

**INTERAGENCY COOPERATION CONTRACT
BETWEEN
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
AND
TEXAS EDUCATION AGENCY
FOR
STATEWIDE ERP SOFTWARE LICENSE AND SUPPORT SERVICES**

This Interagency Cooperation Contract ("Contract") is entered into by the Texas Comptroller of Public Accounts ("CPA") and the Texas Education Agency pursuant to the authority granted and in compliance with the provisions of Chapter 771, Texas Government Code.

I. Contracting Parties

Performing Agency: Texas Comptroller of Public Accounts

Receiving Agency: Texas Education Agency

II. Services to be Performed; Duties and Responsibilities

- A. CPA has entered into an agreement with Oracle under DIR Contract No. DIR-VPC-03-018 to acquire a statewide license and related support services for certain Enterprise Resource Planning software ("Statewide ERP Software License"). CPA shall make available to Receiving Agency the software and support services that are available to Receiving Agency as an "Authorized Agency" under the Statewide ERP Software License and any associated support services agreements. CPA shall make payment to Oracle on behalf of Receiving Agency.
- B. Under the terms of the Statewide ERP Software License, licenses for certain programs that were acquired by the Receiving Agency prior to the effective date of the Statewide ERP Software License are converted and replaced by the Statewide ERP Software License. The affected licenses include any versions or releases of the programs listed in Section A, Parts 1-3 of the Statewide ERP Software License; the specific programs are identified on the "Converted and Replaced Licenses" Exhibit to the Statewide ERP Software License. The affected licenses include programs licensed or supported under the 1999 DIR-PeopleSoft Software License and Services Agreement for Texas State Agencies and amendments thereto. Receiving Agency acknowledges and agrees that as of September 25, 2009, Receiving Agency (i) does not have any right to use the Converted and Replaced Licenses, (ii) is not permitted to reinstate the Converted and Replaced Licenses, and (iii) is not entitled to a credit or refund of license fees for the Converted and Replaced Licenses.
- C. Receiving Agency acknowledges and agrees that the software and support services that it is entitled to receive under this Contract are limited to the programs listed on the Statewide ERP Software License that are available to "Authorized Agencies." Receiving Agency shall be solely responsible for its compliance with all terms and conditions of this Contract, the Statewide ERP Software License, and subsequent amendments thereto, for the applicable licensed programs. In addition, Receiving Agency shall be solely responsible for its compliance with all terms and conditions of the support services agreements for the applicable programs licensed under the Statewide ERP Software License. The Statewide ERP Software License and associated support services agreements, including any subsequent amendments thereto, are attached to and made a part of this Contract for all purposes.
- D. Receiving Agency will notify CPA of any substantial problems in the quality of services provided by Oracle. In addition, Receiving Agency will notify CPA on or before July 1st of each fiscal year of any Extended Support request.

III. Contract Amount; Basis for Computing Reimbursable Costs; Payment

A. Contract Amount.

1. Receiving Agency shall pay CPA ONE HUNDRED FORTY-TWO THOUSAND, EIGHTY-NINE AND 62/100 DOLLARS (\$142,089.62) for providing Standard Support Services necessary to fulfill the terms of this Contract for Fiscal Year 2017 (September 1, 2016 through August 31, 2017).
2. All changes to the contract amount due to additional services added to this Contract shall be by amendment to this Contract.

B. Basis for Computing Reimbursable Costs. CPA shall invoice Receiving Agency for its respective share of the total license and standard support costs billed to CPA based on Receiving Agency's usage of the software under the Statewide ERP Software License. If Receiving Agency elects to receive Extended Support, then such amounts will also be included in CPA's invoice to Receiving Agency.

C. Payment for Services. An Interagency Transaction Voucher or Invoice (ITV) for the services to be performed under this Contract will be prepared by CPA and submitted to Receiving Agency for advance payment. Receiving Agency shall submit payment to CPA within thirty (30) calendar days of receipt of an invoice. If payment by Receiving Agency is not received within thirty (30) calendar days, CPA may cancel the Contract without further notice to Receiving Agency and Receiving Agency shall remain liable for all actual costs incurred by CPA in delivering services under this Contract. In addition, Receiving Agency remains liable for any interest that accrues as a result of an overdue payment. Payment of CPA invoices will be made in accordance with Sections 771.007 and 771.008, Texas Government Code. Receiving Agency shall pay invoices from proper appropriation items or accounts which it normally uses for like expenditures, on vouchers payable to CPA.

IV. Term; Termination; Amendment

This Contract is effective upon the date signed by CPA, after first having been signed by Receiving Agency, and will expire on August 31, 2017, unless otherwise sooner terminated as provided herein. This Contract may be extended for a one year term beginning September 1, 2017 and ending August 31, 2018, by mutual agreement of the parties by execution of a written amendment.

This Contract is subject to termination for convenience by either party upon thirty (30) days' prior written notice to the other. Unless otherwise agreed by the parties, the termination date shall be no earlier than thirty (30) days from the date the notice of termination is received. Upon receipt of notice of early termination from Receiving Agency, CPA shall cancel, withdraw, or otherwise terminate outstanding orders which relate to the performance of this Contract and shall otherwise cease to incur costs under this Contract. In the event of early termination, Receiving Agency is not entitled to reimbursement for any amounts paid. CPA shall have no liability whatsoever to any other party, person, agency, or entity upon termination of this Contract for any reason, whether for cause or for convenience.

This Contract is subject to termination for cause in the event Receiving Agency fails to comply with the terms and conditions of this Contract. If Receiving Agency fails to remedy a material breach of this Contract within thirty (30) calendar days from the date of CPA's written notice, then CPA, in addition to other remedies at law or in equity, may terminate this Contract. Upon termination of this Contract for any reason, Receiving Agency shall immediately discontinue all use of the programs and, if applicable, return to CPA the programs, the documentation and all related materials within thirty (30) calendar days of termination.

This Contract may be amended only in writing by an instrument signed by CPA and Receiving Agency; however, CPA expressly reserves the right in its sole discretion, to amend this Contract unilaterally with ten (10) business days written notice to ensure compliance of this Contract or either party with state or federal law or other regulation.

V. General

A. Texas Public Information Act. It shall be the responsibility of each party to comply with the provisions of Chapter 552, Texas Government Code, ("Texas Public Information Act") and the Attorney General Opinions issued under that

statute. Neither party is authorized to receive requests or take any other action under the Texas Public Information Act on behalf of the other party. Responses to requests for confidential information shall be handled in accordance with the provisions of the Texas Public Information Act. Within three (3) days of receipt, Receiving Agency will refer to CPA any open records requests received by Receiving Agency for information to which Receiving Agency has access as a result of or in the course of performance of this Contract. The provisions of this paragraph survive the termination or expiration of this Contract.

- B. Records; Right to Audit. CPA will maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. CPA shall provide access to all such records by Receiving Agency, State Auditor's Office, or other authorized persons. The parties acknowledge the State Auditor's authority to conduct audits of state agencies under Chapter 321, Texas Government Code.
- C. Dispute Resolution. The parties agree to use good-faith efforts to resolve all questions, difficulties, or disputes of any nature that may arise under or by this Contract; provided however, nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.
- D. Non-Appropriation of Funds. This Contract is subject to termination or cancellation, without penalty to either party, either in whole or in part, subject to the availability of state funds. Both parties are state agencies whose authority and appropriations are subject to actions of the Texas Legislature. If either party becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render either party's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, CPA will not be liable to Receiving Agency for any damages, which are caused or associated with such termination or cancellation, and CPA will not be required to give prior notice.
- E. Force Majeure. Neither party shall be liable to the other for any delay in, or failure of performance of, any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- F. Independent Contractor. It is understood and agreed that each party is contracting as an independent contractor.
- G. Assignment. No assignment of this Contract or of any right accruing hereunder shall be made, in whole or part, by either party without the prior written consent of the other.
- H. Headings. The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of the Contract.
- I. No Waiver. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to either party as an agency of the State of Texas or otherwise available to the party. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to a party under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
- J. Survival. The expiration or termination of this Contract shall not affect the rights and obligations of the parties accrued prior to the effective date of expiration or termination and such rights and obligations shall survive and remain enforceable.
- K. Severability. In case one or more provisions herein contained shall be deemed invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision hereof and in such event, this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

L. Governing Law; Venue. This Contract is governed by and construed under and in accordance with the laws of the State of Texas. Any and all obligations under this Contract are due in Travis County and venue is proper only in such county.

VI. Notices; Liaison

Any notice relating to this Contract, which is required or permitted to be given under this Contract by one party to the other party shall be in writing and shall be addressed to the receiving party at the address specified below. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address specified below. It shall be deemed to have been given on the date of certified receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified below. Registered or certified mail with return receipt is not required for copies.

1. The address of CPA for all purposes under this Contract and for all notices hereunder shall be:

Mike Reissig
Deputy Comptroller
Texas Comptroller of Public Accounts
111 E. 17th Street
Austin, Texas 78774

With copy to: Texas Comptroller of Public Accounts
Attn: General Counsel Division, Contracts Section
111 E. 17th Street, Room 201
Austin, Texas 78774
Facsimile: (512) 463-3669

2. The address of Receiving Agency for all purposes under this Contract and for all notices hereunder shall be:

Shirley Beaulieu
Associate Commissioner, Chief Financial Officer
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701

Either party may change its address for notice by written notice to the other party as herein provided. CPA and Receiving Agency each agree to maintain specifically identified liaison personnel for their mutual benefit during the term of the Contract. The liaison(s) shall be identified in writing following the execution of this Contract. Subsequent changes in liaison personnel shall be communicated by the respective parties in writing.

VII. Merger

This Contract contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Contract shall be of no force or effect unless contained in a subsequent writing, signed by both parties. This Contract shall not be construed against the party that has prepared the Contract, but instead shall be construed as if all parties prepared this Contract.

VIII. Certifications

The undersigned parties do hereby certify that: (1) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of those agencies, (3) the services, supplies or materials

contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract to the lowest responsible bidder, and (4) this Contract neither requires nor permits either party to exceed its duties and responsibilities or the limitations of its appropriated funds.

CPA further certifies that it has the authority to enter into this Contract by virtue of the authority granted in Chapters 403 and 2101, Texas Government Code.


Receiving Agency further certifies that it has the authority to enter into this Contract by virtue of the authority granted in Chapter 771, Texas Government Code.


IX. Signatories

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their undersigned, duly authorized representatives to be effective on the date signed by CPA. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

Texas Comptroller of Public Accounts

Texas Education Agency

BY 
NAME Mike Reissig
TITLE Deputy Comptroller

BY 
NAME Shirley Beaulieu
TITLE Associate Commissioner,
Chief Financial Officer

DATE 8-31-16

DATE 8-19-16