



## PROCUREMENT GENERAL TERMS AND CONDITIONS, FEDERAL REQUIREMENTS, AND STATE OF TEXAS REQUIRED CLAUSES

*Concho Valley Council of Governments ("CVCOG" or "Customer") is a recipient of both state and federal funding, and as such, all contractors engaged with CVCOG are required to comply with the terms and conditions outlined in this document, unless explicitly agreed upon in writing by the parties. These terms encompass both agency-specific requirements as well as clauses from the State of Texas and federal regulations. Contractor acknowledges, by signing any agreement documents and/or supplying the requested commodities and/or fulfilling the requested services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional written and signed agreement or purchase order and all associated documents and amendments. CVCOG rejects any terms and conditions provided by the Contractor unless agreed upon in writing by the parties.*

### 1. ORDER OF PRECEDENCE

In the event of any conflict or inconsistency between the provisions of the documents referenced herein, the following order of precedence shall govern:

1. Applicable Federal Laws and Regulations: Any provision required by federal law or regulation shall take precedence over conflicting provisions in this document.
2. State of Texas Laws and Regulations: Any provision required by the laws or regulations of the State of Texas shall take precedence over conflicting provisions in this document, unless federal law requires otherwise.
3. This Document: The general terms and conditions of this document shall apply, except where they conflict with federal or state requirements as outlined above.
4. Contractor-Specific Terms: Any specific terms mutually agreed upon between the agency and the contractor that are not in conflict with federal or state requirements shall take precedence over general provisions of this document.

In case of a dispute, the most stringent applicable requirement shall govern to ensure compliance with both state and federal funding regulations.

### 2. DEBARMENT AND SUSPENSION

The Contractor certifies that neither it nor its principals are currently debarred, suspended, or otherwise excluded from participation in any federal or state-funded program or activity. The Contractor agrees to immediately notify CVCOG if it becomes debarred, suspended, or excluded during the term of this Agreement. CVCOG reserves the right to terminate this Agreement without liability if the Contractor or any of its principals becomes debarred, suspended, or otherwise excluded from participation in any relevant program. The Contractor further agrees to ensure that its subcontractors, if any, comply with the same debarment and suspension requirements.

### 3. COMPLIANCE WITH LAWS

The Contractor agrees to comply with all applicable federal, state, and local laws, regulations, ordinances, and executive orders in the performance of this Agreement. This includes, but is not limited to, laws and regulations pertaining to labor, environmental protection, occupational safety, and public health. The Contractor further agrees to comply with any other applicable industry-specific regulations and standards. The Contractor shall ensure that its employees, subcontractors, and agents also adhere to these legal requirements. If the Contractor becomes aware of any violation of applicable laws, regulations, or ordinances, it shall promptly notify CVCOG in writing. The Contractor shall indemnify and hold CVCOG harmless from any claims, penalties, or liabilities arising from the Contractor's failure to comply with these legal requirements.

### 4. INSURANCE REQUIREMENTS

The Contractor agrees to maintain insurance coverage with limits sufficient to cover any incidents or liabilities that may arise in connection with the performance of this Agreement. The specific insurance coverage limits and types will be outlined in the Agreement document or purchase order (PO). The Contractor further agrees to provide proof of such coverage and to list the Concho Valley Council of Governments (CVCOG) as an additional insured on the general liability policy, if required by the Agreement. If required, the Contractor shall also provide a waiver of subrogation in favor of CVCOG for the duration of the Agreement. The Contractor shall submit certificates of insurance to CVCOG, evidencing such coverage and additional insured status, prior to commencing any work under this Agreement. Failure to maintain the required insurance may result in termination of the Agreement.

### 5. WARRANTY (GOODS)

Contractor warrants that any goods provided under this Agreement shall be new (unless otherwise agreed upon) and free from defects in materials and workmanship for a minimum period of one (1) year from the date of delivery. During the warranty period, the Contractor shall, at its own expense, repair or replace any defective goods promptly upon notification from CVCOG. This warranty is the sole remedy for defects in the goods, and the Contractor shall not be liable for any incidental or consequential damages arising from the use of the goods. This warranty is non-transferable and does not cover defects resulting from misuse, abuse, or unauthorized modifications to the goods.

### 6. WARRANTY (SERVICES)

The Contractor warrants that all services performed under this Agreement shall be conducted with reasonable skill, care, and diligence. The Contractor further warrants that the services provided shall conform to the specifications and requirements outlined in this Agreement. In the event that the services provided are found to be defective or fail to meet the agreed upon specifications, the Contractor shall, at its own expense, re-perform the services or take other necessary corrective actions to remedy the defect promptly upon notification from CVCOG. This warranty shall be valid for a minimum of one (1) year from the date of performance. The exclusive remedy for breach of this warranty shall be the re-performance of the services or, at the Contractor's discretion, a refund of the fees paid for the defective services. This warranty does not cover defects resulting from the CVCOG's misuse, neglect, or unauthorized alterations to the services performed.

### 7. CONFIDENTIALITY

The Contractor agrees to maintain the confidentiality of all information, data, and materials provided by CVCOG or generated in the course of performing this Agreement, unless required to disclose such information by law or with the prior written consent of CVCOG. This includes, but is not limited to, proprietary, confidential, or sensitive information regarding CVCOG's operations, business processes, and any third-party information entrusted to CVCOG. The Contractor shall take all reasonable measures to protect the confidentiality of such information and ensure that it is not disclosed to unauthorized persons. The obligations of confidentiality shall survive the termination or expiration of this Agreement and remain in effect for as long as the information remains confidential. In the event of an accidental or unauthorized disclosure, the Contractor shall immediately notify CVCOG and cooperate in mitigating any potential harm.

### 8. ASSIGNMENT/SUBCONTRACTING

The Contractor shall not assign, transfer, or subcontract any part of this Agreement, including any rights, obligations, or responsibilities, without the prior written consent of CVCOG. Any approved subcontracting or assignment shall not relieve the Contractor of its obligations under this Agreement, and the Contractor shall remain fully responsible for the performance of the work and the compliance of any subcontractor with all terms and conditions of this Agreement. The Contractor shall ensure that any subcontractor adheres to the same standards, requirements, and obligations set forth in this Agreement.

### 9. INDEPENDENT CONTRACTOR STATUS

In the performance of this Agreement, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

### 10. OWNERSHIP OF WORK PRODUCT

All deliverables, documents, materials, and work products produced by the Contractor in connection with this Agreement, including but not limited to reports, designs, software, and any other intellectual property, shall be the exclusive property of CVCOG upon creation. The Contractor agrees to assign and transfer to CVCOG all right, title, and interest in any such work product, including any copyrights, patents, or other intellectual property rights. The Contractor shall execute any necessary documents and take any further actions as required to effectuate the transfer of ownership. CVCOG shall have the right to use, modify, or distribute the work product in any manner, without restriction, and without further compensation to the Contractor, unless otherwise agreed upon in writing.

**11. CONFLICT OF INTEREST**

The Contractor agrees to disclose any potential or actual conflicts of interest that may arise in connection with the performance of this Agreement. The Contractor shall not engage in any activity or relationship that creates or may create a conflict of interest with CVCOG, its operations, or its objectives. If a conflict of interest arises, the Contractor shall promptly notify CVCOG in writing and take necessary steps to resolve or mitigate the conflict. CVCOG reserves the right to terminate this Agreement if a conflict of interest is identified and cannot be satisfactorily resolved. The obligations of this section shall survive the termination of the Agreement.

**12. EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor agrees to comply with all applicable federal, state, and local laws, regulations, and executive orders regarding equal employment opportunity. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, sex, age, disability, religion, sexual orientation, gender identity, or any other protected class under applicable law. The Contractor shall take affirmative action to ensure that applicants are employed and employees are treated fairly during employment, without regard to any of the aforementioned factors. The Contractor shall include this provision in all subcontracts or agreements related to this Agreement, ensuring that subcontractors and vendors comply with the same equal employment opportunity requirements.

**13. ADVERTISING**

Contractor shall not publish or use any information concerning this Agreement in any format or media for advertising or publicity without prior written consent from CVCOG.

**14. NON-ENDORSEMENT AND PUBLICITY**

CVCOG is not endorsing the Contractor's products or services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to CVCOG in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of CVCOG.

**15. BACKGROUND CHECKS**

The Contractor agrees to perform background checks, at its own expense, on all employees, subcontractors, or agents who will have access to CVCOG premises, sensitive information, or who will be directly involved in the performance of this Agreement. These background checks must include, at a minimum, criminal history, employment verification, and any other checks deemed necessary to ensure the safety, security, and integrity of CVCOG and its operations. The Contractor shall ensure that any individual with a criminal history or other disqualifying information is not permitted to perform work under this Agreement unless otherwise approved by CVCOG in writing.

CVCOG reserves the right to conduct additional background checks or screenings, as may be required by the specific funding agency, in addition to those conducted by the Contractor. The Contractor shall provide CVCOG with documentation of the results of these background checks upon request. CVCOG also reserves the right to reject any personnel who fail to meet the necessary qualifications or security requirements.

**16. RECORD RETENTION**

The contractor agrees to maintain all records, documents, and other evidence related to the performance of this contract for a minimum period of three (3) years after the completion of the contract or final payment, whichever is later, unless a longer retention period is required by law. Such records shall be maintained in a manner that ensures they are readily accessible for inspection, audit, or copying by authorized representatives of CVCOG, state, or federal authorities, as applicable. The contractor shall make these records available upon request during normal business hours and ensure that they are safeguarded from loss, damage, or destruction during the retention period. In the event of an ongoing audit or investigation, records may be retained for a longer period if necessary. This clause applies to all financial and non-financial documents, including, but not limited to, contracts, invoices, receipts, correspondence, reports, and any other relevant documentation related to the performance of the contract.

**17. DELIVERY/PERFORMANCE**

The Contractor shall deliver goods or complete services by the dates specified in the Agreement or purchase order, unless otherwise agreed upon by both parties. CVCOG shall not be held responsible for any delays caused by circumstances beyond its control. All deliveries and performance are subject to inspection and acceptance by CVCOG.

**18. SHIPPING**

All items shall be shipped FOB Destination (Free on Board Destination), unless otherwise agreed upon in writing by both parties. When FOB Origin is authorized, the Contractor shall prepay all shipping charges, route the goods by the least expensive common carrier, or by the carrier specified by CVCOG, and list shipping charges as a separate item on the Contractor's invoice. Each invoice for shipping charges must be accompanied by the original or a copy of the bill of lading, indicating that such charges have been paid. CVCOG reserves the right to reject any C.O.D. (Cash on Delivery) shipments. Furthermore, the Contractor shall not insure the goods for the CVCOG account during shipment, except when specifically requested in writing by CVCOG.

**19. INSPECTION/ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this Agreement. CVCOG reserves the right to inspect or test any supplies or services that have been tendered for acceptance. CVCOG may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in price. CVCOG must exercise its post-acceptance rights -- (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

**20. INVOICING AND PAYMENT**

**20.1. INVOICING TERMS**

The Contractor shall submit invoices for payment in accordance with the terms and conditions specified in this Agreement. Each invoice must include, at a minimum, the Agreement or purchase order number, a detailed description of the goods or services provided, the applicable pricing, and any other supporting documentation necessary for CVCOG to verify the accuracy of the charges. Invoices must be submitted in a timely manner, no later than thirty (30) days after the completion of services or delivery of goods. CVCOG reserves the right to reject any invoice that is incomplete or inaccurate, in which case the Contractor will be notified and required to resubmit a corrected invoice. Payments will be made in accordance with the payment terms outlined in the Agreement or purchase order, subject to the provisions of the Texas Prompt Payment Act. The Contractor agrees that payments may be withheld if the required documentation is not provided or if there are discrepancies with the invoiced amounts.

**20.2. PAYMENT TERMS**

Payments under this Agreement shall be made in accordance with the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code). The Contractor shall submit invoices for payment in a timely manner, and CVCOG will process payments within the time frame specified by the Prompt Payment Act, which is generally within 30 days of receiving a properly completed and approved invoice. Invoices must reference the applicable Agreement or purchase order number and be submitted with sufficient detail to allow for proper review and approval. The Contractor agrees to accept such payments as full and complete satisfaction of the amounts owed under the Agreement.

**20.3. ADVANCE PAYMENTS PROHIBITED**

Advance payments shall not be made under this Agreement, unless specifically authorized in writing by CVCOG. In cases where advance payment is deemed necessary for the Contractor to meet the requirements of the contract, such payment will only be made if explicitly agreed upon by CVCOG, and will be subject to appropriate terms and conditions as determined by CVCOG. Any advance payments, if authorized, may be conditioned upon the Contractor providing adequate security, guarantees, or other assurances to protect the interests of CVCOG. All payments will otherwise be made in accordance with the terms specified in the Agreement and upon completion of services or delivery of goods.

**21. TAXES**

CVCOG is a tax-exempt entity and, as such, is not responsible for the payment of any federal, state, or local taxes, fees, or assessments that are generally applicable to other parties, including but not limited to sales, use, or excise taxes. The Contractor acknowledges and agrees that it is the Contractor's responsibility to ensure that no taxes are applied to CVCOG's purchases that are exempt under applicable laws. If the Contractor imposes any taxes on CVCOG that are exempt, the Contractor shall be responsible for reimbursing CVCOG for any such tax payments. The Contractor further agrees to indemnify and hold CVCOG harmless from any claims, penalties, or interest arising from the Contractor's failure to comply with tax obligations or failure to properly account for CVCOG's tax-exempt status.

**22. MODIFICATIONS AND CHANGES**

CVCOG may modify or change the terms of this Agreement through a written amendment, which must be signed by both parties. Any requested changes by the Contractor must be submitted in writing and are subject to the approval of CVCOG. No changes to the Agreement shall be valid unless agreed to in writing by both parties. The Contractor shall not proceed with any changes unless they have received written approval from CVCOG, and any work performed without such approval will be at the Contractor's own risk and expense.

**23. TERMINATION OF AGREEMENT**

**23.1. TERMINATION FOR CAUSE OR DEFAULT**

CVCOG may terminate this Agreement, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any terms and conditions, or fails to provide the CVCOG, upon request, with adequate assurances of future performance. In the event of termination for cause, the CVCOG shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the CVCOG for any and all rights and remedies provided by law. If it is determined that the CVCOG improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

**23.2. TERMINATION FOR CONVENIENCE**

CVCOG reserves the right to terminate the Agreement at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if CVCOG determines that such termination is in the best interest of the organization. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. CVCOG shall be liable for payments limited only to the portion of work CVCOG authorized in writing and which Contractor has completed, delivered to CVCOG, and which has been accepted by CVCOG. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. CVCOG shall have no other liability, including no liability for any costs associated with the termination.

**23.3. TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Each payment obligation of CVCOG or any of its programs created by this Agreement is conditioned upon the availability of funds that are appropriated or allocated for the goods and/or services under this Agreement. If such funds are not allocated, this Agreement may be terminated by CVCOG. CVCOG shall notify Contractor at the earliest possible time before such termination. No penalty shall accrue to CVCOG in the event this provision is exercised, and CVCOG shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

**24. DISPUTE RESOLUTION**

Before submitting a dispute, all parties shall make every effort to resolve any concerns raised by an interested party at the contracting officer level through open and honest discussions. If a dispute arises during the performance of this Agreement and is not resolved by mutual agreement, it shall be addressed in accordance with the dispute resolution process outlined in Chapter 2260 of the Texas Government Code.

Disputes should be submitted to the following address:

Concho Valley Council of Governments  
Attn: Executive Director  
5430 Link Road  
San Angelo, TX 76904

During the dispute resolution process, unless otherwise directed by the respective Contracting Officer, the Contractor shall continue to perform under this Agreement while the dispute is being resolved.

**25. AUDIT RIGHTS**

CVCOG reserves the right to audit the Contractor's records, books, and accounts related to this Agreement at any time during the term of the Agreement and for a period of seven (7) years following its expiration or termination. The Contractor agrees to provide access to all relevant records and documents upon request, including but not limited to financial records, invoices, and any other supporting documentation necessary to verify compliance with the terms and conditions of this Agreement. The Contractor shall cooperate fully with the audit process, and any discrepancies or overpayments identified during the audit shall be promptly addressed by the Contractor, including reimbursement to CVCOG if applicable. CVCOG's audit rights under this provision shall survive the expiration or termination of this Agreement.

**26. FORCE MAJEURE**

Neither party shall be held liable for failure to perform its obligations under this Agreement due to events beyond its reasonable control, including, but not limited to, acts of God, natural disasters, war, terrorism, strikes, labor disputes, government actions, pandemics, or any other unforeseen circumstances. In the event of a force majeure occurrence, the affected party shall promptly notify the other party in writing of the situation and make reasonable efforts to mitigate the impact of the event. If the force majeure event persists for a period exceeding [insert number] days, either party may terminate the Agreement without liability, except for any obligations accrued up until the date of termination.

**27. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

**28. GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Texas. Any legal action or proceeding arising out of or relating to this Agreement shall be brought exclusively in the courts located in Tom Green County, Texas. The Parties hereby consent to the exclusive jurisdiction and venue of such courts and waive any objections based on improper venue or inconvenient forum.

**29. ENTIRE AGREEMENT**

These General Provisions, Terms, and Conditions, together with any associated contracts, purchase orders, or amendments, constitute the entire agreement between the parties with respect to the subject matter hereof. It supersedes all prior discussions, negotiations, understandings, and agreements, whether written or oral, between the parties. Any modifications or amendments to this Agreement must be made in writing and executed by both parties. In the event of any inconsistency or conflict between the terms of this Agreement and any other document, the terms of this Agreement shall prevail, unless otherwise explicitly stated in writing by both parties.

**30. INDEMNIFICATION**

THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CVCOG, ITS OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR IN CONNECTION WITH THE CONTRACTOR'S PERFORMANCE OF THIS AGREEMENT. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY CLAIMS RESULTING FROM THE CONTRACTOR'S NEGLIGENCE, WILLFUL MISCONDUCT, VIOLATION OF APPLICABLE LAWS OR REGULATIONS, OR ANY BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE CONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY CVCOG FOR CLAIMS ARISING SOLELY FROM CVCOG'S OWN NEGLIGENCE OR WILLFUL MISCONDUCT. THE OBLIGATIONS UNDER THIS INDEMNIFICATION PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

## FEDERAL REQUIREMENTS

### 1. FEDERAL COMPLIANCE

The Contractor agrees to comply with any additional federal regulations or statutes that may apply to the purchase, as determined by the funding source utilized. While the CVCOG will make a good faith effort to inform the Contractor of the specific provisions applicable to the purchase, the Contractor is ultimately responsible for ensuring compliance with the relevant provisions. This includes, at a minimum, the applicable provisions outlined in 2 CFR 200 Appendix II, based on the monetary thresholds of the award.

### 2. FEDERAL FUNDS

CVCOG is a recipient of federal funds from various federal agencies. CVCOG shall require Contractors to comply with all federal regulations related to the use of federal funds. In addition, Contractor agrees to flow down all applicable clauses to lower-tier subcontractors.

- 2.1. Prohibition of non-Segregated Facilities (FAR 52.222.21)
- 2.2. Equal Opportunity FAR 52.222.26 and Executive Order 11246 as amended by Executive Order I 1375 and supplemented by 41CFR part 60
- 2.3. Copeland Anti-kickback Act (for construction and repair) 18 USC 874 as supplemented by Department of Labor regulations 29 CFR part 3
- 2.4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)
- 2.5. Restrictions on Subcontractor Sales to the Government FAR 52-203.6
- 2.6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
- 2.7. Rights to Inventions Made under a Contract or Agreement (37 CFR part 401)
- 2.8. Preference for Privately Owned U.S.-Flag Commercial Vessels - FAR 52.247-64
- 2.9. Preference for US Flag Carriers FAR 52.247-63
- 2.10. Hazardous Material Identification and Material Safety Data policy (when applicable) FAR 52.223-3
- 2.11. Filing of Patent Applications FAR 52.227-10
- 2.12. Patents Rights - Retention by the Contractor Short and Long Form FAR 52.227-11, FAR 52.227.12 and FAR 52.227.13 Validation of Restrictive Markings on Technical Data SFAR 252.227-7037
- 2.13. Buy American Act - Supplies FAR 52.225-1
- 2.14. Clean Air Act (42 U.S.C. 7401-7671q.)
- 2.15. Federal Water Pollution Control Act (33 U.S.C. 1251-1387)
- 2.16. Debarment and Suspension (Executive Orders 12549 and 12689)
- 2.17. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
- 2.18. Procurement of recovered materials (2 CFR 200.323)
- 2.19. Prohibition on certain telecommunications and video surveillance equipment or services (2 CFR 200.216)
- 2.20. Domestic preferences for procurements (2 CFR 200.322)

### 3. DAVIS-BACON AND RELATED ACTS

*This provision is applicable only to contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.*

If applicable to the scope of work under this Agreement, the Contractor agrees to comply with the requirements of the Davis-Bacon Act (40 U.S.C. 3141-3148) and the related Acts, as amended, which mandate the payment of prevailing wages to laborers and mechanics employed in the performance of federal or federally-assisted construction projects. The Contractor shall ensure that all subcontractors adhere to these requirements, and shall submit weekly certified payroll records to CVCOG in accordance with the applicable regulations. The Contractor further agrees to comply with all other related requirements, including those under the Copeland "Anti-Kickback" Act (18 U.S.C. 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701), and any other applicable laws, regulations, or executive orders. CVCOG reserves the right to inspect and audit the Contractor's payroll records to verify compliance with the Davis-Bacon and Related Acts. Non-compliance with these requirements may result in the withholding of payments or termination of the Agreement.

### 4. SOLID WASTES

*This provision applies to all contracts valued at \$10,000 or more.*

The Contractor hereby certifies that, if this project involves the collection, removal, or disposal of solid waste and has a contract value of \$10,000 or more, it will comply with the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.). This includes ensuring that all activities related to solid waste management under this Agreement adhere to the standards and requirements set forth by the Solid Waste Disposal Act. The Contractor will utilize appropriate methods and facilities for the collection, handling, and disposal of solid waste in compliance with all applicable federal, state, and local regulations. The Contractor will also maintain accurate records related to solid waste disposal activities and provide such documentation upon request to the contracting officer or authorized representatives. The Contractor affirms that the information provided in this certification is accurate and complete and understands that failure to comply with the Solid Waste Disposal Act requirements may result in penalties and/or contractual remedies.

## STATE OF TEXAS REQUIRED CLAUSES

### 1. ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED

Contractor represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2273.003 of the Texas Government Code and that payments made by Customer to Contractor and Contractor's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.

### 2. AMERICANS WITH DISABILITIES ACT

Contractor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA) and its implementing regulations, as each may be amended."

### 3. ANTITRUST AFFIRMATION

Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Bid, Proposal, Offer, or Application to any competitor or any other person engaged in the same line of business as Contractor.

### 4. ASSIGNMENT

Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Customer. Any attempted assignment in violation of this provision is void and without effect.

### 5. BINDING EFFECT

The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.

### 6. BUY TEXAS AFFIRMATION

In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

**7. CHANGE IN LAW AND COMPLIANCE WITH LAWS**

Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

**8. CHILD SUPPORT OBLIGATION AFFIRMATION**

Under Section 231.006 of the Family Code, the Contractor certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate in addition to other remedies set out in 231.006(f).

**9. CLOUD COMPUTING STATE RISK AND AUTHORIZATION MANAGEMENT PROGRAM (TX-RAMP)**

Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Contractor represents and warrants that it complies with the requirements of the state risk and authorization management program and Contractor agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.

**10. COMPUTER EQUIPMENT RECYCLING PROGRAM**

Contractor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

**11. CONTRACTING INFORMATION RESPONSIBILITIES**

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Customer for the duration of the contract, (2) promptly provide to the Customer any contracting information related to the contract that is in the custody or possession of the Contractor on request of the Customer, and (3) on termination or expiration of the contract, either provide at no cost to the Customer all contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Customer. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**12. COVID-19 VACCINE PASSPORT PROHIBITION**

Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, or gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

**13. CRITICAL INFRASTRUCTURE AFFIRMATION**

Pursuant to Government Code Section 2275.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2275.0103, or (2) headquartered in any of those countries.

**14. CRITICAL INFRASTRUCTURE SUBCONTRACTS**

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commercial Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the Customer before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

**15. CUSTOMER'S RIGHT TO AUDIT**

Contractor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Customer and the State of Texas.

**16. CYBERSECURITY TRAINING**

Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.

**17. DAMAGE TO GOVERNMENT PROPERTY**

Contractor shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Contractor shall notify the Customer in writing of any such damage within one (1) calendar day. Contractor is responsible for the removal of all debris resulting from work performed under the contract.

**18. DATA MANAGEMENT AND SECURITY CONTROLS**

In accordance with Section 2054.138 of the Texas Government Code, Contractor certifies that it will comply with the security controls required under this contract and will maintain records and make them available to Customer as evidence of Contractor's compliance with the required controls.

**19. DEALINGS WITH PUBLIC SERVANTS AFFIRMATION**

Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract.

**20. DEBTS AND DELINQUENCIES AFFIRMATION**

Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

**21. DISASTER RECOVERY PLAN**

Upon request of Customer, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.

**22. DISCLOSURE OF INTERESTED PARTIES**

Contractor represents and warrants that if selected for award of a contract as a result of a Solicitation, Contractor will submit to Customer a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

**23. DISCLOSURE OF PRIOR STATE EMPLOYMENT**

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by Customer or another state agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Bid, Proposal, Offer, or Application the following: (i) the nature of the previous employment with Customer or the other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

**24. DISCOUNTS**

If Contractor at any time during the term of the contract provides a discount on the final contract costs, Contractor will notify Customer in writing ten (10) calendar days prior to effective date of discount. Customer will generate a Purchase Order Change Notice and send a revised Purchase Order to Contractor.

**25. DISPUTE RESOLUTION (ENGINEERING, ARCHITECTURAL, OR CONSTRUCTION SERVICES)**

Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).

- a) Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Contractor's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Contractor may make a claim against Customer for breach of contract and the Customer may assert a counterclaim against the Contractor as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Contractor must provide written notice to Customer of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Contractor seeks as damages; and (3) the legal theory of recovery.
- b) The chief administrative officer, or if designated in the contract, another officer of the Customer, shall examine the claim and any counterclaim and negotiate with the Contractor in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
- c) If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this contract as to the parts of the claim that are not resolved.
- d) If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with Customer, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the Customer if the parties are unable to resolve their disputes as described in this section.
- e) Nothing in the contract shall be construed as a waiver of the state's or the Customer's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas 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. Customer does not waive any privileges, rights, defenses, or immunities available to Customer by entering into this contract or by its conduct, or by the conduct of any representative of Customer, prior to or subsequent to entering into this contract.
- f) (Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Contractor:
  - 1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or
  - 2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.

**26. DISPUTE RESOLUTION (GENERAL)**

Disputes arising under the contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.

**27. ELECTRICAL ITEMS**

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

**28. ENERGY COMPANY BOYCOTTS**

Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2276.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify Customer.

**29. ENTITIES THAT BOYCOTT ISRAEL**

Contractor represents and warrants that (1) it does not, and shall not for the duration of the contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify Customer.

**30. EQUAL EMPLOYMENT OPPORTUNITY**

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

**31. E-VERIFY PROGRAM**

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:

- 1) all persons employed by Contractor to perform duties within Texas; and
- 2) all persons, including subcontractors, assigned by Contractor to perform work pursuant the contract within the United States of America.

**32. EXCESS OBLIGATIONS PROHIBITED**

Contractor understands that all obligations of Customer under the contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the contract may be terminated by Customer.

**33. EXCLUDED PARTIES**

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

**34. EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION**

Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Contractor represents that no person who served as an executive of Customer, in the past four (4) years, was involved with or has any interest in the contract. If Contractor employs or has used the services of a former executive of Customer, then Contractor shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor, and the date of employment with Contractor.

**35. FALSE STATEMENTS**

Contractor represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Bid, Proposal, Offer, or Application with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Bid, Proposal, Offer, or Application and any resulting contract.

**36. FEDERAL OCCUPATIONAL SAFETY AND HEALTH LAW**

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

**37. FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION**

Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Bid, Proposal, Offer, Application or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

**38. FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION**

Contractor verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify Customer.

**39. FORCE MAJEURE**

Neither Contractor nor Customer shall be liable to the other for any delay in, or failure of performance, of any requirement included in the 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.

**40. FOREIGN TERRORIST ORGANIZATIONS**

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**41. FORMER AGENCY EMPLOYEES**

Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Customer during the twelve (12) month period immediately prior to the date of execution of the contract.

**42. GOVERNING LAW AND VENUE**

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Tom Green County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Customer.

**43. HUMAN TRAFFICKING PROHIBITION**

Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Bid, Proposal, Offer, Application or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**44. IMMIGRATION**

Contractor represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

**45. INDEMNIFICATION (ENGINEERING OR ARCHITECTURAL SERVICES)**

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO CONTRACTOR'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO CONTRACTOR, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**46. INDEMNIFICATION (GENERAL)**

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**47. INDEMNIFICATION (INTELLECTUAL PROPERTY)**

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) CUSTOMER'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO CUSTOMER BY CONTRACTOR OR OTHERWISE TO WHICH CUSTOMER HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE CUSTOMER AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF CUSTOMER DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF CUSTOMER IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, CUSTOMER WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF CUSTOMER'S COUNSEL.

**48. LEGAL AND REGULATORY ACTIONS**

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Customer's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Customer's consideration of the Response. In addition, Contractor represents and

warrants that it shall notify Customer in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Customer shall constitute breach of contract and may result in immediate termination of the contract.

**49. LICENSE GRANT**

Contractor hereby grants to Customer a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Contractor; and (b) to sublicense any or all such rights to third parties.

**50. LIMITATION ON AUTHORITY**

Contractor shall have no authority to act for or on behalf of Customer or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expense or liability of any kind on behalf of Customer or the State of Texas.

**51. LOBBYING PROHIBITION**

Contractor represents and warrants that Customer's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

**52. MEDIA RELEASES**

Contractor shall not use Customer's name, logo, or other likeness in any press release, marketing material, or other announcement without Customer's prior written approval. Customer does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without Customer's prior written consent, and then only in accordance with explicit written instructions from Customer.

**53. NATIONAL ANTHEM VERIFICATION**

If Contractor is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, Contractor will play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of this contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Contractor may be debarred from contracting with the State. The Customer or the Attorney General may strictly enforce this provision.

**54. NO CONFLICTS OF INTEREST**

Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

**55. NO FELONY CRIMINAL CONVICTIONS**

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised Customer in writing of the facts and circumstances surrounding the convictions.

**56. NO IMPLIED WAIVER**

The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

**57. NO QUANTITY GUARANTEES**

The contract is not exclusive to the Contractor. Customer may obtain products and related services from other sources during the term of the contract. Customer makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the contract.

**58. NO THIRD-PARTY BENEFICIARIES**

The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

**59. PERMITS, CERTIFICATIONS, AND LICENSES**

Contractor represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.

**60. PRIOR DISASTER RELIEF CONTRACT VIOLATION**

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Bid, Proposal, Offer, Application or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**61. PROMPT PAYMENT**

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

**62. PROPERTY RIGHTS**

For purposes of the contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract.

Customer and Contractor intend this agreement to be a contract for the services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Contractor to be a work made for hire. Contractor and Contractor's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of Customer. Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Customer. If for any reason the Work would not be considered a work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to Customer, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights, as Customer may deem necessary to secure for Customer or its designee the rights herein assigned. In the event that Contractor has any rights in and to the Work that cannot be assigned to Customer, Contractor hereby grants to Customer an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon Customer's request, Contractor shall deliver to Customer all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the contract. Contractor will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of Customer.

**63. PUBLIC INFORMATION ACT**

Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or



exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or Customer.

**64. RECORDS RETENTION**

Contractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

**65. REFUND**

Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Customer which are not expressly authorized under the contract.

**66. RESTRICTED EMPLOYMENT FOR CERTAIN STATE PERSONNEL**

Pursuant to Section 572.069 of the Texas Government Code, Contractor certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for Customer involving Contractor within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

**67. SECURE ERASURE OF HARD DISK CAPABILITY**

All equipment provided to Customer by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

**68. SIGNATURE AUTHORITY**

By submitting the Bid, Proposal, Offer, or Application, Contractor represents and warrants that the individual submitting this document and the documents made part of this Bid, Proposal, Offer, or Application is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under any contract that may result from the submission of this Bid, Proposal, Offer, or Application.

**69. SOVEREIGN IMMUNITY**

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the Customer or the State of Texas of any immunities from suit or from liability that the Customer or the State of Texas may have by operation of law.

**70. STANDARD OF CARE FOR ARCHITECTURAL AND ENGINEERING CONTRACTS**

Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Contractor shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

**71. STATE AUDITOR'S RIGHT TO AUDIT**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**72. SUBCONTRACTORS**

Contractor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Customer. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the contract. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Customer is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

**73. SURVIVAL**

Expiration or termination of the contract for any reason does not release Contractor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

**74. SUSPENSION AND DEBARMENT**

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

**75. TAXES**

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Customer will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. Customer shall not be liable for any taxes resulting from the contract.

**76. TECHNOLOGY ACCESS CLAUSE**

Contractor 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 impairment. Accordingly, Contractor represents and warrants to Customer that the technology provided to Customer 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:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, 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.

In accordance with Title 1, Chapter 213, Subchapter B of the Texas Government Administrative Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

**77. TELEVISION EQUIPMENT RECYCLING PROGRAM**

Contractor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

**78. TERMS AND CONDITIONS ATTACHED TO RESPONSE**

Any terms and conditions attached to a Bid, Proposal, Offer, or Application will not be considered unless specifically referred to in the Bid, Proposal, Offer, or Application.

**79. TEXAS BIDDER AFFIRMATION**

Contractor certifies that if a Texas address is shown as the address of the Contractor on this Bid, Proposal, Offer, or Application, Contractor qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

**80. UNFAIR BUSINESS PRACTICES**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

**81. USE OF STATE PROPERTY**

Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Customer's office space, identification badges, Customer information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Customer -issued software, and the Customer Virtual Private Network (VPN client)), and any other resources of Customer. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access Customer's network or e-mail while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by Customer that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor's use of State Property that exceeds the contract scope. Contractor shall fully reimburse such charges to Customer within ten (10) calendar days of Contractor's receipt of Customer's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Customer under contract, at law, or in equity.