

PROCUREMENT GENERAL TERMS AND CONDITIONS

Concho Valley Council of Governments ("CVCOG") 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. 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.

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. 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 CVCOG. Any attempted assignment in violation of this provision is void and without effect. 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.

4. 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.

5. 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.

6. BYRD ANTI-LOBBYING AMENDMENT

Contractor certifies that no federal appropriated funds have been paid or will be paid to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on its behalf to obtain, extend, or modify this contract or grant. If non-federal funds are used by Contractor to conduct such lobbying activities, Contractor shall promptly file the prescribed disclosure form. In accordance with 31 U.S.C. § 1352(b)(5), Contractor acknowledges and agrees that it is responsible for ensuring that each subrecipient and subcontractor certifies its compliance with the expenditure prohibition and the declaration requirement.

7. CHILD SUPPORT OBLIGATION

Contractor represents and warrants that it will include the following clause in the award documents for every subaward and subcontract and will require subrecipients and contractors to certify accordingly: "Under Section 231.006 of the Family Code, the vendor or applicant 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. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application."

8. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Contractor represents and warrants that it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

9. COMPLIANCE WITH LAWS, RULES, AND REQUIREMENTS

Contractor represents and warrants that it will comply, and assure the compliance of all its subrecipients and contractors, with all applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Contractor represents and warrants that it will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Contractor, the more restrictive requirement applies.

10. 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.

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. CONTRACT OVERSIGHT

Contractor represents and warrants that it will maintain oversight to ensure that subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

13. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contractor represents and warrants that it will comply with the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

14. CYBERSECURITY TRAINING PROGRAM

If Contractor has access to any state computer system or database, Contractor shall complete cybersecurity training and verify completion of the training program to the CVCOG pursuant to and in accordance with Section 2054.5192 of the Government Code.

15. DAVIS-BACON ACT AND THE COPELAND ACT

Contractor represents and warrants that it will comply with the requirements of the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction") and the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874).

16. DEBARMENT AND SUSPENSION

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.

17. DEBTS AND DELINQUENCIES

Contractor acknowledges and agrees that, to the extent Contractor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Contractor is otherwise owed under the contract or grant may be applied toward any debt Contractor owes the State of Texas until the debt is paid in full. These provisions are effective at any time the Contractor owes any such debt or delinquency.

18. 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.

19. DISASTER RECOVERY PLAN

Upon request of CVCOG, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

20. 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 CVCOG or another agency at any time during the two years preceding the submission of the quote, bid, proposal, or offer or, in the alternative, Contractor has disclosed in its quote, bid, proposal or offer the following: (i) the nature of the previous employment with CVCOG or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

21. DISCLOSURE PROTECTIONS FOR CERTAIN CHARITABLE ORGANIZATIONS, CHARITABLE TRUSTS, AND PRIVATE FOUNDATIONS

Contractor represents and warrants that it will comply with Section 2252.906 of the Texas Government Code relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.

22. DISCRIMINATION PROHIBITED

In accordance with Section 2105.004 of the Texas Government Code, Contractor represents and warrants that it will not use block grant funds in a manner that discriminates on the basis of race, color, national origin, sex, or religion.

23. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the agreement.

24. 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.

25. EQUAL EMPLOYMENT OPPORTUNITY

The Contractor hereby agrees that it will incorporate or cause to be incorporated into any subcontract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the federal Government or borrowed on the credit of the federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided that if the Contractor so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government that does not participate in work on or under the contract.
- 9) The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

26. 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.

27. EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of the CVCOG, (2) a person who at any time during the four years before the date of the contract or grant was the executive head of the CVCOG, or (3) a person who employs a current or former executive head of the CVCOG.

28. 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.

29. FEDERAL SOLID WASTE DISPOSAL ACT

Contractor represents and warrants that it will comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

30. FIREARM SUPPRESSOR POLICY

Contractor certifies that it has not received a final judicial determination finding it adopted a rule, order, ordinance, or policy under which it enforces, or allows the enforcement of, a federal statute, order, rule, or regulation that purports to regulate a firearm suppressor in violation of Texas Government Code §2.102(a) in an action brought by the Attorney General under Texas Government Code §2.104. If Contractor is currently being sued under Texas Government Code §2.104 or is sued under this section at any point during the duration of this grant, Contractor agrees to immediately disclose the lawsuit and its posture to the CVCOG.

31. 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.

32. FORMER AGENCY EMPLOYEES

In accordance with Section 2252.901 of the Texas Government Code, 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 CVCOG during the twelve (12) month period immediately prior to the date of execution of the contract.

33. FUNDING LIMITATION

Contractor understands that all obligations of CVCOG under the contract or grant are subject to the availability of grant funds. The contract or grant is subject to termination or cancellation, either in whole or in part, without penalty to CVCOG if such funds are not appropriated or become unavailable.

34. GOVERNING LAW AND VENUE

This agreement 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 this agreement is fixed in any court of competent jurisdiction of Tom Green County, Texas, unless the specific venue is otherwise identified in a statute that directly names or otherwise identifies its applicability to the contracting state agency.

35. INDEMNIFICATION

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CONCHO VALLEY COUNCIL OF GOVERNMENTS, AND/OR ITS 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 CONCHO VALLEY COUNCIL OF GOVERNMENTS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

36. INDEPENDENT CONTRACTOR

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.

37. 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.

38. 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.

39. INVOICING AND PAYMENT

39.1. 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.

39.2. 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.

39.3. 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.

40. LOBBYING EXPENDITURE RESTRICTION

Contractor represents and warrants that CVCOG's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract or grant are not prohibited by Sections 403.1067 or 556.0055 of the Texas Government Code, which restrict lobbying expenditures.

41. 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.

42. NO CONFLICTS OF INTEREST (STATE)

Contractor represents and warrants that performance under the contract or grant will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Further, Contractor represents and warrants that in the administration of the grant or performance of the contract, it will comply with all conflict of interest prohibitions and disclosure requirements required by applicable law, rules, and policies, including Chapter 176 of the Texas Local Government Code. If circumstances change during the course of the contract or grant, Contractor shall promptly notify CVCOG.

43. NO WAIVER OF SOVEREIGN IMMUNITY

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

44. 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.

45. OPEN MEETINGS

If the Contractor is a governmental entity, Contractor represents and warrants its compliance with Chapter 551 of the Texas Government Code, which requires all regular, special or called meeting of a governmental body to be open to the public, except as otherwise provided by law.

46. 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.

47. 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.

48. POLITICAL POLLING PROHIBITION

Contractor represents and warrants that it does not perform political polling and acknowledges that appropriated funds may not be granted to, or expended by, any entity that performs political polling.

49. RECORDS RETENTION (FEDERAL)

Contractor represents and warrants its compliance with the records retention requirements of 2 CFR § 200.333. CVCOG reserves the right to direct a Contractor to retain documents for a longer period of time or transfer certain records to CVCOG custody when it is determined the records possess longer term retention value. Contractor must include the substance of this clause in all subawards and subcontracts.

50. RECORDS RETENTION (STATE)

For the time period specified in Section 441.1855 of the Texas Government Code, 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. Contractor must include the substance of this clause in all subcontracts.

51. REMEDIES FOR NONPERFORMANCE

If Contractor fails to comply with any requirement of the contract, CVCOG may terminate or cancel all or any part of the contract, may obtain substitute requested items, may withhold acceptance and payments to Contractor, may revoke any prior acceptance, may require Contractor to refund amounts paid prior to revocation of acceptance and may pursue all rights and remedies against Contractor under the contract and any applicable law. Remedies for nonperformance may also include suspension or debarment. No provision of the contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to CVCOG as an agency of the State of Texas or otherwise available to CVCOG. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to CVCOG by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

52. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Contractor represents and warrants that it will comply with the requirements of 37 CFR Part 401 ("Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements") and any implementing regulations issued by the awarding agency, if federal award meets the definition of "funding agreement" under 37 CFR §401.2(a) and the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement."

53. 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.

54. 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.

55. STATE AUDITOR'S RIGHT TO AUDIT

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Contractor or any other entity or person 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, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

56. 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.

57. TERMINATION AND CANCELLATION CIRCUMSTANCES

CVCOG reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice. CVCOG reserves the right, in its sole discretion, to terminate the contract in whole or in part for Contractor's material breach, provided that Contractor has been given advance written notice specifying the nonperformance and a thirty (30)-calendar-day period in which to cure the breach.

In the event of contract termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Termination or expiration of the contract shall not affect CVCOG's right to use previously purchased licensed software through the term of each such license, nor any maintenance or support purchased prior to such termination. In the event of contract termination, the CVCOG's sole and maximum obligation shall be to pay Contractor for previously authorized services completed in accordance with contract requirements and performed prior to the effective date of termination. CVCOG shall have no other liability, including no liability for any costs associated with the termination.

CVCOG reserves the right to pursue reasonable costs, fees, expenses, and other amounts or damages available to the CVCOG under the contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at the Contractor's request or if the CVCOG terminates the contract for cause.

58. TEXAS PUBLIC INFORMATION ACT

Contractor understands that CVCOG will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Solicitation or any resulting contract or grant may be subject to public disclosure pursuant to the Texas 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 CVCOG.

59. 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.

60. 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.