase Order.

## **2. PROGRAM IMPLEMENTATION**

**2.1. Conduct of Program.** The Program consists of the marketing and sale of Plates and ancillary Plate products and the provision of services to customers. As part of the program and in the exercise of its rights and responsibilities under this Purchase Order, MPI will undertake certain activities. MPI will conduct the program in accordance with the procedural and operational guidelines set forth in the Operating Agreement.

**2.2. Services.** The Operating Agreement describes the services to be performed by MPI during the term of this Purchase Order. MPI will provide such services as outlined in the Operating Agreement. By way of illustration and not limitation, the services outlined in the Operating Agreement will include expectations to ensure business continuity and information back up in the event of failures of technology.

**2.3. Activities of TxDOT.** During the term of this Purchase Order, TxDOT shall be solely responsible for the following, which are expressly excluded from the services:

- (a) Securing production of Plates from the Texas Department of Criminal Justice, including the oversight and coordination of appropriate production standards and quality assurance for the manufacture of the Plates;
- (b) Periodically evaluating the performance of MPI in its conduct of the program and provision of services, including giving adequate notice to MPI if TxDOT observes or otherwise actually becomes aware of any action or inaction which TxDOT, in its sole judgment, considers a material default or material error in MPI's performance;
- (c) Providing in a timely manner any decision, authorization or approval requested by MPI;
- (d) Facilitating the activities of the Working Group through participation of its authorized representatives; and
- (e) Any other function committed to TxDOT by law or rule.

**2.4. Implementation of Services.** MPI shall notify TxDOT in writing when it has satisfied all preconditions to beginning marketing and selling Plates under this Purchase Order. Within 60 days after receiving this notification, TxDOT shall notify MPI in writing that it may begin marketing and selling Plates or identify the preconditions that have not been met. The date on which TxDOT notifies MPI that it may begin marketing and selling Plates is the Implementation Date. During the period between issuance of this Purchase Order and the Implementation Date, MPI shall not be liable for liquidated damages.

**2.5. Changes to the Program.** The parties anticipate that certain events may occur which would necessitate consideration of changes to the scope or terms of this Purchase Order. In the event of such changes, the parties agree to negotiate reasonably and in good faith to consider and address such changes so as to retain the spirit and viability of this Purchase Order. By way of illustration, the parties contemplate that a change may be occasioned by:

- (a) act of the Commission or the Texas Legislature;
- (b) Force Majeure as incorporated by reference in the Purchase Order; or
- (c) mutual agreement.

### **3. TERM OF PERFORMANCE**

**3.1. Termination.** This Purchase Order shall remain in force for the terms provided in this Article 3, unless discontinued by termination as follows:

- (a) Immediately or as may be otherwise agreed to by mutual agreement of the parties;
- (b) Immediately by TxDOT in the event of a willful action by MPI that endangers the motoring public or constitutes fraud.
- (c) By either party for cause under the following procedure. If either party believes that the other party has committed a material breach of this Purchase Order, that party may provide the other party with a written notice of intent to terminate. The party alleged to have breached the Purchase Order shall have 30 days in which to cure the alleged breach. At the end of that 30-day period, the party alleged to have breached the Purchase Order shall provide the party giving notice with a written explanation of how the alleged breach has been cured or provide the party giving notice with a written explanation of why there was in fact no material breach. After receipt of the written explanation, the party giving notice shall have 45 days in which to evaluate the cure and the written explanation. If the cure or the written explanation is not adequate to remedy the breach, the party alleging the material breach may then give a final written 30-day notice of termination to the party alleged to have committed the material breach.

**3.2. Transition Period.** Section 32 of the request for proposal pursuant to which this Purchase Order is issued ("RFP") contains provisions regarding transition period activities, which provisions are incorporated into this Purchase Order by reference.

**3.3. Liquidated Damages.** In the event of a notice of intent to terminate pursuant to paragraph 3.3(c) occasioned by a breach of the customer service performance standards described in Schedule 3.3., the provisions for graduated liquidated damages set forth in Schedule 3.3 shall apply.



#### **4. COMPENSATION; PAYMENTS**

**4.1. Payments on Sales of Plates.** MPI shall make payments to TxDOT in connection with the sales of Plates in the manner provided in the RFP and in the amounts listed in Schedule 4.1.

**4.2 Minimum Guaranteed Payment.** The annual minimum guaranteed payments as set forth in Schedule 4.2 shall be made to TxDOT no later than the applicable annual anniversary of the Implementation Date.

**4.3. Performance Bond.** Within 30-days of the issuance of this Purchase Order, MPI shall provide TxDOT with proof of a performance bond in the amount of \$100,000 assuring its performance under this Purchase Order. The bond shall be in a form acceptable to TxDOT. At its option MPI may instead provide proof of an equivalent bank CD or bank guarantee in a form acceptable to TxDOT.

#### **5. OTHER AGREEMENTS**

##### **5.1. Ownership and Use of Work Product, Intellectual Property.**

**5.1.1. Existing MPI Plate Designs.** MPI has developed certain Plates constituting Intellectual Property of MPI developed prior to the term of this Purchase Order, including but not limited to those items listed on Schedule 5.1.1. All rights to Intellectual Property of MPI developed, conceived or claimed prior to the term of this Purchase Order, including Existing MPI Plate Designs, will remain with MPI, regardless of whether such Intellectual Property is employed in the performance of this Purchase Order.

The parties acknowledge that MPI contemplates using designs based on Existing MPI Plate Designs and adapted for use in Texas to create Plates to be offered for sale to customers in connection with its activities under this Purchase Order ("Adapted Plate Designs"). MPI grants TxDOT a perpetual, exclusive license to use such Adapted Plate Designs following termination of this Purchase Order within the State of Texas for the same purposes that were made of such Adapted Plate Designs by MPI under this Purchase Order. The license granted by this subsection 5.1.1. may not be transferred or assigned without the express written permission of MPI, except that TxDOT may transfer or assign the license for the limited purpose of manufacturing or distributing Plates in Texas. The provisions of this subsection 5.1.1. will survive the termination of this Purchase Order. Except for the license rights granted to TxDOT as described in this subsection 5.1.1., all rights to Existing MPI Plate Designs will be the property of MPI.

MPI retains an unrestricted right at all times to use Existing MPI Plate Designs and Intellectual Property in any marketplace in the course of its business; provided, however, that MPI will not use Existing MPI Plate Designs and Intellectual Property in a manner which actually

causes material confusion with Adapted Plate Designs in the marketplace served by this Purchase Order without the written permission of TxDOT, which permission will not be unreasonably withheld.

**5.1.2. New Plate Designs.** MPI will not have Intellectual Property rights to any Plates designed during the term of this Purchase Order and in connection with its activities under this Purchase Order if such Plate designs are not derived or adapted from Existing MPI Plate Designs or Intellectual Property of MPI ("New Plates"); provided, however that TxDOT grants MPI a perpetual exclusive license to use New Plate designs and any Intellectual Property associated with such New Plates in any marketplace in the course of its business; and provided further that MPI agrees not to exercise its rights under such license in a manner which actually causes material confusion with New Plates in the marketplace served by this Purchase Order without the written permission of TxDOT, which permission will not be unreasonably withheld. The license granted by this subsection 5.1.2. may not be transferred or assigned without the express written permission of TxDOT. The provisions of this subsection 5.1.2. will survive the termination of this Purchase Order. Except for the license rights granted to MPI as described in this subsection 5.1.2. and in subsection 5.1.3., all rights to New Plates will be the property of TxDOT.

**5.1.3. Ancillary Products.** TxDOT grants MPI an exclusive license to use New Plate designs and any Intellectual Property associated with such New Plates in any marketplace including the State of Texas during the term of this Purchase Order for the purpose of designing, manufacturing and selling Ancillary Products. In connection with the license granted by this subsection 5.1.3, MPI agrees to pay TxDOT royalties in the manner and amount set forth on Schedule 5.1.3. The license granted by this subsection 5.1.3. may not be transferred or assigned without the express written permission of TxDOT.

**5.1.4. Third Party Intellectual Property.** The parties acknowledge and agree that, in creating Adapted Plate Designs and New Plates for use pursuant to this Purchase Order, MPI may contract for or otherwise obtain rights to use Intellectual Property or other proprietary items of third parties. MPI agrees that any third party agreement will contain the right for TxDOT to renew already issued Adapted Plate Designs and New Plates upon termination of this Purchase Order, and MPI will cause such third party rights to be assigned or transferred to TxDOT as may be necessary for TxDOT to establish and maintain such rights in already issued Adapted Plate Designs and New Plates.

**5.2. Seven Character Plate Inventory.** MPI may market and sell Plates with seven alphanumeric characters, subject to the approval procedures set forth in this Purchase Order. TxDOT will not issue Statutory Texas Plates with seven alphanumeric characters. General issue license plates, exempt plates and other license plates as otherwise required by law may contain seven alphanumeric characters. MPI may request from time to time that TxDOT reserve for MPI's use specified alphanumeric combinations. TxDOT, in its discretion, may approve such request. Seven character plates will have a higher TxDOT manufacturing cost which shall not exceed \$5 per plate.

**5.3 Plate Sales\Website.** As more fully set forth in the Operating Agreement, MPI shall operate a call center and a sales office, as well as a website and related systems through which Plates can be ordered. All sales and renewals shall be processed through the website and related systems operated by MPI. The website shall be accessible to the general public. When reasonably practical, the website shall also be accessible to the Tax Assessor Collectors in each Texas county. The website shall offer for sale and renewal the Plates, as well as offering for sale and renewal Statutory Texas Plates.

Regardless of where the customer places an order or renewals for Plates or Statutory Texas Plates, all payment of sale and renewal fees shall be made electronically through Texas Online, or such other site as the parties shall designate. MPI's website shall be linked to Texas Online so that all sales are processed through Texas Online.

TxDOT shall modify its website so that it provides a link taking or redirecting persons seeking to purchase or renew specialty and personalized plates from the TxDOT website to the MPI website.

#### **5.4. Hold Harmless.**

**5.4.1. By MPI.** MPI hereby holds harmless TxDOT from all losses, damages, claims, patent and copyright claims, expenses, costs, liabilities, and judgments of whatever nature arising out of or in any way related to the performance of, or the failure to perform, this Purchase Order by MPI. MPI shall, at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising from or incurred in connection with any claim or suit described in this Section 5.4 provided MPI has been notified of such claim or suit. TxDOT will give MPI written notice of such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

The obligation of MPI to hold harmless TxDOT pursuant to this Section shall survive the expiration or termination of this Purchase Order regardless of the reason for such termination.

MPI shall not be obligated to hold harmless TxDOT for TxDOT's negligence. Under no circumstance shall consequential damages exceed the sum of \$1,000,000. This hold harmless does not include losses, damages, claims, patent and copyright claims, expenses, costs, liabilities, and judgments arising out of any act or failure to act of MPI where the act or failure to act is specifically directed in writing by TxDOT.

**5.4.2. By TxDOT.** To the extent allowed by law, TxDOT hereby holds harmless MPI from and against all losses, damages, claims, patent and copyright claims, expenses, costs, liabilities, and judgments arising out of or in any way related to the performance of, or the failure to perform, this Purchase Order by TxDOT. To the extent allowed by law, TxDOT shall, at its own expense,

appear, defend, and pay all charges of attorneys and all costs and other expenses arising from or incurred in connection with any claim or suit described in this Section 5.4 provided TxDOT has been notified of such claim or suit. MPI will give TxDOT written notice of such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

To the extent allowed by law, the obligation of TxDOT to hold harmless MPI pursuant to this Section shall survive the expiration or termination of this Purchase Order regardless of the reason for such termination.

TxDOT shall not be obligated to hold harmless MPI for MPI's negligence. TxDOT shall not be liable under this Section 5.4 or otherwise for consequential damages of any kind. This hold harmless does not include losses, damages, claims, patent and copyright claims, expenses, costs, liabilities, and judgments arising out of any act or failure to act of TxDOT where the act or failure to act is specifically directed by MPI.

**5.5. MPI's Representations and Warranties.** MPI represents and warrants that

(a) MPI is a corporation authorized to do business in, and in good standing under the laws of, the State of Texas, with all requisite power and authority to carry on the business described in this Purchase Order, to own its properties, and to execute and perform this Purchase Order, and

(b) All factual information furnished to TxDOT by MPI in connection with this Purchase Order was true, correct, and complete in all material respects when submitted. All forecasts and predictions provided by MPI in its response to the RFP were prepared to the best of MPI's knowledge and are accurate and complete to the best of MPI's knowledge and belief; however, such information is not guaranteed to be accurate or complete, nor is such information warranted to be accurate as a predictor of MPI's potential success in operating the program.

**5.6. Confidential Information.** TxDOT is a government agency subject to the Texas Public Information Act, TEX. GOVT. CODE ANN., Section 552. This Purchase Order and other information related to this Purchase Order that is submitted to TxDOT are subject to release by TxDOT as public information.

Any information furnished to TxDOT, either before or after the execution of this Purchase Order descriptive of the actual business practices of MPI and the actual or proposed conduct of the Program and provision of service, including but not limited to marketing, plate design, pricing and payment, constitutes trade secrets, proprietary commercial information, or proprietary financial information and shall be "confidential information" for purposes of this Section 5.6. Confidential information shall not include information that: (a) is or becomes generally available to the public other than as a result of disclosure by TxDOT; or (b) becomes available to TxDOT on a non-confidential basis from a source other than MPI, provided that such source is not bound by a confidentiality agreement with MPI or any other party with respect to such information.

In the event TxDOT and MPI disagree as to whether certain information furnished to TxDOT constitutes confidential information, TxDOT will notify MPI in writing of said disagreement. In the event the parties are unable to resolve such disagreement, TxDOT or MPI may seek relief from the State District Courts of Travis County. In no event will TxDOT disclose any confidential information in dispute until the expiration of ten (10) days of such notice, unless such release of information is in response to a request pursuant to the Texas Open Records Act.

If TxDOT is presented with a request under the Open Records Act for public information that includes confidential information, TxDOT shall timely request an opinion from the Office of the Attorney General as to whether or not the information is within an exception to the Open Records Act. Furthermore, TxDOT shall promptly notify MPI in writing of any request to TxDOT for confidential information and shall promptly furnish MPI with: (a) a copy of such request; (b) TxDOT's response to such request; and (c) TxDOT's request to the Attorney General for an opinion.

If it is the opinion of the Office of the Attorney General that the confidential information is not subject to an exception to the Open Records Act, TxDOT will promptly notify MPI of TxDOT's obligation to release such information and will release such information, unless such release is enjoined by a court of competent jurisdiction.

TxDOT shall not publicize or divulge any MPI financial information to anyone other than members of the Commission, TxDOT staff, attorneys, and consultants. TxDOT shall, in accordance with its own internal procedures, inform all such Commission members, staff members, attorneys, and consultants of their duty to keep such information in confidence and abide by the terms of this Section 5.6. The obligations imposed by this Section 5.6 upon TxDOT shall continue to exist after the termination of this Purchase Order. The obligations imposed by this Section 5.6 upon each staff member of TxDOT shall continue to exist after the staff member's termination of employment with TxDOT and after termination of this Purchase Order. The obligations imposed by this Section 5.6 upon each attorney and consultant of TxDOT shall continue to exist after the attorney or consultant is no longer representing or advising TxDOT and after termination of this Purchase Order. TxDOT shall not be considered to have breached this Purchase Order as a result of actions by any former TxDOT employee or contractor.

**5.7. Public Information Act requests.** In the event that TxDOT receives a Public Information Act request for information relating to or in the possession of MPI, TxDOT shall promptly inform MPI and provide it with a copy of the request. The parties will cooperate fully in responding appropriately to any Public Information Act request, legislative request, or other valid information request.

**5.8. Disputes.** Should any disputes between MPI and TxDOT relating to the performance of this Purchase Order occur, the parties shall attempt to settle such disputes by agreement between the parties as follows. The Executive of the party asserting such dispute shall provide written notice of all facts and supporting documentation concerning the disputes to the Executive of the other party. The Executive of the other party shall review these materials and shall within ten (10) business days of

receipt of such notice, either meet in person or by conference telephone call with the Executive of the party asserting such dispute to discuss a resolution or provide a written notice of such party's position on the disputed issues and the reason(s) for such dispute.

Any disputes between MPI and TxDOT relating to the performance of this Purchase Order that cannot be settled by agreement between the parties shall be a dispute. Any dispute arising under this Purchase Order shall be addressed pursuant to the dispute resolution process provided for in Texas Government Code Chapter 2260 and 43 TAC Section 9.1.

**5.9. Plate recall and cancellation.** To the extent allowed by law or rule TxDOT may discontinue any plate design. To the extent allowed by law or rule TxDOT may recall a plate based on its alphanumeric sequence.

**5.10. Audits.** Except as otherwise required by law, TxDOT's right to audit, inspect, and obtain documents under this Purchase Order is limited to the purpose of monitoring or enforcing the Purchase Order or otherwise exercising its statutory responsibilities.

## **6. PROVISIONS OF GENERAL APPLICATION**

**6.1. Assignment.** This Purchase Order shall be binding upon the successors and assigns of the parties to this Purchase Order. MPI may assign this Purchase Order and all associated rights, interests and obligations without prior approval or consent of TxDOT to a limited liability company or other entity directly or indirectly controlled by or under common control with MPI or the owner of MPI. Assignment of any rights or obligations under the proceeding sentence shall not relieve MPI of its ultimate responsibility for performance under this Purchase Order. Except for such assignment, MPI may not assign this Purchase Order, nor any of its rights, interests, or obligations under this Purchase Order without the written consent of TxDOT.

**6.5. Modifications.** No change in, addition to, or waiver of the terms, conditions, and specifications contained in this Purchase Order shall be a binding obligation of either party unless approved in writing by such party. Any excuse by any party of a breach by the other, whether express or implied, shall not constitute an excuse for any other breach. Changes, additions or waivers to the terms, conditions and specifications of any Schedule or Exhibit, including the Operating Agreement, shall be governed by the terms of such Schedule or Exhibit.

**6.6. Notices.** All notices, requests, reports, and other communications under this Purchase Order shall be deemed to be duly given if hand-delivered, transmitted by fax and acknowledged, delivered by nationally recognized courier service, or mailed by certified or registered mail with postage prepaid as specified below:

If to TxDOT to:

Mailing Address:  
Director, Vehicle Titles and Registration Division  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

Physical Address:  
Director, Vehicle Titles and Registration Division  
Texas Department of Transportation  
4000 Jackson Avenue  
Austin, Texas 78731

Fax Number:  
(512) 467-5909

If to MPI to:

Address:  
Michael Shaunessy  
Sedgwick Detert, Moran & Arnold, LLP  
919 Congress Avenue, Suite 1250  
Austin, Texas 78701-3656

Fax Number:  
(512) 481-8444

Either party may furnish substitute names and addresses to the other party, but must do so in writing.

All such notices and communications shall be deemed given when received, as evidenced by the signed acknowledgment of receipt of the person to whom such notice or communication shall have been delivered by hand or by fax, the confirmation of delivery rendered by the applicable courier service, or the acknowledgment of receipt returned to the sender by the applicable postal authorities.

**6.7. Severance Clause.** If any term or provision of this Purchase Order is found to be illegal and therefore unenforceable, then, notwithstanding such provisions, the remainder of this Purchase Order shall remain in full force and effect and the offending term or provision shall be deemed struck and replaced with a term or provision that shall be reformulated to meet the original intent of the parties, but in a manner that is enforceable and legal.

**6.8. Cooperation; Further Assurances.** The parties agree to act reasonably and in good faith to effectuate the purposes and intent of this Purchase Order. Each party to this Purchase Order will make, execute, acknowledge and deliver such other instruments and documents, and take all such

other actions, as may be reasonably required in order to consummate the transactions contemplated by this Purchase Order. The parties will cooperate reasonably and in good faith to provide in a timely manner the various reviews, decisions and approvals required by this Purchase Order.



Executed on SEPTEMBER 27TH, 2007.

TxDOT  
Texas Department of Transportation

By: 

Name: Rebecca Davio

Title: VTR Director

MPI  
My Plates, Inc.

By: 

Name: JAMES G. POWER

Title: PRESIDENT

### Schedule 3.3 Liquidated Damages

The Operating Agreement lists certain levels of customer service performance that MPI is required to maintain during the term of the Purchase Order. Failure to maintain those customer service levels listed below may be considered a breach of the terms of the Purchase Order. Upon notice of such breach pursuant to the provisions of paragraph 3.3 (c) of the Purchase Order, MPI may cure such breach by the payment of liquidated damages for such breach according to the following schedule:

<u>Service Standard</u>	<u>Default standard</u>	<u>Liquidated damages</u>
Monthly abandoned call rate of 4% or less*	<4% to 10% <10% to 25% <25%	\$1,000 for each such month \$2,500 for each such month \$5,000 for each such month
Web site must be accessible 24 hours a day, 7 days per week*	monthly for 95%	\$2,500 for each such month
Customer service and call center operations from 8:00am until 6:00pm, Central time, Monday through Friday, except Federal Holidays	daily for over ½ hour	\$500 for each such day
Customer complaints to total application requests of less than 1% each month*	1% to 5% <5% to 10% <10%	\$500 for each such month \$2,500 for each such month \$10,000 for each such month
Application processing accuracy rate of 99.8% each month* (for failures due to MPI performance and not failures due to customer error)	>99.8% to 98% >98% to 95% >95%	\$500 for each such month \$2,500 for each such month \$10,000 for each such month

\* monthly rate to be the per month average of the preceding three month total

**Schedule 4.1**  
**TxDOT ROYALTY**

<b>CATEGORY</b>	<b>PRICE</b>	<b>% RETURN</b>
A	\$1 – 150	30%
B	\$151-300	35%
C	\$301-400	40%
D	\$401+	45%

The percentage return applies to all revenue from the sale of Plates, net of TxDOT's statutory reimbursement for its costs. There shall be no percentage return to the state on the sale of Statutory Texas Plates. The price set as shown in this table refers to the initial or annual renewal price of the Plate.

## Schedule 4.2

**MINIMUM FINANCIAL RETURN TO STATE**

YEAR	RETURN TO STATE
1	\$2 million
2	\$4 million
3	\$6 million
4	\$10 million
5	\$18 million
	Total: \$40 million

Financial return in excess of minimum return (if any) for past years may be carried forward and applied to satisfy the minimum return for future years.

**Schedule 5.1.1**  
**MPI's Existing Plates**

<b>Schedule 5.1.1 MPI's Existing Plate Designs</b>
2000 - 10 Years on the Gold Coast
2000- It's not the end of the World
4WD Do it in the Dirt
4x4 Do It In the Dirt
Aussie Aussie Aussie
B105 Battle of the Sexes Female
B105 Battle of the Sexes Male
Beautiful Queensland
Betty Boop
Bi-Centennial
Blue Hibiscus
Brace Yourself
Brisbane - The River City
Brisbane Lions
Broncos
Cairns - Living in Paradise
Centenary of Federation
Cherckerplate
Elvis - King of Rock & Roll
EXPO 88
Ford Performance Vehicle
Frangipanni-Relax it's Queensland
Get Ready to Go
Gladstone
Gold Coast
Gold Coast Titans

Great Barrier Reef
Hooked on Fishing
Horoscope - Aquarius
Horoscope - Aries
Horoscope - Cancer
Horoscope - Capricorn
Horoscope - Gemini
Horoscope - Leo
Horoscope - Pisces
Horoscope - Sagittarius
Horoscope - Scorpio
Horoscope - Taurus
Horoscope - Virgo
Horoscopes- Libra
I'd Rather be driving Balls
I'd Rather Be Fishing
I'd Rather Be Playing Golf
It's Great To Be A Queenslander
It's Great to Be A Queenslander
Lions 3x 3
Lions Member of the Pride
Lions Premiers
Lions Premiers 2x2
Living in Paradise
Looney Toons - Bugs Bunny
Looney Toons - Daffy Duck
Looney Toons - Marvin the Martian
Looney Toons - Road Runner
Looney Toons - Speedy Gonzales

Looney Toons - Tasmanian Devil
Looney Toons - Tweety Bird
Looney Toons - Yosemite Sam
Looney Toons- Sylvester
Mackay
New Euro
Nth Qld Cowboys
Nth Qld Cowboys
Number 1 Dad
Outback Queensland
Pink Hibiscus
Qld Euro
Qld Maps (Green & Maroon)
Qld Special Father
Qld Special Mother
Queensland Reds
Queensland Tourism
Real Aussies drive utes
Reef
Road to Reconciliation
Rugby - The Game Played in Heaven
Smile- Don't Worry Be Happy
Soccer - The World's Game
State of Origin
State of Origin
Sun, Serf & Sand
Sunset
Sunshine Coast
Surfing-Endless Summer

The New Millennium
The Phantom
Townsville- Life in the Tropics
Tropical Queensland
V8 SuperCars
V8 SuperCars
V8 SuperCars
Whitsundays
World Masters Games



**Schedule 5.1.3**  
**Royalties for Ancillary Product Sales**

MPI will pay TxDOT a royalty amount equal to ten percent (10%) of the gross revenues received by MPI, net of returns and allowances, from sales of Ancillary Products.

Royalty amounts will be paid to TxDOT monthly.

For each royalty payment submitted to TxDOT, MPI will prepare and provide a detailed accounting of sales activity associated with the generation of such royalty payment reasonably acceptable to TxDOT, including by way of illustration and not limitation the amount, price and nature of Ancillary Products sold upon which the calculation of the royalty payment is based.

The parties understand and agree that TxDOT with review and recommendations from the Working Group, will have the right and authority to approve all Ancillary Products prior to marketing and sale by MPI, and to exert and approve quality control over all Ancillary Products.

The parties understand and agree that, in the course of marketing and selling Ancillary Products, MPI will have the right to assign Intellectual Property rights acquired by MPI through license pursuant to Section 5.1.2. of the Purchase Order to third parties for the limited purpose of manufacturing, distributing, or promoting Ancillary Products; provided, however, that such third parties may not be granted further rights to the use of such Intellectual Property, including by way of illustration and not limitation rights to reassign, sublicense or otherwise contract the use of such Intellectual Property to other parties.

MPI will notify TxDOT promptly of any infringement of TxDOT intellectual property and will cooperate fully in protecting TxDOT intellectual property.

## Schedule 6.1

### Definitions

**Ancillary Products** means any product displaying Intellectual Property owned or licensed to TxDOT under this Purchase Order, except for a plate.

**Commission** means the Texas Transportation Commission.

**Executive** may mean either the MPI Executive or the TxDOT Executive as described in subsection 1.3.4.

**Existing MPI Plate Designs** means license plate designs that were in existence at the time this Purchase Order was issued and were being offered in a jurisdiction other than Texas.

**Intellectual Property** includes without limitation copyright, trademark, trade name, service name, service mark, patent, design right, processes, procedures, know-how, confidential information and rights in records (whether or not stored on computer) and any other legally recognized intellectual property in which ownership or license rights are recognized at law and are protected.

**Operating Agreement** means the procedural and operational guidelines as may be reasonably agreed to by the parties from time to time, initially being those procedural and operational guidelines as set forth in Exhibit A.

**Plate** means any license plate that is permitted by Texas Transportation Code section 504.851 to be sold by a private company. Plate does not, however, include souvenir license plates and personalized souvenir license plates, which are considered Ancillary Products. Plate does not include any Statutory Texas Plates.

**Statutory Texas Plates** means specialty and personalized license plates created by TxDOT under statutory authority other than Texas Transportation Code, Section 504.851.

# **OPERATING AGREEMENT OF THE SPECIALTY PLATES PROJECT MANAGEMENT WORKING GROUP**

The Texas Department of Transportation ("TxDOT"), and My Plates, Inc. ("MPI") have convened a Specialty Plates Project Management Working Group ("Working Group") to facilitate implementation and operation of the Project described in the Purchase Order for the Marketing, Sale and Design of Specialty License Plates in Texas between TxDOT and MPI ("Purchase Order").

As directed by the Purchase Order, the Working Group adopts this Operating Agreement to describe its composition, duties, and expectations regarding its activities. This is the Operating Agreement referred to in subsection 1.3.3 of the Purchase Order. Capitalized terms defined in this Operating Agreement have the meanings given to them, and capitalized terms not defined have the same meanings as given to them in the Purchase Order.

## **1. Formation**

1.1 **Purpose.** The purpose of the Working Group is to facilitate a successful business operating to the mutual benefit of TxDOT and MPI. In pursuit of this purpose, the Working Group is convened to create a structure for a working relationship between TxDOT and MPI that will facilitate sharing of ideas and expertise, provide flexibility and clear mechanisms for soliciting input in the implementation and operation of the program, promote MPI's innovation in the production, marketing and sale of Plates, provide clear mechanisms for the provision of information and regular reporting, and describe appropriate decision making procedures.

1.2 **Nature of Working Group.** The Working Group is advisory and consultative in nature. No person or entity has any ownership or other interest in the Working Group. The Working Group does not have a separate legal existence.

The Working Group does not constitute, and this Operating Agreement does not create, a relationship, partnership, association, joint undertaking or enterprise or other business organization or entity. In no event shall this Operating Agreement be construed, and all parties expressly disclaim any intention, to create an employer-employee relationship, a partnership, joint venture or joint enterprise by reason of the provisions of this Operating Agreement or the activities of the Members (defined in Section 2.1).

The Members acknowledge and agree that, in acting pursuant to this Operating Agreement, MPI and the agents, employees, officers and consultants of MPI shall act in an independent capacity and not as officers, employees or agents of TxDOT, except that MPI is the agent of TxDOT solely for the purpose of marketing and selling Plates to customers in accordance with the Purchase Order; and TxDOT and the agents, employees, officers and

consultants of TxDOT shall act in an independent capacity and not as officers, employees or agents of MPI.

**1.3 Working Group Recommendations and Decisions.** Members shall make such recommendations and decisions and take such actions only as are specifically assigned to the Working Group in this Operating Agreement.

Attachment 1.3 lists items regarding the design and implementation of the program, the recommendations and decisions for which are specifically assigned to the Working Group. Article 3 lists Services, and Article 4 lists Performance Standards, for which Working Group oversight is contemplated.

**1.4 Term.** The Working Group commences when first constituted by the Executives pursuant to Section 2.1, and continues until the earlier of such time as (a) the Purchase Order is amended to provide that the Working Group need not be convened, or (b) the Purchase Order is terminated and the rights and obligations of TxDOT and MPI under the Purchase Order are fully discharged.

## **2. Composition and Meetings**

**2.1 Members.** The Working Group shall be composed of four Members and two Ex-Officio Members.

The Ex-Officio Members of the Working Group are the TxDOT Executive and the MPI Executive. Ex-Officio Members are entitled to notice of and participate at meetings of the Working Group, but shall not be entitled to vote except in the event of a dispute as described in Section 2.2(b). Attendance of Ex-Officio Members at Working Group meetings is not required and shall not count in the determination of a quorum.

The TxDOT Executive and the MPI Executive shall each name two Members to the Working Group. Members serve at the designation of such Executive, and may be removed or replaced at any time by such Executive upon notice of such Executive to the other Executive.

The Chair shall be a Member designated by the MPI Executive, and the Deputy Chair shall be a Member designated by the TxDOT Executive.

The initial Members of the Working Group are the persons executing this Operating Agreement. Each person who subsequently becomes a Member of the Working Group must first execute and deliver a copy of the Consent to be Bound by Operating Agreement attached as Schedule 2.1.

**2.2 Meetings.** (a) *Quorum and Vote.* A quorum shall be present at a meeting of Members only if at least one designee of each Executive is present at such meeting. With respect to any matter, the affirmative vote of all Members at a meeting of Members at which a quorum is

present shall be the act of the Members. No Member individually has the authority or power to act for or on behalf of the Working Group.

(b) *Dispute Resolution.* In the event of a dispute among the Members or in the event that the Members are unable to reach an agreement or decision regarding a matter before them, such matter shall be referred by the Members to the Executives for an agreement or decision. An agreement or decision of the Executives in such an event shall constitute the act of the Working Group.

(c) *Time and Place of Meetings.* A meeting may be called by the Chair or Deputy Chair of the Working Group, or their designees, at anytime on reasonable notice to all members of the Working Group. Meeting shall be held in Austin, Texas. Members may participate by teleconference or similar means. Meetings shall be held at least ten times during any twelve month period.

**2.3 Minutes and Records.** All documents reflecting a decision of the Work Group shall be executed in duplicate, and one original shall be provided to each party.

The Members shall determine and make arrangements for the appropriate person or persons to record and circulate minutes of its meetings. Such person may, but need not be, a Member. Promptly following the conclusion of each meeting, minutes shall be prepared and circulated to each Member and each Ex-Officio Member for review, comment and revision. Meeting minutes shall be presented at the subsequent meeting of Members for ratification and approval.

In addition to the preparation of records and minutes, the Members shall establish reasonable and appropriate procedures for the maintenance of such records, minutes, documents and other materials and items associated with the performance of their activities under this Operating Agreement as the Members in their reasonable discretion, with appropriate input from the Ex-Officio Members, shall determine.

**2.4 Proxies.** A Member may vote or otherwise delegate his or her responsibilities as a Member to any other person by written proxy delivered to the Chair and the Deputy Chair of the Working Group.

**2.5 Conduct of Meetings.** All meetings of the Members shall be presided over by the Chair. Appropriate records and minutes of all meetings shall be maintained as set forth in Section 2.3.

**2.6 Action by Written Consent or Telephone Conference.** (a) Any action required or permitted to be taken at any meeting may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken is signed by all of the Members. Every written consent must bear the date of signature of each Member who

signs the consent. A facsimile, electronic transmission or similar reproduction or transmission by a Member of a writing signed by a Member shall be regarded as evidence of written consent.

(b) Members may participate in and hold a meeting by means of conference telephone or similar communications equipment if all Members participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting.

**2.7 Compensation.** The Members shall not receive compensation for their participation in the Working Group as a Member.

**2.8 Conflicts of Interest.** Each Member and Ex-Officio Member may engage in other employment and business activities and possess interests in other business ventures of any and every type and description, independently or with others; provided, however, that Members and Ex-Officio Members shall adhere to the standards and agreements regarding confidentiality and information as set forth in Section 5.1.

### **3. Services**

**3.1 Start Up Period Provisions.** Attachment 3.1 describes expectations regarding activities to commence upon execution of the Purchase Order and through the Implementation Date.

**3.2 Plate Sales\Web.** MPI shall maintain a website that is available to the public that will be available at all times of the day or night, during weekdays, weekends and holidays. Except where required by unforeseen circumstances, website maintenance shall be scheduled at times so as to avoid disruption in sales.

The MPI website will be the conduit for the processing of Plates during the term of the Purchase Order. A section or segment of the MPI website will also offer for sale and renewal all Statutory Texas Plates. Within that section or segment of the MPI website, MPI shall display those personalized and specialty plates in comparable prominence to how they are currently offered for sale on the TxDOT website.

TxDOT's website shall redirect or link any customer attempting to find, purchase or renew the Statutory Texas Plates to the MPI website.

Payments for sales and renewals of Plates, as well as sales and renewals of Statutory Texas Plates shall be made electronically through Texas Online, or such other site as the parties shall designate. MPI's website shall be linked to Texas Online so that all sales are processed through Texas Online.

#### **4. Performance Standards**

**4.1 Customer Service.** Attachment 4.1 describes expectations for levels of customer service performance.

**4.2 Business Continuity and Disaster Recovery.** Attachment 4.2 describes expectations to ensure business continuity and information back up in the event of failures of technology.

**4.3 Reporting.** Attachment 4.3 describes expectations for reports to be provided in connection with the operation of the Program.

**4.4 Funds Management.** Attachment 4.4 describes expectations for the management of Program funds.

#### **5. Other Agreements and General Provisions**

**5.1 Access to Information; Confidentiality.** The Members acknowledge and agree that all information they may receive in connection with their participation in the Working Group is deemed confidential. The Members agree to treat such information with the same degree of care as they would their own confidential information, and agree not to disclose such confidential information to anyone other than other Members, members of the Commission, TxDOT staff, attorneys and consultants. Members will exclude non-Members from participation in Working Group meetings when appropriate to effectuate the intent of this provision.

**5.2 Notices.** All notices provided for in this Operating Agreement must be in writing and given either by mail, personal delivery, electronic or facsimile transmission to the addresses as set forth in the Purchase Order or as otherwise maintained by the Chair or Deputy Chair for each Member from time to time.

**5.3 Amendment.** This Operating Agreement or any Attachment may be amended from time to time only by a written instrument adopted by vote as described in Section 2.2; provided, however, that no amendment may be made which will diminish the decision making authority vested in the Executives and/or Commission. Upon the adoption of any such amendments, the Members shall determine and make arrangements for the appropriate person or persons to record and circulate an Amended and Restated Operating Agreement, setting in full the terms of the Operating Agreement as so amended. Each such Amended and Restated Operating Agreement shall note the date of adoption in its heading to clearly identify it as follows:

**OPERATING AGREEMENT  
OF THE  
SPECIALTY PLATES PROJECT MANAGEMENT WORKING GROUP  
AMENDED AND RESTATED TO BE EFFECTIVE [DATE]**

**5.4 Good Faith; Further Assurances.** The Members agree to act reasonably and in good faith to effectuate the intent of this Operating Agreement and retain the spirit and viability of the Purchase Order. Each Member shall undertake any additional activities not specified but that may be reasonably necessary or appropriate to effectuate the intent of this Operating Agreement.

**5.5 Duplicate Originals.** This Operating Agreement may be executed in duplicate with the same effect as if all signing parties had signed the same document. Both duplicates shall be construed together and constitute one and the same instrument.



**MEMBERS:**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

## Attachment 1.3

### Working Group Recommendations and Decisions

Duties of the Working Group include:

1. Review day-to-day operation of the program and make recommendations for improvements to the marketing and sales of Plates.
2. Evaluate and recommend amendments or revisions to the Operating Agreement based upon status, success and changes in the program.
3. Where appropriate, consider and attempt to resolve disputes between the parties. Recommend resolutions of problems and disputes to the Executives. Evaluate and recommend liquidated damages in the event of a breach.
4. Consider and address all issues related to nature, format, and frequency of all reports MPI provides TxDOT.
5. Monitor and address flow of information by and between MPI and TxDOT related to program performance and information necessary to facilitate marketing and sales.
6. Evaluate and make recommendations on matters to be presented to the Commission, including but not limited to plate categories, plate pricing, etc.
7. Consider issues related to the operation of the website and call centers.
8. Review and make recommendations to the Executives regarding MPI's proposed marketing plans and all marketing materials.
9. Consider and recommend ancillary products for sale.
10. Consider and recommend plate categories and plate designs.
11. Develop means of evaluating customer satisfaction and address customer complaints.
12. Evaluate program performance on all levels.
13. Oversee plate design and initial approval of plate design.
14. Study, evaluate and recommend use of new technology in manufacture, marketing and sales of plates.

15. Recommend discontinuing sales of specific specialty plates.

16. Work on coordinating necessary communications and linkage between MPI and TxDOT's computer systems, websites and related systems.

Attachment 2.1

Consent to be Bound by Operating Agreement

This Consent to be Bound by Operating Agreement ("Consent") is entered into as of \_\_\_\_\_, 20\_\_ by each of the undersigned Members of the Specialty Plates Project Management Working Group ("Working Group").

Prior to or simultaneously with the execution of this Consent, the undersigned has been designated to serve as a Member of the Working Group convened by the Texas Department of Transportation ("TxDOT") and My Plates, Inc. ("MPI") pursuant to the Operating Agreement of the Specialty Plates Project Management Working Group ("Operating Agreement").

In connection with service as a Member of the Working Group and as required by Section 2.1 of the Operating Agreement, the undersigned desires to enter into this Consent.

The undersigned acknowledges and agrees that he or she (1) has received, read and understands the terms of the Operating Agreement, and (2) agrees to adhere to the terms of the Operating Agreement as if he or she was an original signatory to the Operating Agreement.

The Members acknowledge and agree that all information they may receive in connection with their participation in the Working Group is deemed confidential. The Members agree to treat such information with the same degree of care as they would their own confidential information, and agree not to disclose such confidential information to anyone other than other Members, members of the Commission, TxDOT staff, attorneys and consultants.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Member)

Attachment 3.1  
Target Startup Schedule

Startup Activity	Research Phase	Design Phase	Month 1	Month 2	Month 3	Month 4
<b>New Plates</b>						
Research	X		X	X		
Design	X		X	X	X	
Pricing	X			X		
TxDOT Review	X	X (Review)			X	
TxDOT Commission Approval		X				X
<b>Marketing and Advertising</b>						
Concepts	X		X	X	X	
Production	X	X (Review)	X	X	X	
Public Relations	X		X	X	X	
Media	X		X	X	X	
TxDOT Review	X	X (Review)			X	
Coordinate Schedule Release	X	X				X
Implementation	X					X
Review Implementation	X	X (Review)				X
<b>Stakeholder Meetings</b>						
County Tax Assessor	X	X	X	X	X	X
SLP Vendors	X	X	X	X	X	X
Motor Vehicle Dealers	X	X	X	X	X	X
<b>Recruit and Train Key Staff</b>						
Hire Key Management Team	X		X			
Identify Key Positions and Post	X		X	X		
Hire and Train	X		X	X		
Develop Policies and Procedures	X		X	X	X	
<b>Build Out Office</b>	X		X	X	X	X
<b>Order and Install Office Furnishing</b>			X	X	X	
Furniture	X		X	X	X	
Call Center Workstations	X		X	X	X	
Copier, Fax, Scanner, Printer	X		X	X	X	
<b>Technology Infrastructure</b>						
Finalize Architecture Plan	X	X (Review)	X			
Procure Technology	X		X	X	X	
Install Hardware, Systems Software	X		X	X	X	

Configure Servers	X		X	X	X	
Conduct Testing	X		X	X	X	
Local and Wide Area Network	X		X	X	X	
Review Implementation	X	X (Review)				X
<b>Technology - Application</b>						
Finalize Application Architecture	X	X (Review)	X			
Procure Technology	X		X	X		
CRM	X			X	X	
Financial System	X			X	X	
TxONLINE Modifications	X	X (Authorize and Coordinate)	X	X	X	X
RTS Special Plates Integration - Flat File	X	X (Authorize and Coordinate)	X	X	X	X
MyPlates Proprietary Software Install	X		X	X	X	X
<b>Technology - Phone System</b>						
Finalize Communications Architecture	X	X (Review)				
Procure Technology	X		X	X		
Install Technology	X		X	X		
Configure Technology	X		X	X		
Develop Call Center Reports	X				X	X
Customize Call Center Monitoring	X				X	X
<b>Business Continuity Plan</b>						
Finalize BCP	X		X	X	X	
Complete Agreements with BCP Partners	X			X	X	
Review Implementation	X	X (Review)			X	
<b>MyPlates Walk Through</b>						
Testing of Interfaces with TxDOT	X	X				X
Review and Testing of Other Interfaces		X				X
Sign Off as Operational		X				X

Attachment 4.1  
Customer Service

**Customer Service Requirements**

MPI is required to provide TxDOT with the following level of customer service performance:

- MPI will staff the call center at level which will allow all calls to be answered by a live specialist once the call is routed to the individual by the automated call distribution software.
- MPI will monitor all phone calls and will make necessary adjustments to the staffing level when special plates call volume increases
- 4 percent or less abandoned call rate per month
- Web site must be accessible except during scheduled maintenance
- Customer service and call center operations from 8:00 a.m. until 6:00 p.m., Central time, Monday through Friday, except Federal Holidays.
- No more than a 1% rate of customer complaints to total application requests
- Maintain an application processing accuracy rate of 99.8 % per month based upon the edits within the IVTRS and TxOnline application which will prevent the entry of erroneous vehicle registration numbers and credit card information, and MPI validation all other required application information

Attachment 4.2  
Business Continuity and Disaster Recovery

1. MPI will locate a customer service center and call center in Austin. The site(s) at which these center(s) are located will have secured card key access, 24 hour security monitoring service for intrusion and fire detection, smoke and fire detectors installed throughout the building, and be equipped with fire extinguishers, emergency exits and evacuation procedures.
2. The site(s) or building(s) where the centers are located will be equipped with a commercial uninterruptible power supply (UPS) or a back up generator to maintain 100% uptime in case of power loss. MPI's call and customer service centers will have fiber optic connections into the site for Internet and data communications from MPI's Internet service provider. MPI's fiber network will provide sufficient redundancy within their network allowing automatic rerouting of communications should a problem be encountered.
3. MPI's 1/800 and local telephone communications will provide for continuous connectivity, including redundancy within MPI's voice communications providers network to provide automated rerouting of calls when necessary. MPI will have a secondary call center available for use if necessary, and MPI will have automatic rerouting of 1/800 and local calls to this location upon notification to its telecommunications provider(s).
4. MPI shall perform nightly back ups of information from its administrative systems, including its financial system, CRM application, and special plates repository of applications using commercial back up and recovery software and technology. MPI will retain this information on site. MPI will perform onsite development and testing of all of applications so current versions of all application and system software will be resident on a development server separate from its production system. MPI will retain a duplicate version of the production system as an onsite back up. MPI's staff will be responsible for daily monitoring of the operation of all software and hardware supporting the MPI operations and, if it becomes necessary, place the duplicate system in operation.
5. MPI will maintain an inventory of all equipment and parts, hardware, software, telephones as replacement for small-scale failures such as disk drive, computer monitor, network router, telephone handset and other easily replaceable equipment and software.
6. MPI will contract with a third party approved by TxDOT for the provision of the commercial business continuity and disaster recovery services and will secure these services upon contract award. The contract with the third party will provide for complete off site data storage and alternate site recovery of system and administrative software, as well as call center operations. The contract with this third-party vendor will provide a level of service enabling MPI to transmit electronically all information retained locally on the MPI systems, including:

- MPI financial data



- Special Plates Customer Resource Management (CRM) Data
- Call Center Statistical Data
- Human Resources and Personnel Data

7. MPI will have a back-up call center site located in Austin, Texas and operated by a third-party contractor approved by TxDOT. This site will have the Internet and voice and call center configurations necessary to support the MPI operation. This site will also have access to the MPI administrative system software and data from the business continuity provider MPI will use for this service. This call center, which will be used when the primary call center site becomes inoperable due to communications failure that prevents voice communication, telephone communication, or the ability to occupy the primary call center site, will be operational no later than 24 hours following the occurrence of inoperability of the primary call center.

8. MPI will comply with all TxDOT regulations regarding utilization of historically under utilized businesses with regard to the provision of business continuity and disaster recovery services. MPI will seek approval from TxDOT for all third parties with which MPI contracts for the provision of business continuity and disaster recovery services, which approval cannot be unreasonably withheld. MPI will give TxDOT at least thirty-days notice of its intent to terminate a third-party contract for the provision of business continuity and disaster recovery services, unless circumstances prevent giving thirty days notice, in which case MPI will give TxDOT as much notice as reasonably possible.

## Attachment 4.3 Reporting

<u>RFP#</u>	<u>Frequency</u>	<u>Vendor requirements</u>
10.4	Monthly	Status of interface w' RTS/FIMS work <ul style="list-style-type: none"> <li>• User acceptance testing</li> <li>• TxONLINE and TxDOT issues</li> <li>• "fix" recommendations</li> </ul>
10.5	Monthly	validate/test all systems applications prior <ul style="list-style-type: none"> <li>• User acceptance testing</li> <li>• TxONLINE and TxDOT issues</li> <li>• "fix" recommendations</li> </ul>
10.6	As needed	notify within 24 hours when plate is unavailable
10.6	As needed	provide TxDOT & county updated forms in 24 hours
<u>RFP#</u>	<u>Frequency</u>	<u>Marketing</u>
11.1	Monthly/yearly	Submit SLP submissions market research data
11.2	Per plate	Narrative summary of market research results for plate submission
11.5	Yearly	Annual Marketing Plan Summary of market research List of plates to be launched w' respective marketing plans Proposed plate prices Summary of proposed ancillary products (if any)
	Monthly & Yearly	YTD ranking of specialty license plates sales (including the existing non-profit organizations)
	Qtrly	YTD ranking of plate sales compared to plate renewals
	Qtrly & yearly	YTD comparison of web hits, call volume and sales on one chart
	Yearly	chart sales by demographic (if data is collected from subscribers)
	Monthly & yearly	chart marketing activities with plate sales
	Yearly	organization activity
	On request	ad hoc
<u>RFP#</u>	<u>Frequency</u>	<u>Design</u>
	Quarterly	assessment of needs for both TxDOT and operator: software, hardware, raw materials, etc.
<u>RFP#</u>	<u>Frequency</u>	<u>Customer Service</u>
14.7/8	Monthly/yearly	answer time, call volume, abandonment, trends
	Monthly	response time, volume for email correspondence
	Qtrly	compare phone and electronic volume trends
	Qtrly	quality assurance (call monitoring/email review) reports
	Qtrly	customer complaint/resolution summaries
	Monthly	system uptime/downtime
	Qtrly	disaster recovery test report
	Monthly	number of remanufactured plate orders due to data entry errors

	Monthly/yearly	summary of PLP rejections and reason codes
	On request	ad hoc
RFP#	Frequency	Funds management
16.1.1	Monthly/yearly	daily reconciliation of receipts and deposits.

#### **Attachment 4.4 Funds Management**

MPI shall collect the full retail price of new and renewal Plates and associated fees, if any, through their application, which will extract the vendor's share and transfer all funds to which the state is entitled through Texas Online. MPI is obligated to 1) collect the full agreed on price from the customer, and 2) enter the transaction into Texas Online within 72 hours. Statutory Texas Plate fees and associated fees, if any, shall be collected in the same way, but the funds will be routed directly to state accounts, with no share to MPI. MPI will not be required to separate general revenue funds from TxDOT funds or from existing plate sponsor funds in the transmission process. TxDOT will be responsible for fund allocation among these accounts.

In the event that TxDOT is unable to implement the above, this operating agreement will be amended in a way that achieves the same financial result.

**TxDOT TERMS AND CONIDITIONS  
REVISED, MAY 2007**

**TEXAS DEPARTMENT OF TRANSPORTATION  
TERMS AND CONDITIONS**

**PART I**

**GENERAL TERMS AND CONDITIONS**

Part I of the General Terms and Conditions shall apply to all solicitations [Request for Quote (RFQ), Invitation for Bids (IFB), Request for Offer (RFO) and Request for Proposal (RFP)] offered by the Texas Department of Transportation (TxDOT). Parts II and III are solicitation specific additions to Part I

This procurement falls under the statutory authority of Texas Government Code (TGC), Title 10, Subtitle D, Section 2151, et seq. (commonly known as the "Purchasing Act"). The purchasing procedures include statutory requirements and those requirements established by rule of the Texas Building and Procurement Commission (TBPC) as contained in TBPC Rule 1TAC 113.1, et seq.

All purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.

The purchase order may contain a "Total Cost Not to Exceed" statement. Vendor shall not perform any work that may exceed either the purchase order total or the not-to-exceed total without prior written authorization from TxDOT.

**Title VI Assurance.** TxDOT, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, hereby notifies all respondents that it will affirmatively insure that in any purchase order entered into pursuant to TxDOT procurements, minority business enterprises will be afforded full opportunity to submit responses and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**1 REQUIREMENTS AND ADDITIONAL INFORMATION**

- 1.1. Our system requires pricing per unit shown and extensions. Unit prices shall govern in the event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted and net line extensions shown.
- 1.2. Respondent guarantees product offered will meet or exceed specifications identified in this solicitation.
- 1.3. The respondent shall submit the number of responses required and in the manner stated in the specification or on the solicitation. Ring binders or excessive information are not preferred. Responses may be tab indexed.
- 1.4. Response should be submitted on the solicitation form. If submitting multiple responses, each response should be placed in a separate envelope, correctly identified with the solicitation number and opening/closing date. Response must be time stamped in TxDOT's Mail Room or hand delivered to the address on the solicitation before the hour and date specified for the solicitation opening/closing.
- 1.5. Late responses will not be considered under any circumstances. Correctly identified late responses will be returned to respondent.
- 1.6. Documentation provided with the response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the response. Failure to furnish required documentation with the response may result in the response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to responses or development of documentation that may result from this solicitation.
- 1.7. All prices shall be F.O.B. destination, freight prepaid and allowed. This means the vendor shall prepay and include the freight charges in the unit price.
- 1.8. All prices shall be firm for acceptance for thirty (30) days from solicitation response date unless otherwise stated in the solicitation. "Discount from list" pricing is not acceptable unless requested. Cash discount will not be considered in determining the low response; however, all cash discounts offered will be taken if earned. Price(s) shall not increase during the term of the purchase order or the agreement unless otherwise stated in the specification. Vendor shall offer price reductions to TxDOT that result from reduced cost to the vendor during the term of the purchase order.

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\* This Revision Supersedes Previous Revision, Revised September, 2006.

- 1.9. Failure to sign the solicitation manually in the required space will disqualify the response. The person signing the response must have authorization to bind the company in contract. Solicitation response shall include Texas Identification Number (TIN), full firm name and address of company. The TIN is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. Enter this TIN in the space provided on the solicitation.
- 1.10. Any alterations made before opening/closing date and time shall be initialed by respondent or authorized agent. Response cannot be altered or amended after opening/closing date and time.

A response may be withdrawn if requested in writing prior to the opening/closing date and time. A response may be withdrawn from consideration after the opening/closing date only with the approval of TxDOT based on respondent's written, acceptable reason. The response will not be considered for award but will be retained by TxDOT according to the Response Information Confidentiality provision.
- 1.11. At the time of opening/closing for negotiated solicitations, only the names of respondents will be announced. Prices will not be disclosed.
- 1.12. Persons with special needs or disabilities who plan to attend any prebid conference or bid opening and who require auxiliary aids or service should contact the individual noted on the solicitation as the point of contact at least 3 days prior to meeting so appropriate arrangements can be made.
- 1.13. Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in response unless otherwise specified in the solicitation. Excise Tax Exemption Certificate will be furnished by TxDOT on request.
- 1.14. TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities and make award to best serve the interests of the State. TxDOT reserves the right to reject any response not prepared and submitted in accordance with the solicitation requirements.
- 1.15. In compliance with the provisions of Texas Government Code, Title 10, Subtitle D, Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125, and Texas Administrative Code, Title 1, Chapter 113.6, information obtained from the ~~Texas Building and Procurement Commission's~~ Vendor Performance Tracking System (<http://www.tbpc.state.tx.us/stpurch/venvpts.html>) may be used in evaluating responses to solicitations for goods and services to determine the best value for the state.

TxDOT reserves the right NOT to consider a response from a bidder whose goods or services to TxDOT have been documented as unsatisfactory in providing the same goods or service.
- 1.16. Consistent and continued tie response pricing may lead to rejection of the response by TxDOT and/or investigation for antitrust violations.
- 1.17. Facsimile (FAX) responses may be submitted to the FAX number provided in the solicitation for procurements less than \$25,000, unless otherwise stated in the solicitation. For procurements \$25,000 and greater, FAX responses will not be considered unless otherwise stated in the solicitation. All FAX responses must be signed in space provided in the solicitation. TxDOT will not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered.
- 1.18. It is the intent of TxDOT to purchase goods, equipment, and services having the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental need, availability, and sound economical considerations. TxDOT encourages suggested changes and environmental enhancements for possible inclusion in future revisions of this specification.
- 1.19. TxDOT is committed to maintaining an alcohol-, drug-, and firearm-free workplace. Possession, use, or being under the influence of alcohol or controlled substances by vendor's employees while in the performance of any service is prohibited. Violation of this requirement shall constitute grounds for cancellation of the purchase order. Vendor's employees shall comply with TxDOT's policy prohibiting smoking in TxDOT buildings.
- 1.20. All work by the vendor shall be performed between the hours of 8:00 a.m. and 5:00 p.m., unless otherwise specified, only on working days observed by TxDOT. Working days are usually Monday through Friday of each week.

- 1.21 **Response Information Confidentiality:** All information submitted with a response is subject to and will be handled in accordance with the Texas Public Information Act, Government Code, Chapter 552. The Act allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, the respondent must clearly identify in the response any confidential or proprietary information. Proprietary information identified by the respondent in the response, will be kept confidential by TxDOT to the extent permitted by state law. TxDOT will use best efforts to give the respondent or the awarded vendor an opportunity to present its arguments to the Office of the Attorney General why the identified confidential or proprietary information should not be disclosed.

All information submitted in a response must be retained by TxDOT for the period specified in TxDOT's record retention schedule created under Government Code, Chapter 441. The information may not be returned to the respondent.

## 2. SPECIFICATIONS

- 2.1 The goods furnished or service performed shall be in accordance with the purchase specifications. TxDOT will decide all questions, which may arise as to the interpretation of the specifications and the quality, or acceptability of goods furnished or work performed. If the solicitation is for a service, TxDOT will decide the manner of performance and the rate of progress of the work and the acceptable fulfillment of the service on the part of the vendor.
- 2.2 Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive), and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised as proprietary or sole source under Texas Government Code (TGC), Title 10, Subtitle D, Section 2155.067. Show manufacturer, brand or trade name, and other description of product offered on response. If offer is for other than example(s) shown, include illustrations and complete description of product in the solicitation response. If respondent takes no exception to specifications or reference data in the response, the vendor will be required to furnish brand names, numbers, etc., as specified.
- 2.3 Unless otherwise specified, all items offered shall be new and in first class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.
- 2.4 Product samples, when requested, must be furnished at no cost to TxDOT. If not destroyed in examination or testing, product samples will be returned upon request, at respondent's expense. Each product sample shall be marked with respondent's name and address, and TxDOT solicitation number. Do not enclose in or attach response to product sample.
- 2.5 TxDOT will not be bound by any oral statement or representation contrary to the written specifications of this solicitation. Any revision, clarification, or interpretations pertaining to this solicitation will be in writing and issued by TxDOT as an Addendum. Any changes or interpretation not in an Addendum will not legally bind TxDOT.
- 2.6 Manufacturer's standard warranty shall apply unless otherwise stated in this solicitation.
- 2.7 All electrical items shall meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.
- 3 **TIE RESPONSES:** Award will be made in accordance with Rule 1 Texas Administrative Code (TAC) Section 113.6 (3) and 113.8 (Preferences) **In case of tie bids, one or more preferences described in TAC Rule 113.8 and listed below will be used to make and award. Tie bids which cannot be resolved by application of one or more preferences shall be made by drawing lots.**
4. **PREFERENCES** A respondent may claim a preference under Rule 1TAC 113.8. To claim a preference, a respondent shall identify the preference, on the face of the solicitation. If the appropriate area on the solicitation is not marked, a preference will not be granted unless other documents included in the bid show a right to the preference

Preferences may be claimed for the following:

### Tie-Bid Preferences

- ◆ Supplies, materials or equipment produced in Texas or offered by a Texas bidder
- ◆ Agricultural products **produced or** grown in Texas
- ◆ Agricultural products **and services** offered by Texas bidder
- ◆ USA produced supplies, material or equipment
- ◆ Products produced at facilities located on formerly contaminated property
- ◆ Products and services from economically depressed or blighted areas

### Source Preference

- ◆ Products of persons with mental or physical disabilities
- ◆ Vendors that meet or exceed air quality standards. For contracts to be performed, in whole or in part, in a designated nonattainment area or an affected county, as those terms are defined by §386.001, health and safety codes.



Specification Preferences

- Products made of recycled materials, remanufactured, or environmentally sensitive materials including recycled steel
- Energy efficient products
- Rubberized asphalt paving materials
- Recycled motor oil and lubricants

5. **DELIVERY**

- 5.1. Response should show number of *days* required to place material, or begin service (if required), at TxDOT's designated location under normal conditions. Failure to state delivery time obligates vendor to complete delivery in 14 calendar days. Unrealistic delivery promises may cause response to be rejected.
- 5.2. If delay is foreseen, vendor shall give written notice to TxDOT. TxDOT has the right to extend delivery date if reasons appear valid. Vendor shall keep TxDOT advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes TxDOT to purchase goods or services elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
- 5.3. No substitutions or cancellations permitted without written approval of TxDOT.
- 5.4. Delivery shall be made during normal working hours only, unless prior approval has been obtained from TxDOT or otherwise stated in solicitation.
- 5.5. Receipt of goods does not constitute acceptance.

6. **INSPECTIONS AND TESTS:** Goods and services will be subject to inspection and test by TxDOT to the extent practicable at all times and places. Tests will be performed on samples submitted with the response or on samples taken from regular shipment. In the event samples tested fail to meet or exceed all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may at TxDOT's option, be returned to the vendor or held for disposition at vendor's risk and expense. Authorized TxDOT personnel shall have access to any vendor's place of business for the purpose of inspecting goods and services. Latent defects may result in revocation of acceptance.

7. **AWARD OF PURCHASE ORDER:** A response to a solicitation is an offer to contract with TxDOT based upon the terms, conditions and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TxDOT designee by issuance of a purchase order.

7.1. **BEST VALUE CRITERIA FOR PURCHASE OF GOODS OR SERVICES** – When specified in the solicitation, the factors listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074 will also be considered in making a *best value* award. This section allows TxDOT to develop and apply award evaluation criteria for a procurement in order to obtain goods and services that provide the *best value* for TxDOT.

In determining *best value*, other relevant factors may be considered in addition to purchase price and whether the product meets specifications. Those factors are:

- installation costs; life cycle costs;
- the quality and reliability of goods and services;
- the delivery terms;
- indicators of probable vendor performance;
- cost of employee training associated with a purchase;
- the effect of a purchase on agency productivity; and
- other factors relevant to determining best value for the state in the context of a particular purchase.

Under these guidelines, a vendor is not automatically awarded a purchase order simply because they submit the lowest bid response.

- 7.2. Any purchase order resulting from this solicitation is subject to cancellation without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature. The purchase order for this procurement shall be governed, construed and interpreted under the laws of the State of Texas.
- 7.3. The purchase order is void if sold or assigned to another company without written approval of TxDOT. Written notification of changes to company name, address, telephone number, etc. shall be provided to TxDOT as soon as possible but not later than 30 days from the date of change.

8. **PAYMENT:** Payment will be made in accordance with the Texas Prompt Payment Law, TGC, Subtitle F, Chapter 2251. Vendor shall submit two copies of a correct itemized invoice showing the purchase order number, payee I.D. , remit to address, and phone number on all copies. TxDOT will incur no penalty for late payment if payment is made in thirty (30) days or less from receipt of goods or services and a correct invoice, whichever is later.

**NOTE: Warrants will not be issued to a vendor without a current Texas Identification Number and will be held by the State Comptroller if there is a tax liability.**

9. **TRADEMARKS, COPYRIGHTS, PATENTS AND INTELLECTUAL PROPERTY:** When applicable, each vendor shall obtain necessary permissions, copyrights, trademarks or patents for TxDOT. The vendor agrees to protect TxDOT and the State from claims involving infringement of permissions, copyrights, trademarks or patents. The vendor shall not assert rights at common law or in equity or establish any claim to intellectual property, including, but not limited to, any permissions, statutory copyright any material or information or claim any patent developed in performance of the services authorized. TxDOT will own all rights and has the right to use, reproduce or distribute any or all of such information and other materials without the necessity of obtaining any permission from the vendor and without expense and charge. The vendor agrees to indemnify, hold harmless and defend TxDOT and the State from claims involving infringement of permissions, trademarks, copyrights or patents at the vendor's expense.
10. **VENDOR ASSIGNMENTS:** Vendor hereby assigns purchaser 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. Section 1, et seq. [1973]), and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967). Inquiries pertaining to this solicitation must give solicitation number and opening/closing date.
11. **RESPONDENT AFFIRMATION:** Signing this solicitation with a false statement is a material breach of contract and shall void the submitted response or any resulting contracts, and the respondent shall be removed from all solicitation lists. By signature hereon affixed, the respondent hereby certifies that:
- 11.1 The respondent 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 response.
- 11.2. Under TGC, Title 10, Subtitle D, Section 2155 004, the respondent certifies that the individual or business entity named in this response is eligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- 11.3. Neither the respondent nor the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal Antitrust Laws, nor communicated directly or indirectly the solicitation made to any competitor or any other person engaged in such line of business.
- 11.4. The respondent has not received compensation for participation in the preparation of the specification for this solicitation.
- 11.5. Under TGC, Title 5, Subtitle D, Section 231.006, Family Code (relating to child support), the individual or business entity named in this solicitation is eligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 11.6. Under TGC, Section 669 003, TxDOT may not enter into a contract with an individual who was the executive director of TxDOT during the four years before the date of the contract, or with anyone who employs a current or former TxDOT executive director, unless the Transportation Commission approves the contract in an open meeting.
- If Section 669.003 applies, respondent must provide the following information as an attachment to this solicitation response: Name of former TxDOT executive director, date of separation from TxDOT, position with respondent, and date of employment with respondent.
- 11.7. If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231 006(d), regarding child support, the respondent certifies that the individual or business entity named in the response is not ineligible to receive the specified payment and acknowledges that this purchase order may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any respondent subject to Section 231 006 must include names and Social Security numbers of each person with at least 25% of ownership of the business entity submitting the response. This information must be provided prior to award
- 11.8. Respondent agrees that any payments 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.

- 11.9. Respondent agrees to comply with TGC, Title 10, Subtitle D, Section 2155.4441, pertaining to service contract use of products produced in the state of Texas.
- 11.10. Respondent certifies that the responding entity 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 Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent 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>.
12. **TITLE VI AFFIRMATIONS:** The vendor affirms, with regard to the work performed by it during the purchase order:
- 12.1. Vendor shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The vendor shall not participate either directly or indirectly in the discrimination, including employment practices.
- 12.2. In any solicitations for subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by the vendor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified by the vendor of the vendor's obligations under its purchase order relative to nondiscrimination on the grounds of race, color, or national origin.
13. **SUBCONTRACTING REQUIREMENTS:** In accordance with Texas Government Code, Title 10, Subtitle D, Sections 2161.181-182 and Texas Administrative Code (TAC), Title 1, Section 111.11 and pursuant to the Texas Building and Procurement Commission's (TBPC) HUB Rules, TAC, Title 1, Section 111.13 and 111.14, all state agencies entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable the state agency will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a Historically Underutilized Business (HUB) Subcontracting Plan (HSP). The HSP, if acceptable to the agency, will be a provision of the contract. The HSP, if required, may be found at: <http://www.dot.state.tx.us/qsd/purchasing/purchasing.htm>.
14. **RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES:** Respondent exceptions and/or terms conditions attached to a response will not be considered unless specifically referred to and clearly identified as such within the response.
- NOTE: Such exceptions and/or terms and conditions may result in disqualification of the response (e.g., response with the laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.).**
15. **DISPUTE RESOLUTION:** TxDOT has established a dispute resolution process under 43 TAC § 9.1 to attempt to resolve all disputes that may arise between the department and the vendor under any purchase order resulting from this solicitation. The dispute resolution process provided for in TGC, Title 10, Subtitle F, Chapter 2260 must be used by TxDOT and the vendor to attempt to resolve all disputes arising under this contract.
16. **VENUE AND JURISDICTION:** Venue for any suit concerning this procurement and any resulting purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
17. **VENDOR PERFORMANCE:** Vendors are advised that performance will be reported to the TBPC. In accordance with TGC, Title 10, Subtitle D, Chapters 2155.074 and 2155.075, vendor performance may be used as a factor in the award of a future solicitation.
18. **VENDOR RESPONSIBILITIES**
- 18.1. The vendor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the purchase order, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. The vendor shall maintain all required licenses, certifications, etc. throughout the term of the purchase order. When required, the vendor shall furnish TxDOT with satisfactory proof of its compliance.
- 18.2. If TxDOT determines that any vendor personnel performing under this purchase order are unable to perform in accordance with the service requirements or to communicate effectively, or are, in the opinion of TxDOT, otherwise objectionable, the vendor shall immediately remove that person.
- 18.3. The vendor shall be responsible for damage to TxDOT's equipment, and/or the workplace and its contents, by its work, its negligence in work, its personnel, or its equipment. The vendor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for TxDOT.

- 18.4. The vendor shall provide all labor and equipment necessary to furnish the goods or perform the service. All employees of the vendor shall be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. No visitors, wives, husbands, children or other relatives of the vendor's employees will be allowed on state property during working hours, unless they are bona fide employees of the vendor.
- 18.5. The vendor shall at all times have a minimum of one English-speaking employee on the job. All employees shall be well-groomed and appropriately dressed when on TxDOT property.
19. **DAMAGE CLAIMS:** The vendor shall defend, indemnify, and hold harmless the state of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.
20. **CANCELLATION OF A PURCHASE ORDER**
- 20.1. **FOR CAUSE (ABANDONMENT OR DEFAULT):** If the vendor defaults on the purchase order, TxDOT reserves the right to cancel the purchase order without notice and either re-solicit or re-award the purchase order to the next lowest responsive and responsible respondent. The defaulting vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed.
- 20.2. **FOR CONVENIENCE:** The purchase order may be cancelled in whole or in part, without penalty, by either party by providing thirty (30) days written notice to the other party. TxDOT will pay the vendor the purchase order price prorated for acceptable service performed up to the date specified in the notice of cancellation. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to cancellation. The vendor shall refund any balance of unused prepaid funds.
21. **FORCE MAJEURE:** TxDOT may grant relief from performance of the purchase order if the vendor is prevented from and/or performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the vendor. The burden of proof for the need of such relief shall rest upon the vendor. To obtain release based on force majeure, the vendor shall file a written request with TxDOT.
22. **RIGHT TO AUDIT**
- 22.1. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this purchase order or indirectly through a subcontract under this purchase order. Acceptance of funds directly under this purchase order or indirectly through a subcontract under this purchase order 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. Any entity subject of an audit or investigation by the state auditor agrees to provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- 22.2. TxDOT has the right to audit the vendor's books and records pertaining to the service during the hours of the normal workday.
23. **RENEWAL OF PURCHASE ORDER:** A blanket purchase order for goods may be renewed for the original price, terms and conditions, and any approved changes. Any changes will be clearly detailed in the amended purchase order.
24. **EXTENSION OF PURCHASE ORDER**
- 24.1. A purchase order in its final renewal period may be further extended for a period up to ninety (90) days at the option of TxDOT.
- 24.2. TxDOT reserves the right to extend a purchase order for time only past the stated term to allow the vendor to complete the requirements or to accommodate unanticipated events or requirements.
25. **SITE VISITS:** Prior to and after award of the purchase order, designated TxDOT representatives may conduct unannounced visits to inspect the vendor's facility during normal business hours to visit and inspect the vendor's facility, monitor compliance in accordance with TxDOT specifications or carry out performance audits of the service at any time during normal business hours.

26. **CONFIDENTIALITY CLAUSE:** TxDOT is governed by laws and regulations that make certain information confidential as well as specifying how public information is released. The vendor, its employees or subcontractors shall not divulge any information relative to TxDOT business at any time to a third party without the prior written approval of TxDOT. All information created by or accessible to a vendor while providing a good or service for TxDOT is confidential. If applicable to a service, upon award of a purchase order, the vendor may be required to complete and sign TxDOT Form 2110, Information Resource Confidentiality Agreement and Form 1828, Information Security Compliance Agreement.

## **PART II**

### **PURCHASE OF SERVICES SPECIFIC TERMS AND CONDITIONS**

1. **GENERAL:** The following applies to a solicitation for the purchase of services. These terms and conditions are in addition to those in Part I.
  - 1.1. If applicable to the service, TxDOT recommends that the respondent visit the site and examine the space and/or equipment to be serviced.
  - 1.2. The respondent shall carefully examine these specifications and, if necessary, secure additional information from the TxDOT purchaser that may be requisite to a clear and full understanding of the work.
  - 1.3. If products and/or materials are used in the performance of the service, the vendor shall buy Texas products and/or materials when they are available at a comparable price and delivery schedule.
2. **COMPETENCE OF VENDOR:** To be entitled to consideration, the vendor shall have available, the necessary organization and facilities to fulfill all the services required under the purchase order. Only personnel trained in services of this type shall be employed under and for the purchase order. Vendor shall obtain any licenses/permits required for the performance of the service.
3. **INDEMNIFICATION:** It is expressly understood and agreed to by both parties that TxDOT is contracting with the vendor as an independent contractor, and the vendor, as such, agrees to hold TxDOT harmless and to indemnify TxDOT from and against any and all claims, demands and causes of action of every kind and character which may be asserted by any third party, employee or subcontractor of the vendor out of or in connection with the activities to be performed by the vendor for TxDOT. Vendor understands and agrees that individuals performing services are not state employees.
4. **CHANGES IN WORK:** If TxDOT determines it necessary to require corrections to completed work due to errors made by the vendor, the vendor shall correct the work at no additional cost to TxDOT. If TxDOT requires changes in previously approved and completed work, the vendor shall make such changes as directed by TxDOT and will be compensated for such at the same rates established by each vendor's hourly rates.
5. **OWNERSHIP OF MATERIALS, PRODUCTIONS, AND DOCUMENTS**
  - 5.1 All property rights, including publication rights, to all products developed hereunder shall be retained by TxDOT.
  - 5.2 Vendor shall ensure that duplication and distribution rights are secured for TxDOT from all contractors and subcontractors.
  - 5.3 The vendor shall warrant that individuals or characters appearing or depicted in print, videotapes, or audiotapes have provided their written consent and have been compensated by each vendor for their appearance, if appropriate.
6. **RENEWAL OF SERVICES**
  - 6.1. The purchase order may be renewed for up to two additional periods of time, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the purchase order.
  - 6.2. TxDOT requires a vendor to provide written justification to request a time only extension of a purchase order per Part I, Paragraph 24 above. TxDOT will approve or decline in writing.
7. **PAYMENT:** Payment will be made in accordance with Part I, Paragraph 8 using one of the following methods as specified on the solicitation.
  - 7.1. The service was completed to the satisfaction of TxDOT, and within thirty (30) days from receipt of a correct invoice or billing statement.
  - 7.2. On a monthly basis and within thirty (30) days from receipt of a correct invoice or billing statement.

7.3 As otherwise stated in the specifications or on the solicitation document.

8. **INSURANCE:** Prior to beginning work, the vendor shall provide TxDOT with a completed TxDOT Certificate of Insurance Form 20 102 or Form 1950 or Form 1560 (only TxDOT forms are acceptable) providing the below listed coverage. TxDOT shall be included as an Additional Insured by Endorsement to policies issued for coverage listed in Paragraphs 8.3 and 8.4.

**The vendor shall maintain all required insurance coverage throughout the term of the purchase order. The vendor shall provide a correct TxDOT insurance form each time its insurance is renewed or updated. Failure to provide this form promptly may be cause for discontinuance of the work and cancellation of the purchase order.**

Waiver of Subrogation Endorsement in favor of TxDOT shall be a part of each policy for coverage listed. TxDOT will allow deductible policies. The vendor shall pay the deductible amount. Required insurance coverage is specified on the solicitation document.

8.1. **WORKERS' COMPENSATION INSURANCE:** Amount – Statutory, Texas

- 8.1.1. The vendor is responsible for both Federal and State Unemployment Insurance coverage and Standard Workers' Compensation Insurance coverage. Vendor shall comply with all federal and state tax laws and withholding requirements.

- 8.2. **ACCIDENT INSURANCE:** This is acceptable, in lieu of Workers' Compensation Insurance, for services that are NOT provided on the highway right of way, and are NOT building or construction services. The successful bidder shall notify the purchaser responsible for the procurement to use this type of insurance and request the appropriate Form 1950. Required coverage shall be inclusive of the following:

- \$300,000 for medical expenses and coverage for at least 104 weeks;
- \$100,000 for accidental death and dismemberment, 70% of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and
- \$500 for maximum weekly benefit.

8.3. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Bodily Injury/Property Damage each occurrence and in the aggregate:

8.3.1. \$325,000 OR

8.3.2. \$150,000

8.4. **TEXAS BUSINESS AUTOMOBILE POLICY**

- |        |                         |  |
|--------|-------------------------|--|
| 8.4.1. | Amounts – Bodily Injury | \$100,000 each person<br>\$300,000 each occurrence |
| 8.4.2. | Property Damage         | \$ 25,000 each occurrence                          |

**PART III**

**CATALOG PURCHASE SPECIFIC TERMS AND CONDITIONS**

1. **GENERAL:** The following terms and conditions apply to solicitations advertised under the Catalog Information Systems Vendor (CISV) Catalog Purchasing Program governed by TGC, Title 10, Subtitle D, Section 2157 and TBPC rule 1TAC 113.19. These terms and conditions supersede those in the CISV Catalog and are in addition to those in Part I and Part II as applicable.
2. **DEFINITIONS**
  - 2.1 **REQUEST FOR OFFER (RFO):** This term is used to identify a solicitation issued to a CISV in order to obtain an offer and facilitate negotiations for prices, terms and conditions through the Catalog purchasing program.
  - 2.2 **CATALOG INFORMATION SYSTEMS VENDOR (CISV):** A vendor that is compliant with TBPC's URL requirements listed at: [http://www.tbpc.state.tx.us/\\$4purch/cisvhtmlreg.html](http://www.tbpc.state.tx.us/$4purch/cisvhtmlreg.html) and provide automated information systems (AIS) type products and/or services to eligible entities in the state of Texas.

- 2.3 **BEST VALUE:** The lowest overall cost for Automated Information System (AIS) equipment or services will be based on the following factors including, but not limited to
- purchase price
  - compatibility to facilitate exchange of existing data
  - capacity for expansion and upgrading to more advanced levels of technology
  - quantitative reliability factors
  - level of training required to bring end-users to a stated level of proficiency
  - technical support requirements for maintenance of data across a network platform and management of the networks hardware and software
  - compliance with applicable Department of Information Resources (DIR) statewide standards validated by criteria adapted by the department by rule TAC (1 TAC 113.9)
- 3 **VENDOR REQUIREMENTS:** Vendors that are not approved CISV, may respond to the RFO. However, vendors must seek CISV status and vendor shall be an approved CISV no later than the date TxDOT awards a purchase order. Vendors may check their status with the TBPC by calling 512-463-3459 or at <http://www.tbpc.state.tx.us/cmb/cmbhub.html>
4. **BEST VALUE CRITERIA:** Best value criteria will be used on all Catalog purchases. For purposes of determining the best value available, TxDOT will consider items, features, etc., which are in addition to requirements listed, as well as factors which, in TxDOT's opinion, add value to the product/service but are not specifically required within the specification
5. **NEGOTIATIONS**
- 5.1. Negotiations for "best value" will occur with Catalog vendors, instead of making selections for goods and services based solely on the published prices, terms and conditions in the Catalogs
- 5.2. During the evaluation phase, TxDOT reserves the right to conduct formal negotiations with the responsive respondent(s) judged to be the best offer pertaining to price, products, services and terms.
- 5.3. TxDOT will be the sole judge as to which offer is the most advantageous and in the best interest of TxDOT.
6. **TECHNOLOGY ACCESS CLAUSE:** "The Vendor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the Texas Department of Transportation that the technology provided to the Texas Department of Transportation for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of
- 6.1. providing equivalent access for effective use by both visual and non-visual means;
- 6.2. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- 6.3. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
- 6.4. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance."
- 6.5. **EXEMPTION DECLARATION:** Pursuant to the provisions of the Texas Government Code, Chapter 2157 005(d) when the requirement specified on the solicitation is for the purchase of a wireless communication device to be used by emergency response personnel to respond to a public safety emergency, the provisions of the Technology Access Clause do not apply.