



Michael J. Garcia, Mayor

## Purchasing Memo

**Date:** May 30, 2026

**To:** Governing Body, Finance Committee, and Public Works & Utilities Committee

**Via:** Sam Burnett, Interim Public Works Director 

Carol Swenson, Public Works Business Operations Manager   
YVONNE SWENSON

Melissa McDonald, Parks and Open Space Division Director 

**From:** Sean Moody, Public Works Capital Projects Manager   
SM

**Subject:** GIS and Asset Management Integration and Capacity Building

**Vendor Name:** Langan LLC

**Munis Vendor Number:** 11259

### **ACTION:**

Request for Approval of a Professional Services Agreement with Langan LLC for Software Consulting Services to Integrate OpenGov Enterprise Asset Management and Geographic Information Services Systems in the Total Amount of \$600,000 Through June 30, 2030. (Sean Moody, Public Works Capital Projects Manager: [sxmoody@santafenm.gov](mailto:sxmoody@santafenm.gov))

### **Committee Review**

Public Works and Utilities Committee: June 29, 2026

Finance Committee: July 6, 2026

Governing Body: July 8, 2026

### City Council

Alma G. Castro, District 1  
Patricia Feghali, District 1

Elizabeth "Liz" Barrett, District 2  
Paul C. Bustamante, District 2

Lee Garcia, Mayor Pro Tem, District 3  
Pilar F.H. Faulkner, District 3

Jamie Cassutt, District 4  
Amanda Chavez, District 4

**CONTRACT NUMBER:**

The FY27 Munis contract number is 3260374.

**BACKGROUND AND SUMMARY:**

Langan LLC is a professional consulting firm with expertise in geographical information systems which has been selected to assist the city in its implementation of the OpenGov Enterprise Asset Management (EAM) software platform to manage the city’s capital assets. A four year, on-call hourly service agreement will be procured through an Interlocal Cooperation Contract between the City of Santa Fe and the State of Texas Department of Information Resources, which is a cooperative procurement agreement under NM Stat § 13-1-135 (2025) and NM Stat § 13-1-98 A. (2025).

Scope of services includes data integration and workflow coherence among Constituent Services, ITT/GIS (geographic Information systems), Public Works and Public Utilities; staff training and development; monitoring of public assets; enhancement of the city’s existing GIS database and mapping capabilities; and assisting the Public Works Department in development of in-house GIS capabilities. Optional work may include selective data acquisition, such as a survey of pavement conditions, signage and striping, which will allow the Complete Streets Division to better manage and prioritize the maintenance and repair of the city’s roads, open space trails and bicycle paths, and to respond more effectively to constituent requests.

Funding over term of the contract will be drawn from each fiscal year’s operating budget within the Public Works Department’s Administration office, the Complete Streets Division, and the Parks and Open Space Division. An initial purchase order is expected to be issued in July, 2026 once the city’s FY2027 budget has been appropriated.

**PRIOR APPROVALS AND SUPPORTING INFORMATION:**

**FUNDING SOURCE:**

**Fund Name/Number:** Various

**Munis Org Name/Number:** Public Works Administration/1006001

**Munis Object Name/Number:** Professional Contracts/510300

Future funding sources may include 1000471.570850(Complete Streets); 2310411.570850 (River and Watershed); 2554150.570850 (Parks and Open Space); and 1006001.570850 (Public Works – Software Purchases)


**Budget Officer / Designee:** Andy Hopkins

**Date:** 06/04/2026

Budget Officer Comment/Exceptions: \_\_\_\_\_

**PROCUREMENT METHOD:**

The procurement method used was NMSA 1978, Section 13-1-135, Coop

Chief Procurement Officer (CPO)/Designee:  \_\_\_\_\_ Date: 06/09/2026

CPO Comment/Exceptions: Texas Department of Information Coop DIR TSO IC718

**ASSOCIATED APPROVALS:**

IT Components included?  Yes |  No

Approval:  \_\_\_\_\_ Title: Director, IT Date: 06/18/2026

Comment/Exceptions: previously approved see down below

Treasury/Point of Sale Components included?  Yes |  No

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

Vehicles included?  Yes |  No

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

Construction to City Facilities, Furniture, and/or Fixtures included?  Yes |  No

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

Is this an externally funded purchase?  Yes |  No

If yes, what is the issuing agency: \_\_\_\_\_

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

AP  
AP (Jun 4, 2026 10:18:47 MDT)

Is this a Capital Asset or Project?  Yes |  No

Project Ledger Number: PTW2623101

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

**ATTACHMENTS:**

Professional Services Contract

Vendor's Quote

Horizons declination

CPO Service Determination Email

Department approval email from ITT

Procurement documents: Coop Master Agreement

Certificate of Liability Insurance (COI)

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **LANGAN ENGINEERING, ENVIRONMENTAL, SURVEYING, LANDSCAPE ARCHITECTURE AND GEOLOGY D.P.C.**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

**RECITALS**

**WHEREAS**, the Chief Procurement Officer of the City has made the determination that this Agreement is in accordance with the provisions of the New Mexico Procurement Code (NMSA 1978, 13-1-28 et seq.) pursuant to NMSA 1978, section 13-1-135; and

**WHEREAS**, the Contractor is one of such requisite and qualifications and is willing to engage with the City for professional services, in accordance with the terms and conditions hereinafter set out, and the Contractor understanding and consenting to the foregoing is willing to render such professional services as outlined in the Contract; and

The City and the Contractor hereby agree as follows:

**1. Scope of Work**

Langan services will be provided on a task order basis, as requested by the City, and may include any of the following from the tasks below.

**On-Call OpenGov Enterprise Asset Management & GIS Support Services**

The Langan team may provide on-site and virtual OpenGov Enterprise Asset Management (EAM) and geographic information services ("GIS") support services to maintain the City's OpenGov EAM and Esri GIS software. Under this contract, the expected services may include, but are not limited to, any of the following:

- **Needs Assessment, Discovery, and Strategic Planning:** On-site and virtual needs assessment and discovery for the Parks and Open Space and Complete Streets divisions from the Public Works Department, the Constituent Services division of the Department of Community Engagement, the Department of Public Utilities, the Planning and Land Use Division of the Department of Community Development and the Information Technology and Telecommunication (ITT) Division. Ongoing discovery, planning, strategic planning and roadmap activities based on feedback and evolving goals of the City.

- **Training:** Development and delivery of additional job aids and remote online training for OpenGov EAM software and workflows for the City’s end-users as quick reference guides. On-site or virtual training delivery and support for managers/supervisors and staff focused on OpenGov EAM workflow, GIS processes, and both OpenGovEAM and GIS software.

- **Maintenance and Administration of OpenGov EAM:** Development and delivery of guidance to perform the maintenance and administration of the OpenGov EAM software, Esri’s ArcGIS platform, and related technologies and data, services, and applications hosted within each environment.

- **OpenGov Integration Support:** OpenGov EAM integration support for ArcGIS Enterprise, ArcGIS Online and associated Esri technologies and/or other enterprise business systems.

- **GIS Support for the City’s existing Esri ArcGIS Enterprise and ArcGIS Online environments:**

- o Project management, discovery, support, and strategic planning.
- o Data collection, configuration, modeling, and maintenance.
- o GIS data configuration and attributing for OpenGov EAM.
- o ArcGIS Enterprise and ArcGIS Online maintenance, administration and training.
- o Web/Mobile application development, maintenance, & support, such as dashboards, Experience Builder, Instant Apps, Field Maps, and Survey123.
- o IT and cloud resource support, maintenance and administration.
- o GIS integration support and maintenance for other enterprise business systems.

- **On-demand User Support:** On-demand user support (response within 24 hours of receipt of request on standard business days M-F) technology support for the OpenGov EAM and ESRI GIS apps/tools and related technologies.

## **2. Standard of Performance; Licenses**

- A. The Contractor does hereby accept its designation as a professional service, rendering services related to IT Services for the City, as set forth in this Contract. The Contractor represents that Contractor possesses the personnel, experience, and knowledge necessary to perform the services described under this Contract.
- B. The Contractor agrees to obtain and maintain throughout the term of this Contract, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives, and subcontractors.

### 3. Compensation

**A. Payment.** The City shall compensate the Contractor based on the itemized amounts and/or rates specified in Exhibit A. For the services and goods described in the scope of work, the City agrees to pay an amount to the Contractor of \$554,592.72. The services and goods in the contract will require Gross Receipts Tax (GRT). The GRT on this contract is levied at the rate of 8.1875%, equaling \$45,407.28. The total not to exceed compensation for the contract including GRT is \$600,000.00. PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE City. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

**B.** Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

**C. Notice of Extended Payment Provision For Grant Funded Contracts.** This contract allows the owner to make payment within 45 days after submission of an undisputed request for payment.

### 4. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Contract shall terminate **on June 30, 2030** unless terminated pursuant to paragraph 5 (Termination) and paragraph 6 (Appropriations). The City reserves the right to renew this contract by mutual agreement not to exceed a total of four (4) years in accordance with NMSA 1978, Sections 13-1-150 through 152.

### 5. Termination

**A. Grounds.** The City may terminate this Contract for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide

the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. The Contractor may only terminate this Contract based upon the City's uncured, material breach of this Contract.

**B. Notice; City Opportunity to Cure.**

- 1)The City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
- 2)Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Contract upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
- 3)Notwithstanding the foregoing, this Contract may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 6, "Appropriations", of this Contract.
- 4)Liability. Except as otherwise expressly allowed or provided under this Contract, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Contract. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS CONTRACT.

**6. Appropriations**

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**7. Status of Contractor**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Contract. The Contractor acknowledges that all

sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**8. Assignment**

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract without the prior written approval of the City, provided, however, that Contractor can assign this Agreement, without consent, to a subsidiary of Contractor.

**9. Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

**10. Release**

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

**11. Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City, except as may be required by law or regulation.

**12. Product of Service -- Copyright**

All materials developed or acquired by the Contractor under this Contract, upon payment by the City of amounts owed pursuant to the terms of this Agreement, shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**13. Conflict of Interest; Governmental Conduct Act**

**A.** The Contractor represents and warrants that it presently has no interest and, during the term of this Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

**B.** The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract complies with all applicable provisions of the Governmental Conduct Act, NMSA 1978, Chapter 10, Article 16.

C. Contractor's representations and warranties in Paragraphs A and B of this Article are material representations of fact upon which the City relied when this Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Contract to the contrary, the City may immediately terminate the Contract.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

#### **14. Amendment**

A. This Contract shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Contract to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Contract, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

#### **15. Entire Agreement.**

This Contract, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Contract, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Contract, and the related Exhibits and Schedules, the statements in the body of this Contract shall control.

#### **16. Merger**

This Contract incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written contract.

Cooperative 13-1-135

This Contract is issued against the Texas Department of Information Resources DIR-CPO-6027 and the INTERLOCAL COOPERATION CONTRACT DIR No: DIR-TSO-IC718

(EXHIBIT B to this Contract), and through this language hereby incorporates this agreement

by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

**17. Penalties for violation of law**

NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

**18. Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

**19. Applicable Law**

The laws of the State of New Mexico shall govern this Contract, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-2. By execution of this Contract, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Contract.

**20. Workers Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Contract may be terminated by the City.

**21. Professional Liability Insurance**

Contractor shall maintain professional liability insurance throughout the term of this Contract providing coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Contract.

**22. Other Insurance**

If the services contemplated under this Contract will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this

Contract, the following insurance coverage(s), including the City as additional insured.

**A. Commercial General liability** insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits of \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include Contractual Liability coverage and be endorsed to include the City of Santa Fe their officials, officers, and employees, as additional insureds. Limits required herein may be satisfied by a combination of primary and excess/umbrella coverages.

**B. Business Automobile Liability** insurance for all owned, non-owned automobiles, with a combined single limit of \$1,000,000 per accident.

**C. Broader Coverage and limits.** The insurance requirements under this Contract shall be the coverage and limits specified in this Contract. No representation is made that the insurance requirements of this Contract are sufficient to cover the obligations of Contractor hereunder.

**D.** Contractor shall maintain the above insurance for the term of this Contract and include the City as an additional insured and provide for 30 days cancellation notice for reasons other than the nonpayment of premium on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy affording additional insured coverage as required herein is primary over any other valid and collectible insurance and provide a waiver of subrogation where allowed by law except for Professional Liability.

### **23. Records and Financial Audit**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the City to recover excessive or illegal payments.

### **24. Indemnification**

The Contractor shall defend (except against professional liability claims), indemnify and hold harmless the City from all third party actions, proceedings, claims and demands ("Claims") and the costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of such Claims resulting from the performance of this Contract, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee or subcontractor thereof has or is performing services pursuant to this Contract. If any action, suit or proceeding related to the services performed by the Contractor or any officer, agent,

employee, servant or subcontractor under this Contract is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

**25. New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et. seq., as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act.

**26. Invalid Term or Condition**

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

**27. Enforcement of Contract**

A party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Contract shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**28. Notices**

Any notice required to be given to either party by this Contract shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:

Brett Milburn, Director of Digital Solutions, Principal  
Langan Engineering, Environmental, Surveying, Landscape Architecture and Geology  
D.P.C.  
300 Kimball Drive, Suite 4  
Parsippany, NJ 07054

To the Contractor:

Sean Moody, Capital Projects Manager  
Public Works Department  
City of Santa Fe  
P.O. Box 909  
Santa Fe, NM 87504-0909

**29. Authority**

If Contractor is other than a natural person, the individual(s) signing this Contract on behalf of Contractor represents and warrants that he or she has the power and authority to

including but not limited to tort (including negligence and professional errors and omissions), strict liability, breach of contract, or breach of warranty shall not exceed the total compensation received by Contractor or \$100,000, whichever is greater.

**35. Mutual Waiver of Consequential Damages**

Contractor and City waive all consequential or special damages, including, but not limited to, loss of use, profits, revenue, business opportunity, or production, for claims, disputes, or other matters arising out of or relating to the Contract or the services provided by Contractor, regardless of whether such claim or dispute is based upon breach of contract, willful misconduct or negligent act or omission of either of them or their employees, agents, subconsultants, or other legal theory, even if the affected party has knowledge of the possibility of such damages. This mutual waiver shall survive termination or completion of this Contract.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

CONTRACTOR:  
LANGAN ENGINEERING, ENVIRONMENTAL,  
SURVEYING, LANDSCAPE ARCHITECTURE AND  
GEOLOGY D.P.C.

\_\_\_\_\_

*Brett Milburn*  
Brett Milburn (May 28, 2026 17:24:50 EDT)

MICHAEL GARCIA, MAYOR

BRETT MILBURN, PRINCIPAL

DATE: May 28, 2026

ATTEST:

\_\_\_\_\_

GERALYN CARDENAS, CITY CLERK

CITY ATTORNEY'S OFFICE:

*Kevin L. Nault*  
Kevin L. Nault (May 28, 2026 16:57:15 MDT)  
KEVIN NAULT, ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

*Andrea Phillips*  
ANDREA PHILLIPS (Jun 18, 2026 10:50:57 MDT)

ANDREA PHILLIPS, FINANCE DIRECTOR

February 17, 2026

Sean Moody, Capital Project Manager  
City of Santa Fe  
737 Agua Fria Street  
Santa Fe, New Mexico 87501  
Submittal via email: [sxmoody@santafenm.gov](mailto:sxmoody@santafenm.gov)



## Re: On-Call OpenGov Asset Management & GIS Support Services

Dear Sean Moody,

Thank you for the opportunity to provide the City of Santa Fe, New Mexico (Santa Fe or City) with our proposal and scope of services for on-call OpenGov Enterprise Asset Management (EAM) and Geographic Information Systems (GIS) support services. Our approach to assist the City with its OpenGov EAM and GIS environments is described herein.

## Project Understanding

To assist the City in its efforts, Langan Engineering, Environmental, Surveying, Landscape Architecture, and Geology D.P.C. (Langan) has prepared a scope of services based on the initial discussion with the City on August 26, 2025, and subsequent meetings. Based on these discussions, we understand the City would like to move forward with on-call OpenGov EAM and GIS service hours to assist with a variety of tasks. Langan leverages its strategic partnership with OpenGov to help clients implement and sustain robust enterprise asset management solutions, safeguarding performance through optimized workflows, data-driven insights, and long-term operational support. By supporting OpenGov's GIS-centric environment, we pair our Esri Gold partnership and associated specialties to safeguard the seamless operation of both systems. Where needed, the Langan team follows Esri's recommended best practices described at the [ArcGIS Architecture Center](#). Langan adheres to the security requirements recommended for Esri ArcGIS products as outlined at <https://trust.arcgis.com/en/>. We will collaborate with the City to implement industry's best practices or adjust existing measures, as necessary. Along with our asset management and GIS services, we also provide licensed survey, drone Imagery capture, and reality scanning/capture services to further facilitate your asset management and data needs.

# Scope of Services

Langan services will be provided on a task order basis, as requested by the City, and include any or the following from the tasks below.

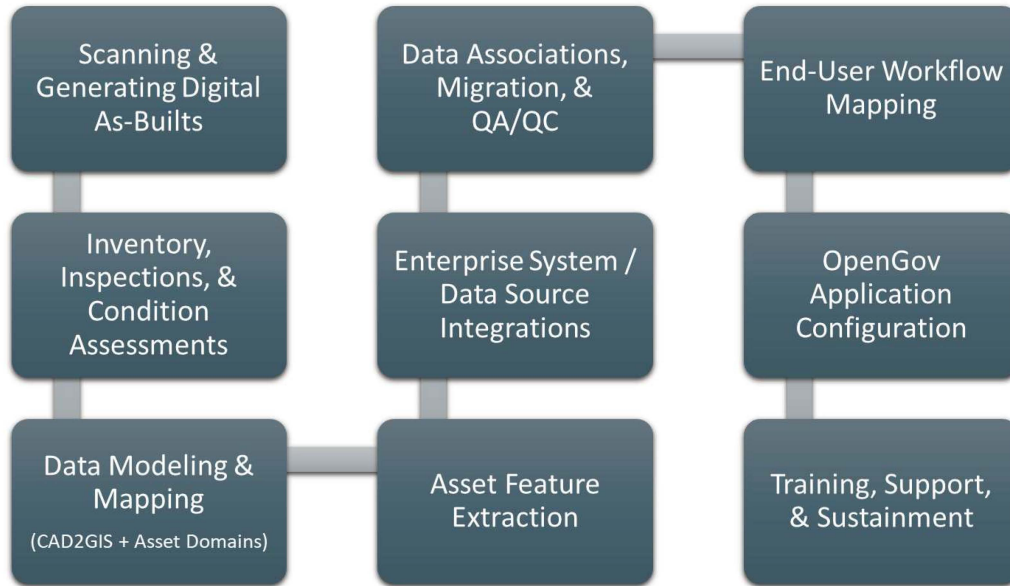
## On-Call OpenGov Enterprise Asset Management & GIS Support Services

The Langan team can provide on-site and virtual OpenGov EAM and GIS support services to maintain the City's OpenGov EAM and Esri GIS software. Under this contract, the expected services may include, but are not limited to, any of the following:

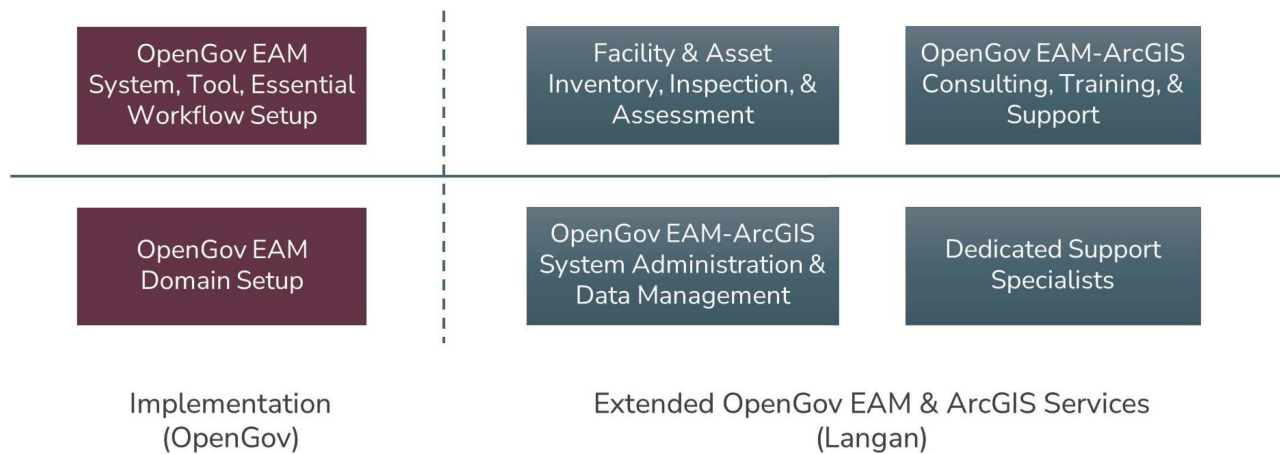
- **Needs Assessment, Discovery, and Strategic Planning:** On-site and virtual needs assessment and discovery for the two (2) divisions, Parks and Open Space and Complete Streets from the Public Works Department. Ongoing discovery, planning, strategic planning and roadmap activities based on feedback and evolving goals of the City.
- **Training:** Development and delivery of additional job aids and remote online training for the apps/tools/workflows configured for the City's end-users as quick reference guides. On-site or virtual training delivery and support for managers/supervisors and trades staff focused on apps/tools/workflows managers/supervisors. Training services can be provided for both OpenGov EAM and GIS processes.
- **Maintenance and Administration of OpenGov EAM:** Development and delivery of guidance and perform the maintenance and administration of the OpenGov EAM software, Esri's ArcGIS platform, and related technologies and data, services, and applications hosted within each environment.
- **OpenGov Integration Support:** OpenGov EAM integration support for ArcGIS Enterprise, ArcGIS Online and associated Esri technologies and/or other enterprise business systems.
- **GIS Support for the City's existing Esri ArcGIS Enterprise and ArcGIS Online environments:**
  - Project management, discovery, support, and strategic planning.
  - Data collection, configuration, modeling, and maintenance.
  - GIS data configuration and attributing for OpenGov EAM.
  - ArcGIS Enterprise and ArcGIS Online maintenance, administration and training.
  - Web/Mobile application development, maintenance, & support, such as dashboards, Experience Builder, Instant Apps, Field Maps, and Survey123.
  - IT and cloud resource support, maintenance and administration.
  - GIS integration support and maintenance for other enterprise business systems.

- On-demand User Support:** On-demand user support (response within 24 hours of receipt of request on standard business days M-F) technology support for the OpenGov EAM, GIS apps/tools and related technologies. Our engagement model for on-demand / on-call services is further defined in our Professional Services Engagement Model below.

The graphic below further outlines our approach to project delivery for OpenGov, asset management, and GIS support and sustainment services:



The graphic below further outlines our collaboration with OpenGov starting with implementation of their EAM software by OpenGov and through on-call support services:



## Professional Services Engagement Model

The Langan team will implement the following professional services engagement model with the City staff to manage incoming requests:

- **Designated POCs:** Langan will assign one main point of contact (Melissa Kelly), as well as a back-up (Brock Saylor) for incoming requests and projects.
- **Regular, recurring meetings:** Langan will provide regular (weekly or bi-weekly) recurring meetings to discuss status on outstanding requests, focus projects, percentage complete, and remaining budget.
- **Monday to Friday, 24-hour response time:** Langan will receive and respond to requests from designated POCs Monday-Friday. Incoming requests will be acknowledged within 24 hours of receipt.
- **Common tasks (1-8 hours):** It is our experience that most requests can be completed within one-to-eight hours and assumes direct engagement, as needed, with the assigned City staff or requester.
- **Focused tasks (Over 8 hours):** For these requests, it is standard procedure for us to provide a request/project review with the City POC, develop a recommended scope of tasks & anticipated budget (time allocation), and gain the City's acceptance prior to commencing work.
- **QA/QC of work product:** Langan follows a standard QA/QC protocol for work products.
- **Training and support:** Langan provides written and digital training (in-person and/or virtual) for work products to be used by the City staff. This may include instructor-led training, knowledge transfer, job aids, virtual/in-person training workshops, as well as direct 1:1 technical support.

## Estimated Fee

Our estimated fee for these on-call services is provided herein and developed based on our previous discussions with the City. Our fees will be billed on a time and material (T&M) basis using the billing rates provided below and will not exceed the amount of **\$649,125** with contract GRT throughout the contract without prior authorization. The work will be assigned on a task order basis throughout the next four years. Per Langan's standard practices, monthly invoices will be sent to the City for work completed in the previous month.

Estimated Fee for Services		
Task	Estimated Hours	Estimated Fee
On-Call OpenGov Enterprise Asset Management & GIS Support Services	2,960	\$600,000
Total Estimated Hours & Estimated Fee	2,960	\$600,000
Contract GRT	X	\$49,125
<b>Total Estimated Hours &amp; Estimated Fee with Contract GRT</b>	<b>2,690</b>	<b>\$649,125</b>

In compliance with Langan's Texas DIR Price Sheet for Services, DIR-CPO-6027, the DIR Customer Price Per Unit is based on a blended rate using the hourly fee schedule provided below and are effective until June 30, 2026. The rates provided in the table below will increase by 4% each year.

Hourly Fee Schedule	
Project Personnel	Hourly Rate
Project Principal	\$290
Senior Consultant	\$280
Project Director	\$270
Project Manager	\$250
Lead Solutions Architect/Developer	\$260
Senior Solutions Architect/Developer	\$250
QA/QC Lead	\$240
Database Administrator	\$220
Senior Solutions Developer	\$200
Solutions Developer	\$190
Senior GIS Analyst	\$180
GIS Analyst	\$170
Senior GIS Technician	\$130
GIS Technician	\$100

Additional Langan fee items are as follows:

- Travel costs such as hotel stays, car rentals, tolls, airfare, train fare, or parking will be expensed at cost.
- Mileage will be billed at the standard government rate for Santa Fe, New Mexico.
- Any shipping costs will be billed at cost.
- Any software or hardware purchases will be billed at cost.
- Subcontractor expenses will be marked up by 15%.

### **Contracting**

Langan plans to leverage our Texas Department of Information Resources contract, #DIR-CPO-6027, additional information can be found here: <https://www.langan.com/dir-texas>. We've also attached the DIR-CPO-6027 Appendix A Standard Contract Terms and Conditions.

## **Key Assumptions & Exceptions**

### **General**

- Unless otherwise specified, Langan staff will perform all work remotely.
- The City staff will be available to assist, participate, and provide feedback for tasks Langan is asked to complete.
- The City Subject Matter Experts (SMEs) will be available to address questions encountered during the project; SME's will respond in a timely manner as to not impact the project schedule.

### **Access and Licensing**

- The City will have all necessary technology environments and software licensing in place, supported, and adequate for this project, the target version, and number of expected users.
  - ArcGIS Online/Enterprise have been procured at the required licensing level for this project.
  - The version of ArcGIS desktop products to be used for all data and mapping services provided by Langan will be ArcGIS Pro version 3.5.x or more recent.
  - OpenGov EAM have been procured and implemented by OpenGov.
- The City will provide adequate and timely access to necessary enterprise systems, which may include servers, databases, platforms, and/or applications.

### **Environments**

- All applicable computing environments (internal-, cloud-, or hybrid-hosted) are available and accessible to Langan.
- No modifications will be required for any environment to achieve the Scope of Services stated herein.
- Memory in the target environment(s) is adequate for the project.
- If backups are needed for servers, databases, or other systems, the City is responsible for taking those backups and restoring them if a contingency plan is enacted.
- Unless otherwise stated herein, all necessary system architecture is in place following industry best practices to support the project.

### **Other Technical Assumptions**

- Web client will be targeted for all browsers with versions n-1; where n is the latest browser version at date of release. Supported browsers are Chrome, Edge, Firefox, and Safari.
- Langan will make no functional code changes to any third-party applications integrated or interfaced with the OpenGov platform and Esri's ArcGIS platform.

### **Requirements and Specifications**

- Any changes to the Scope of Services must be agreed upon by both the City and Langan.
- Any changes to the Scope of Services that impact the budget, schedule, and/or staff resources will require a signed Change Order.
- Data, datasets, requirement specifications, source files, and any other document or file required to complete the Scope of Services will be finalized and delivered to Langan per the agreed-upon schedule.
- Requirements will be locked after the first week of project execution. Changes to the approved requirements after the first week of project execution may require a signed Change Order.

### **Testing**

- The City will be responsible for final testing and for testing approval for changes made in each applicable environment.
- The City resources will be available to test and validate the changes in each implemented environment per the agreed-upon schedule.

### **Data**

- Unless otherwise specified in the Scope of Services, all data related to this project is adequate, available, and ready for use without conversion, cleansing, or other modification. This includes any development/test environments that may be used.
- The City will provide any required CAD DWG files for data conversion and will complete any required DWG file updates unless otherwise specified in the Scope of Services.
- Langan performs industry standard best practice QA/QC checks on all data deliverables.

## Closing

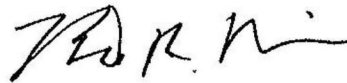
We thank you for the opportunity to submit this proposal and we are excited to be supporting the City with this exciting project. If this proposal is acceptable to you, please sign on the following page and return a copy to authorize the work. If you have any questions, please do not hesitate to call.

Sincerely,

**Langan Engineering, Environmental, Surveying, Landscape  
Architecture, and Geology D.P.C.**



Brock Saylor  
Senior Project Manager | Digital Solutions



Brett Milburn, GISP  
Director of Digital Solutions / Principal

Enclosure(s): DIR-CPO-6027 Appendix A Standard Contract Terms and Conditions

<https://langan.sharepoint.com/sites/AppliedTechnologies/Shared%20Documents/Proposals/Santa%20Fe%20NM%20GIS%20AM%20Services%20September%202025/Draft%20Submittal/Santa%20Fe%20GIS%20Services%20September%202025.docx?d=w917f0984be4d4eb3940b9dbbc6b1948f&csf=1&web=1&e=RsbLN9>

# Authorization

Receipt of this Proposal, which is in accordance with our attached general terms and conditions, is hereby acknowledged and all the terms and conditions contained therein are accepted.

**Client Authorization:**

Sean Moody, Capital Project Manager  
City of Santa Fe  
737 Agua Fria Street  
Santa Fe, New Mexico 87501  
Submission via email: sxmoody@santafenm.gov

**Company:** City of Santa Fe, New Mexico ("Client")

**By/Title:** Sean Moody, Capital Project Manager  
**(Authorized representative)**

**Signature:** \_\_\_\_\_

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

**Langan Authorization:**

Brett Milburn, GISP  
Director of Digital Solutions / Principal  
bmilburn@langan.com

**Signature:** \_\_\_\_\_

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



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**Re: GIS Integration Contractor**

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**From** Matt Loehman <mloehman@horizonsofnewmexico.org>

**Date** Thu 2/19/2026 10:07 AM

**To** KINCADE, KATHERINE L. <klkincade@santafenm.gov>

**Cc** RUDLOFF, SHANE C. <scrudloff@santafenm.gov>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning -

Thank you very much for the opportunity, but we will decline this procurement.

Best regards,

Matt

**Matt Loehman**  
**Executive Director**

**Horizons of New Mexico**  
6121 Indian School Rd. NE, Suite 220  
Albuquerque, NM 87110

office phone: (505) 345-1540  
email: [mloehman@horizonsofnewmexico.org](mailto:mloehman@horizonsofnewmexico.org)  
web: [www.horizonsofnewmexico.org](http://www.horizonsofnewmexico.org)

[The State Use Act helps people with disabilities become gainfully employed, and it saves you valuable time and resources otherwise used during the procurement process.](#)

On Thu, Feb 19, 2026 at 9:49 AM KINCADE, KATHERINE L. <[klkincade@santafenm.gov](mailto:klkincade@santafenm.gov)> wrote:

Good afternoon. We are looking to hire a Geographic Information Systems (GIS) contractor to help us integrate platforms across departments to better respond to and track constituent maintenance

requests and collect specific asset data for management decision-making. The Scope of Work would be as follows:

To provide on-site and virtual OpenGov Enterprise Asset Management (EAM) and GIS support services to maintain the City's OpenGov EAM and Esri GIS software. Under this contract, the expected services may include, but are not limited to, any of the following:

Needs Assessment, Discovery, and Strategic Planning

Training

Maintenance and Administration of OpenGov EAM

OpenGov Integration Support

GIS Support for the City's existing Esri ArcGIS Enterprise and ArcGIS Online environments

On-demand User Support


Do you have a provider we should reach out to? Thank you!


## **Kat Kincade, CPO (she/her)**

Contract Administrator

Parks and Open Space Division

Public Works Department

 505-637-2112

 505-955-2116 (not up and running yet)

 [klkincade@santafenm.gov](mailto:klkincade@santafenm.gov)

1142 Siler Road, Building C (Antonio Roybal Bldg.)

Santa Fe, NM 87505






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**RE: Langan Engineering Contract**


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**From** DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>

**Date** Wed 4/8/2026 10:24 AM

**To** JORDY, CLAIRE S. <csjordy@santafenm.gov>; KINCADE, KATHERINE L. <klkincade@santafenm.gov>

**Cc** HARDING, MATTHEW R. <mrharding@santafenm.gov>; Purchasing DET <purchasing\_det@santafenm.gov>

Thanks for clarifying further. Here is an updated determination:

Based on the information you provided, the scope of work is classified as **Professional Services** for procurement purposes. This classification is made solely to answer the classification question and does not constitute a comprehensive review of the scope or of the procurement method's compliance with all applicable legal or regulatory requirements. This determination may change if the scope of work is modified from the original submission.

Procurements must comply with all applicable requirements, including but not limited to:

- The City of Santa Fe Procurement Manual
- [City ordinances](#)
- [Central Purchasing procedures](#)
- Applicable [State Statutes](#)
- Any requirements of the [New Mexico Department of Workforce Solutions](#), if applicable

Notes and additional approvals:


- Save this email as a PDF and upload it to the corresponding Munis record(s).
- Check with WorkQuest dba Horizons of New Mexico (vendor # 8673) ([mloehman@horizonsofnewmexico.org](mailto:mloehman@horizonsofnewmexico.org)) *if* this service appears on their approved list.
- If your request includes items that must be reviewed and preapproved by another City department or division, send the same scope of work to the appropriate email address before selecting a vendor and include their response in your packet/Munis.

For subject-matter review and signatures, use the following contacts:

- -Treasury (Point of Sale Systems) – questions: [drsena@santafenm.gov](mailto:drsena@santafenm.gov); [clromero@santafenm.gov](mailto:clromero@santafenm.gov). Request signature from: [clromero@santafenm.gov](mailto:clromero@santafenm.gov)
- -IT components (everything IT) – questions: [ereview@santafenm.gov](mailto:ereview@santafenm.gov). Request signature from: [edcandelaria@santafenm.gov](mailto:edcandelaria@santafenm.gov); Copy: [zxdushdurova@santafenm.gov](mailto:zxdushdurova@santafenm.gov); [lenobes@santafenm.gov](mailto:lenobes@santafenm.gov); [lfworstell@santafenm.gov](mailto:lfworstell@santafenm.gov)
- -Vehicles – questions: [fleet@santafenm.gov](mailto:fleet@santafenm.gov). Request signature from: [dmjaramillo@santafenm.gov](mailto:dmjaramillo@santafenm.gov)
- -Grants – questions: [grants@santafenm.gov](mailto:grants@santafenm.gov). Request signature from: [evlujan@santafenm.gov](mailto:evlujan@santafenm.gov)
- Construction, Facilities, Furniture, Fixtures, Equipment, etc. – questions: [fmdreview@santafenm.gov](mailto:fmdreview@santafenm.gov). Request signature from: [jsburnett@santafenm.gov](mailto:jsburnett@santafenm.gov)
- -Emergency Related Purchases – questions [oem@santafenm.gov](mailto:oem@santafenm.gov) and. Request signature from: [klmorgan@santafenm.gov](mailto:klmorgan@santafenm.gov)
- -Asset over \$5k – questions: [accountspayable@santafenm.gov](mailto:accountspayable@santafenm.gov).
- Ensure that the appropriate templates and forms are used, they can be found on the intranet [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1) and in OpenGov <https://procurement.opengov.com/governments/1784201/projects>.

- When processing this procurement, please ensure the procurement number issued by OpenGov and the procurement name are used in the appropriate documents and the subject of emails.
- If you are processing a procurement where the forecasted amount is  $\geq$  \$100,000.00, per SFCC 1987, Section 11-13, the procurement method must be ITB (if you choose not to use a cooperative or an existing contract). If you feel you need to process an RFP, you must request approval of an *Authorization and Plan* before you process.
- $\leq$  \$60,000.00 per year, one quote is acceptable.
- From \$60,000.01 to \$100,000.00 per year or per contract, if you aren't using a cooperative or existing contract, you must provide 3 quotes in your req. It is highly recommended that you use OpenGov, or Pavilion.
- **Identify your funding source and notify Purchasing.**  
It's essential to determine the funding source early, as it impacts the required documentation and contract language. For example, if federal funds are being used, specific federal provisions must be included in both the procurement request and the resulting contract. Notifying Purchasing of the funding source upfront ensures compliance and avoids delays.
- Follow the link below to review existing price agreements, contracts, or cooperative agreements that might be applicable to this request. You might be able to use an existing price agreement/contract to save time and money.
- [Pavilion: Free Cooperative Contract Search for Governments](#) (please work with Purchasing if you find an existing or cooperative contract that might work)
- Submit via [Submit Purchase Requests](#) or the appropriate email address:
- Determination requests to [purchasing\\_det@santafenm.gov](mailto:purchasing_det@santafenm.gov)
- All other requests to [purchasing@santafenm.gov](mailto:purchasing@santafenm.gov)

Thank you for submitting this scope of work for my review.

 [Book time to meet with me](#)

Regards,

Travis Dutton-Leyda, City of Santa Fe Chief Procurement Officer  
200 Lincoln Avenue  
Santa Fe, NM 87501  
505-629-8351  
[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)

**Vendor Registration Sites and Current Procurement Opportunities:**

[ERP] <https://cityofsantafenm.tylerportico.com/va/vendor-access>

[OpenGov - eProcurement] <https://procurement.opengov.com/portal/santafenm>

[Current] <https://www.withpavilion.com/>

Internal Link: [https://intranet.santafenm.gov/central\\_purchasing\\_division\\_cpd](https://intranet.santafenm.gov/central_purchasing_division_cpd)



“Unless someone like you cares a whole awful lot, nothing is going to get better. It's not.”

— Dr. Seuss, [The Lorax](#)

**MOODY, SEAN X.**

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**From:** ITT E-Review  
**Sent:** Thursday, October 9, 2025 10:13 AM  
**To:** MOODY, SEAN X.; ITT E-Review  
**Cc:** DUSHDUROVA, ZARIFA X.; PADILLA, LEONARD P.; PACHECO, PHILLIP M.  
**Subject:** RE: Langan proposal - ArcGIS / OpenGov / IndiGov

Thank you Sean,

ITT has no objections on your procuring additional services to support your GIS program.

Thank you,  
**Zarifa Dushdurova**  
*Enterprise Applications Support (EAS) Manager,*  
*City of Santa Fe Information Technology & Telecommunications (ITT)*  
Mouton Hall, Midtown  
Cell – 505.795.1175  
[zxdushdurova@santafenm.gov](mailto:zxdushdurova@santafenm.gov)



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**From:** MOODY, SEAN X. <sxmoody@santafenm.gov>  
**Sent:** Tuesday, October 7, 2025 3:05 PM  
**To:** ITT E-Review <ereview@santafenm.gov>  
**Cc:** DUSHDUROVA, ZARIFA X. <zxdushdurova@santafenm.gov>; PADILLA, LEONARD P. <lppadilla@santafenm.gov>; PACHECO, PHILLIP M. <pmpacheco1@santafenm.gov>  
**Subject:** Langan proposal - ArcGIS / OpenGov / IndiGov

Hello,

Attached find vendor proposal and ITT intake form.

The purpose of the proposed scope is to optimize the city's ArcGIS and OpenGov Enterprise Asset Management platforms and enhance the city's GIS database to support Public Works' transition to a computerized work order system. Additional consulting may be requested to support ITT's transition from AGOL to ArcGIS Enterprise, and to create an API between IndiGov and Survey123.

I was not able to provide many of the technical details of the environment in which the consultant will work, or the impact of the work on ITT systems.

If it is helpful, may I ask to be included in any call with the consultant to discuss their proposed scope?

Thank you!

Sean

Sean Moody  
Capital Projects Manager  
Public Works Department  
City of Santa Fe  
505.955.6931



## IT Review: Pre-screening questions for Software/Solution Replacement Request

### Change Requested By:

**Name:** Sean Moody

**Date:** October 7, 2025

**Division:** Public Works Department / Engineering

**Phone:** x6931

### Information about the Existing System/Solution:

- Name of the solution you are trying to replace: To support automation of the department's manual work order processes.  
(version/module) \_\_\_\_\_
- Number of current users: +/- 60
- Who is responsible for updating / troubleshooting the current solution?
  - ITT Representative (division/position/name/contact info): Leonard Padilla x5516
  - Vendor (name / contact info): Brock Saylor / bsaylor@langan.com / (484) 363-0720
  - City Department's representative (name/contact info): Sean Moody / sxmoody@santafenm.gov
  - 3<sup>rd</sup> Party Contractor (name/contact info): Laura Ball / lball@opengov.com / (801) 915-6545
  - Other: (Company/name/contact/allocated hours/mo): Tim Triplett / ttriplett@esri.com / (303) 974-0895
- Is the current system hosted in the cloud or locally by the City: Cloud
  - Hosted on ITT servers (name and location): \_\_\_\_\_
  - Hosted on Cloud (provider name and link): \_\_\_\_\_
- What are main features you are utilizing with the current software:  
ArcGIS Pro; AGOL; Survey123 & FieldMaps; OpenGov Enterprise Asset Management
- Describe the limitations of the current software that new proposed solution will remedy:  
ArcGIS data structures must align with OpenGov EAM data structures, and with department workflows.
- What is the extent of the data that will be transferred to the new solution from the current solution: AGOL-to-ArcGIS Enterprise anticipated. IndiGov-to-AGOL or ArcGIS Enterprise possible.
  - All the data will be transferred and deleted from existing accounts; \_\_\_\_\_
  - Only partial/or no data will be transferred, and the data will be backed up into local drive.  
(where?) \_\_\_\_\_
  - No data will be transferred and backed up \_\_\_\_\_
- Will there need to be an archival copy of the current solution maintained?  No \_\_\_\_\_
  - Yes (if yes – by who, and how long): \_\_\_\_\_
  - Unknown (specify): \_\_\_\_\_



**Information about the Proposed System/Solution:**

9. Name of the solution/software you are interested in purchasing: Custom APIs possible.  
(version/module): \_\_\_\_\_

10. What is the goal of the requested application? ITT/GIS support and consultant access to OpenGov, Survey123, FieldMaps, IndiGov

11. Number of users that will be utilizing the system and will need licenses: 2 or less

12. How many users will be covered by current quote?: 2 or less

13. Single sign on – is this solution capable of: \_\_\_\_\_

- Azure Entra ID SAML  Other SSO: 2FA email + code
- Azure Entra ID OAUTH2

14. Will the new solution be hosted and where:

- Locally (address): \_\_\_\_\_
- or in the Cloud (address): \_\_\_\_\_

15. Will the updates to the new system/solution be performed by:

- City staff (Name/position/division): \_\_\_\_\_
- or the Vendor (assigned staff): \_\_\_\_\_

16. What existing IT systems, if any, does this solution need to connect to?:

- Email \_\_\_\_\_  GIS portal/databases\* \_\_\_\_\_
- Network \_\_\_\_\_  API Connect \_\_\_\_\_

17. Who will be responsible for installing and configuring the new solution and transferring existing data from the current solution?

- ITT Representative (division/name/contact info): \_\_\_\_\_
- Vendor (name / contact info): \_\_\_\_\_
- City Department’s representative (name/contact info): \_\_\_\_\_
- 3rd Party Contractor (name/contact info): \_\_\_\_\_
- Other: (Company/name/contact/allocated hours/mo): \_\_\_\_\_

18. What is the estimated timeframe for starting up this new solution, and transferring from the current solution to the new solution? \_\_\_\_\_

Unknown	Under 3 months	3 to 6 months	6-12 months	More than 1 yrs	Other:
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19. How or who handles any requests for support for the requested Application? \_\_\_\_\_  
\_\_\_\_\_



20. What level of support is provided by the vendor for this new system/solution, and what are the applicable SLAs? \_\_\_\_\_

No Vendor Support	Limited to # hours: _____	Unlimited Business Hours	Unlimited 24/7	Other:
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20a. Please include Service Level Agreement details \_\_\_\_\_

21. Vendors contact information for technical questions regarding this new solution:

\_\_\_\_\_

\_\_\_\_\_

22. Does the requested application require any specific browser, plugin, security setting, network setting, hardware or setting? \_\_\_\_\_

\_\_\_\_\_

23. Is there different level of access to the requested application? If so, how is access handled?

\_\_\_\_\_

\_\_\_\_\_

24. Will AI component be utilized in the application?

No \_\_\_ Explanation: \_\_\_\_\_

Yes \_\_\_ Explanation: \_\_\_\_\_

25. Is there an option to utilize Enterprise AI version if available? \_\_\_\_\_

26. What kind of data is collected by most customized (most security/ privacy enabled) version of this application? \_\_\_\_\_

27. Does the quote include Enterprise version option? \_\_\_\_\_

28. Will AI component be reviewed first with a test group? \_\_\_\_\_

Will you require ITT to set up the security and privacy settings on AI component?

No \_\_\_ Explanation: \_\_\_\_\_

Yes  Explanation: \_\_\_\_\_

29. What kind of privacy and security certifications this solution utilizes and is this acceptable for City ITT? \_\_\_\_\_

30. Does this have Incident management component and how this will be managed?

No \_\_\_ Explanation: \_\_\_\_\_

Yes \_\_\_ Explanation: \_\_\_\_\_



**ITT GIS Discovery questions**

31. Will you require APA/Map service? \_\_\_\_\_

32. Who is your City GIS Contact?: \_\_\_\_\_

33. List of data needed for map service: \_\_\_\_\_

34. Is there a data that needs to be reconciled back into City GIS databases?: \_\_\_\_\_

\_\_\_\_\_

35. Will you need City GIS Team to create you field app/ dashboards/ additional services?

\_\_\_\_\_

36. Will you require City's Esri Licenses and how many?: \_\_\_\_\_

\_\_\_\_\_

37. Will this affect City's ESRI service agreement in any way?: \_\_\_\_\_

\_\_\_\_\_



**ITT PMO Discovery questions**

38. Who will be responsible for the project created by adopting the new solution?

- City Department Project Manager
- Vendor Project Manager
- ITT Enterprise Project Management Office Project Manager
- Other

39. Are you requesting ITT Project Management Services?

ITT Project Management Services include but are not limited to:

- Enterprise System Upgrade (i.e. Munis/UKG(Kronos))
- New application selection, purchase, and implementation

40. Will this application need to connect to Tyler Munis via API?

- Yes (requires CCB)  No

What's the name of the Munis module we need to connect to?

---



**For ITT Only (End of discovery results):**

F. Will this implementation require ITT resources?

Yes (Requires Division Approval)

No

G. Will this implementation and management require ITT staff hours?

Yes (Requires Division Approval)

No

H. Was the requested software vetted by ITT Security officer?

Yes

No

I. Does the requested solution have Single Sign enabled?

Yes

No (Requires Security Officer Approval)

J. Are the deliverables for this solution already exist in City's EAS Library (or is this solution can be substituted by existing City of Santa Fe solution?)

Yes (Requires EUS/PMO Approval)

No

**Request Approved?**  **Yes**

**No**

Approver's Name/ Signature: \_\_\_\_\_

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

October 3, 2025

Sean Moody, Capital Project Manager  
City of Santa Fe  
737 Agua Fria Street  
Santa Fe, New Mexico 87501  
Submittal via email: [sxmoody@santafenm.gov](mailto:sxmoody@santafenm.gov)



## Re: On-Call OpenGov Asset Management & GIS Support Services

Dear Sean Moody,

Thank you for the opportunity to provide the City of Santa Fe, New Mexico (Santa Fe or City) with our proposal and scope of services for on-call OpenGov Enterprise Asset Management (EAM) and Geographic Information Systems (GIS) support services. Our approach to assist the City with its OpenGov EAM and GIS environments is described herein.

## Project Understanding

To assist the City in its efforts, Langan Engineering and Environmental Services, LLC (Langan) has prepared a scope of services based on the initial discussion with the City on August 26, 2025, and subsequent meetings. Based on these discussions, we understand the City would like to move forward with on-call OpenGov EAM and GIS service hours to assist with a variety of tasks. Langan leverages its strategic partnership with OpenGov to help clients implement and sustain robust enterprise asset management solutions, safeguarding performance through optimized workflows, data-driven insights, and long-term operational support. By supporting OpenGov's GIS-centric environment, we pair our Esri Gold partnership and associated specialties to safeguard the seamless operation of both systems. Where needed, the Langan team follows Esri's recommended best practices described at the [ArcGIS Architecture Center](#). Langan adheres to the security requirements recommended for Esri ArcGIS products as outlined at <https://trust.arcgis.com/en/>. We will collaborate with the City to implement industry's best practices or adjust existing measures, as necessary. Along with our asset management and GIS services, we also provide licensed survey, drone Imagery capture, and reality scanning/capture services to further facilitate your asset management and data needs.

# Scope of Services

Langan services will be provided on a task order basis, as requested by the City, and include any or the following from the tasks below.

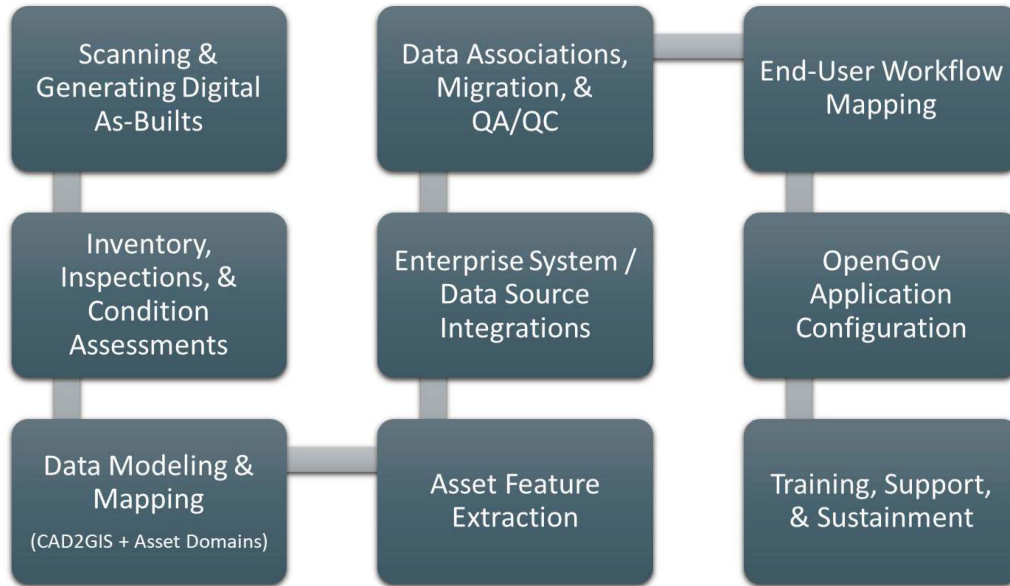
## On-Call OpenGov Enterprise Asset Management & GIS Support Services

The Langan team can provide on-site and virtual OpenGov EAM and GIS support services to maintain the City's OpenGov EAM and Esri GIS software. Under this contract, the expected services may include, but are not limited to, any of the following:

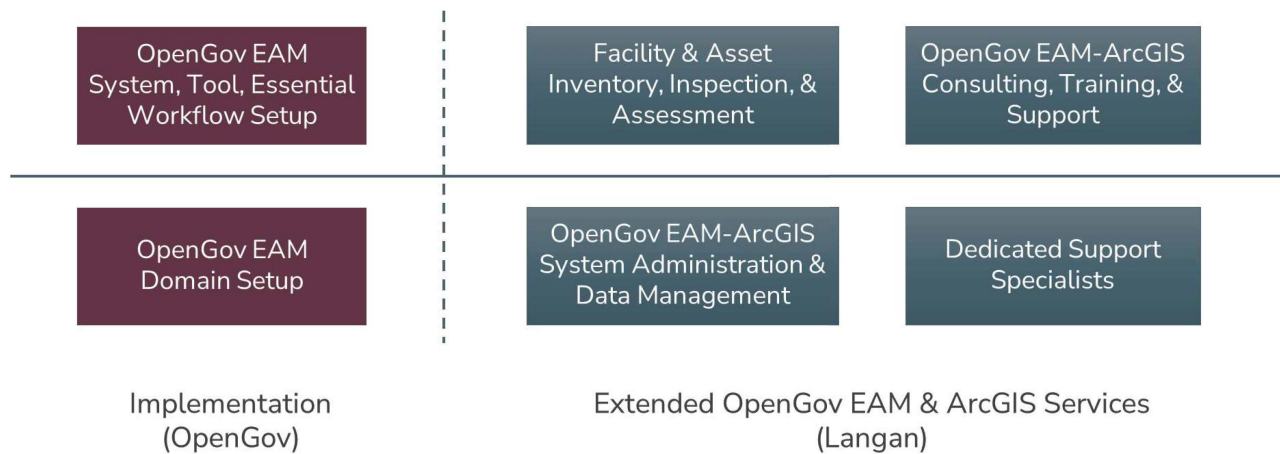
- **Needs Assessment, Discovery, and Strategic Planning:** On-site and virtual needs assessment and discovery for the two (2) divisions, Parks and Open Space and Complete Streets from the Public Works Department. Ongoing discovery, planning, strategic planning and roadmap activities based on feedback and evolving goals of the City.
- **Training:** Development and delivery of additional job aids and remote online training for the apps/tools/workflows configured for the City's end-users as quick reference guides. On-site or virtual training delivery and support for managers/supervisors and trades staff focused on apps/tools/workflows managers/supervisors. Training services can be provided for both OpenGov EAM and GIS processes.
- **Maintenance and Administration of OpenGov EAM:** Development and delivery of guidance and perform the maintenance and administration of the OpenGov EAM software, Esri's ArcGIS platform, and related technologies and data, services, and applications hosted within each environment.
- **OpenGov Integration Support:** OpenGov EAM integration support for ArcGIS Enterprise, ArcGIS Online and associated Esri technologies and/or other enterprise business systems.
- **GIS Support for the City's existing Esri ArcGIS Enterprise and ArcGIS Online environments:**
  - Project management, discovery, support, and strategic planning.
  - Data collection, configuration, modeling, and maintenance.
  - GIS data configuration and attributing for OpenGov EAM.
  - ArcGIS Enterprise and ArcGIS Online maintenance, administration and training.
  - Web/Mobile application development, maintenance, & support, such as dashboards, Experience Builder, Instant Apps, Field Maps, and Survey123.
  - IT and cloud resource support, maintenance and administration.
  - GIS integration support and maintenance for other enterprise business systems.

- On-demand User Support:** On-demand user support (response within 24 hours of receipt of request on standard business days M-F) technology support for the OpenGov EAM, GIS apps/tools and related technologies. Our engagement model for on-demand / on-call services is further defined in our Professional Services Engagement Model below.

The graphic below further outlines our approach to project delivery for OpenGov, asset management, and GIS support and sustainment services:



The graphic below further outlines our collaboration with OpenGov starting with implementation of their EAM software by OpenGov and through on-call support services:



## Professional Services Engagement Model

The Langan team will implement the following professional services engagement model with the City staff to manage incoming requests:

- **Designated POCs:** Langan will assign one main point of contact (Melissa Kelly), as well as a back-up (Brock Saylor) for incoming requests and projects.
- **Regular, recurring meetings:** Langan will provide regular (weekly or bi-weekly) recurring meetings to discuss status on outstanding requests, focus projects, percentage complete, and remaining budget.
- **Monday to Friday, 24-hour response time:** Langan will receive and respond to requests from designated POCs Monday-Friday. Incoming requests will be acknowledged within 24 hours of receipt.
- **Common tasks (1-8 hours):** It is our experience that most requests can be completed within one-to-eight hours and assumes direct engagement, as needed, with the assigned City staff or requester.
- **Focused tasks (Over 8 hours):** For these requests, it is standard procedure for us to provide a request/project review with the City POC, develop a recommended scope of tasks & anticipated budget (time allocation), and gain the City's acceptance prior to commencing work.
- **QA/QC of work product:** Langan follows a standard QA/QC protocol for work products.
- **Training and support:** Langan provides written and digital training (in-person and/or virtual) for work products to be used by the City staff. This may include instructor-led training, knowledge transfer, job aids, virtual/in-person training workshops, as well as direct 1:1 technical support.

## Estimated Fee

Our estimated fee for these on-call services is provided herein and developed based on our previous discussions with the City. Our fees will be billed on a time and material (T&M) basis using the billing rates provided below and will not exceed the amount of **\$600,000** throughout the contract without prior authorization. The work will be assigned on a task order basis throughout the next four years. Per Langan's standard practices, monthly invoices will be sent to the City for work completed in the previous month.

The table below is a summary of the on-call services billing rates by staff role and will be effective until July 2026. The rates provided in the table below will increase by 4% each year.

Hourly Fee Schedule	
Project Personnel	Hourly Rate
Project Principal	\$290
Senior Consultant	\$280
Project Director	\$270
Project Manager	\$250
Lead Solutions Architect/Developer	\$260
Senior Solutions Architect/Developer	\$250
QA/QC Lead	\$240
Database Administrator	\$220
Senior Solutions Developer	\$200
Solutions Developer	\$190
Senior GIS Analyst	\$180
GIS Analyst	\$170
Senior GIS Technician	\$130
GIS Technician	\$100

## Key Assumptions & Exceptions

### General

- Unless otherwise specified, Langan staff will perform all work remotely.
- The City staff will be available to assist, participate, and provide feedback for tasks Langan is asked to complete.
- The City Subject Matter Experts (SMEs) will be available to address questions encountered during the project; SME’s will respond in a timely manner as to not impact the project schedule.

### Access and Licensing

- The City will have all necessary technology environments and software licensing in place, supported, and adequate for this project, the target version, and number of expected users.
  - ArcGIS Online/Enterprise have been procured at the required licensing level for this project.
  - The version of ArcGIS desktop products to be used for all data and mapping services provided by Langan will be ArcGIS Pro version 3.5.x or more recent.

- OpenGov EAM have been procured and implemented by OpenGov.
- The City will provide adequate and timely access to necessary enterprise systems, which may include servers, databases, platforms, and/or applications.

### **Environments**

- All applicable computing environments (internal-, cloud-, or hybrid-hosted) are available and accessible to Langan.
- No modifications will be required for any environment to achieve the Scope of Services stated herein.
- Memory in the target environment(s) is adequate for the project.
- If backups are needed for servers, databases, or other systems, the City is responsible for taking those backups and restoring them if a contingency plan is enacted.
- Unless otherwise stated herein, all necessary system architecture is in place following industry best practices to support the project.

### **Other Technical Assumptions**

- Web client will be targeted for all browsers with versions n-1; where n is the latest browser version at date of release. Supported browsers are Chrome, Edge, Firefox, and Safari.
- Langan will make no functional code changes to any third-party applications integrated or interfaced with the OpenGov platform and Esri's ArcGIS platform.

### **Requirements and Specifications**

- Any changes to the Scope of Services must be agreed upon by both the City and Langan.
- Any changes to the Scope of Services that impact the budget, schedule, and/or staff resources will require a signed Change Order.
- Data, datasets, requirement specifications, source files, and any other document or file required to complete the Scope of Services will be finalized and delivered to Langan per the agreed-upon schedule.
- Requirements will be locked after the first week of project execution. Changes to the approved requirements after the first week of project execution may require a signed Change Order.

### **Testing**

- The City will be responsible for final testing and for testing approval for changes made in each applicable environment.
- The City resources will be available to test and validate the changes in each implemented environment per the agreed-upon schedule.

### **Data**

- Unless otherwise specified in the Scope of Services, all data related to this project is adequate, available, and ready for use without conversion, cleansing, or other modification. This includes any development/test environments that may be used.

- The City will provide any required CAD DWG files for data conversion and will complete any required DWG file updates unless otherwise specified in the Scope of Services.
- Langan performs industry standard best practice QA/QC checks on all data deliverables.

## Closing

We thank you for the opportunity to submit this proposal and we are excited to be supporting the City with this exciting project. If this proposal is acceptable to you, please sign on the following page and return a copy to authorize the work. If you have any questions, please do not hesitate to call.

Sincerely,  
**Langan Engineering & Environmental Services, LLC**



Brock Saylor  
Senior Project Manager | Digital Solutions



Brett Milburn, GISP  
Director of Digital Solutions / Principal

Enclosure(s): General Terms and Conditions

<https://langan.sharepoint.com/sites/AppliedTechnologies/Shared%20Documents/Proposals/Santa%20Fe%20NM%20GIS%20AM%20Services%20September%202025/Draft%20Submittal/Santa%20Fe%20GIS%20Services%20September%202025.docx?d=w917f0984be4d4eb3940b9dbbc6b1948f&csf=1&web=1&e=RsbLN9>

# Authorization

Receipt of this Proposal, which is in accordance with our attached General Terms and Conditions, is hereby acknowledged and all the terms and conditions contained therein are accepted.

**Client Authorization:**

Sean Moody, Capital Project Manager  
City of Santa Fe  
737 Agua Fria Street  
Santa Fe, New Mexico 87501  
Submission via email: [sxmoody@santafenm.gov](mailto:sxmoody@santafenm.gov)

**Company:** City of Santa Fe, New Mexico ("Client")

**By/Title:** Sean Moody, Capital Project Manager  
**(Authorized representative)**

**Signature:** \_\_\_\_\_

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

**Langan Authorization:**

Brett Milburn, GISP  
Director of Digital Solutions / Principal  
[bmilburn@langan.com](mailto:bmilburn@langan.com)

**Signature:** \_\_\_\_\_

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

## GENERAL TERMS AND CONDITIONS

These Terms and Conditions shall apply to services provided by **Langan Engineering, Environmental, Surveying, Landscape Architecture and Geology, D.P.C.**; or **Langan Engineering and Environmental Services, LLC**; or **Langan CA, Inc.**; or **Langan CT, Inc.**; or **Langan MA, Inc.**; or **Langan MI, Inc.**; or **Langan NC, Inc.**; or **Langan International, LLC**; or **Langan International UK, LTD.**; or **Langan Panama, S. DE R.L.**; or **Langan PR LLC**; or **Navix Engineering, LLC**; or such other Langan entity specifically identified in the Proposal (each individually, a "**LANGAN ENTITY**"); and together with the proposal to which these Terms and Conditions are attached (hereinafter, the "**Proposal**"), shall constitute the "**Agreement**." For purposes of this Agreement, the **LANGAN ENTITY** identified in the Proposal shall be referred to as "**LANGAN**" and the entity signing the Proposal shall be referred to as "**CLIENT**."

### A. SCOPE OF SERVICES AND ADDITIONAL SERVICES

LANGAN will provide those services specifically identified in the Proposal (hereinafter, the "Services"). All Services, regardless of the commencement date, will be covered by these Terms and Conditions. All services not specifically identified in the Proposal are excluded; provided, however, that if requested by the CLIENT and agreed to by LANGAN in writing, LANGAN will perform such additional services ("Additional Services") subject to these Terms and Conditions. Unless otherwise agreed in writing, the CLIENT shall pay LANGAN for the performance of any Additional Services on a time-and-materials basis based upon LANGAN's then-current hourly rates. For avoidance of doubt, email will constitute written notice.

### B. STANDARD OF CARE

LANGAN's services will be performed in accordance with this Agreement and in a manner consistent with the generally accepted standard of care and skill ordinarily exercised by professionals performing similar services under similar circumstances at the place and time the services are being performed (the "Standard of Care"). LANGAN will exercise reasonable professional care in its efforts to comply with codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement. The CLIENT agrees that no other representation, warranty or guarantee, expressed or implied, is provided by LANGAN or is presumed given by LANGAN under this Agreement or in any report, opinion, or any other document prepared by LANGAN or otherwise.

### C. CLIENT RESPONSIBILITIES

In addition to other responsibilities described herein, the CLIENT shall: (i) provide all information and criteria as to the CLIENT's requirements, objectives, and expectations for the project, including all numerical criteria that are to be met and all standards of development, design, or construction and all other information reasonably necessary for completion of the Services, prior to the commencement of the Services; (ii) provide prompt, complete disclosure of known or potential hazardous conditions or health and safety risks; (iii) provide to LANGAN all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in LANGAN's opinion for completion of the Services; (iv) review all documents or oral reports presented by LANGAN and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services; (v) furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of LANGAN's Services; (vi) give prompt written notice to LANGAN whenever the CLIENT becomes aware of any development that affects the scope and timing of LANGAN's Services or any defect or noncompliance in any aspect of the project; (vii) give immediate written notice to LANGAN whenever CLIENT becomes aware of a cyber-event impacting CLIENT's or LANGAN's data or computer systems, including but not limited to theft, dissemination or use of confidential or personally identifiable information, or breach of network security (including unauthorized access to, use of or tampering with computer systems or data, or introduction of any virus or malware); and (viii) bear all costs incident to the responsibilities of the CLIENT. LANGAN will have the right to reasonable reliance upon the accuracy and completeness of all information furnished by the CLIENT.

CLIENT acknowledges that LANGAN has expended substantial time and expense in recruiting and training its employees and that the loss of such employees would cause significant financial harm to LANGAN. CLIENT therefore agrees that during the term of this Agreement and for one (1) year following completion of the Services, not to, directly or indirectly, attempt to or actually solicit, recruit or hire, any LANGAN employee involved with the Services. In the event this provision is violated, CLIENT will, on demand, pay LANGAN damages in an amount equal to the current yearly salary of the employee. CLIENT agrees that: (i) damages for a violation of this provision are difficult to ascertain; and (ii) the amount set forth herein bears a reasonable relationship to the actual damages LANGAN would incur and does not constitute a penalty. This provision will not apply to offers of employment resulting from general solicitations in the public domain.

### D. INVOICING AND SERVICE CHARGES

LANGAN will submit monthly invoices to the CLIENT and a final bill upon completion of Services. The CLIENT shall notify LANGAN within two weeks of receipt of invoice of any dispute with the invoice. The CLIENT and LANGAN will promptly resolve any disputed items. Payment on undisputed invoice amounts is due upon receipt of invoice by the CLIENT and is past-due thirty (30) days from the date of the invoice. Any unpaid balances shall accrue late charges of 1.5% per month, or the highest rate allowed by law, whichever is lower, and the CLIENT agrees to pay all fees and expenses incurred by LANGAN in any collection action.

The CLIENT shall notify LANGAN prior to executing this Agreement if federal, state, or local prevailing wage requirements apply. If prevailing wages apply, and LANGAN was not notified by CLIENT, CLIENT agrees to pay LANGAN the prevailing wage for new invoiced amounts, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. CLIENT also agrees to defend, indemnify, and hold harmless LANGAN from any alleged violations for failing to pay prevailing wages, including the payment of any fines or penalties.

### E. RIGHT OF ENTRY

The CLIENT shall provide for safe right of entry in order for LANGAN to perform its Services, including execution of any site access or license agreements required for completion of the Services. LANGAN will not be required to execute any site access or license agreement(s). While LANGAN will take all reasonable precautions to minimize any damage to the property, the CLIENT acknowledges and agrees that in the normal course of work some damage may occur, the correction of which is not part of this Agreement unless specifically provided in the proposal.

### F. JOBSITE SAFETY AND CONTROL OF WORK

LANGAN will take reasonable precautions to safeguard its own employees and those for whom LANGAN is legally responsible. Unless expressly agreed to in writing by LANGAN under separate contract, LANGAN will have no responsibility for the safety program at the Project or the safety of any entity or person other than LANGAN and its employees. Neither the professional activities of LANGAN nor the presence of LANGAN's employees and subcontractors at the Project site will be construed to confer upon LANGAN any responsibility for any activities on site performed by personnel other than LANGAN's employees and subcontractors. The CLIENT agrees that LANGAN will have no power, authority, right or obligation to supervise, direct, stop the work of or control the activities of any other contractors or subcontractors or construction manager, their agents, servants or employees.

### G. EXISTING CONDITIONS AND SUBSURFACE RISKS

Special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program implemented in accordance with a professional Standard of Care may fail to detect certain conditions. The environmental, geologic, geotechnical, geochemical, and hydrogeologic conditions that LANGAN interprets to exist between sampling points will differ from those that actually exist. The CLIENT recognizes that actual conditions will vary from those encountered at the locations where borings, sampling, surveys, observations or explorations are made by LANGAN or its subcontractors and that the data, interpretation, and recommendations of LANGAN are based solely on the information available to it. Furthermore, the CLIENT recognizes that passage of time, natural occurrences, and/or direct or indirect human intervention at or near the site may substantially alter discovered conditions. LANGAN shall not be responsible for interpretations by others of the information it develops or provides to the CLIENT.

LANGAN will take reasonable precautions to avoid damage or injury to subterranean structures or utilities in the performance of its services. The CLIENT agrees to defend, indemnify, and hold LANGAN harmless for any damage to subterranean structures or utilities and for any impact this damage may cause where the subterranean structures or utilities are not called to LANGAN's attention or are not correctly shown on the plans furnished by CLIENT or third parties.

## **H. HAZARDOUS MATERIALS**

Unless otherwise expressly agreed to in writing, the parties acknowledge that LANGAN'S scope of services does not include any services related to a hazardous environmental condition (such as asbestos, PCBs, petroleum, mold, waste, radioactive materials or any other hazardous substance). The discovery of any such condition shall be considered a changed condition and LANGAN may suspend its services until the CLIENT has resolved the condition.

## **I. INDEMNIFICATION**

Subject to the provisions of Section J of these General Terms and Conditions, LANGAN agrees to indemnify and hold harmless the CLIENT and CLIENT's parent companies, subsidiaries, affiliates, partners, officers, directors, shareholders, and employees for any and all damage obligations, liabilities, judgments, and losses for personal injury and/or property damage including reasonable attorney's fees and other expenses and disbursements, asserted by any third parties to the extent determined to have been caused by the negligent acts, errors or omissions or willful misconduct of LANGAN in the performance of its services under this Agreement. LANGAN will not be responsible for any loss, damage, or liability arising from any acts by the CLIENT or any of its agents, employees, staff, or other consultants, subconsultants, contractors or subcontractors. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations.

To the fullest extent permitted by law, the CLIENT agrees to indemnify, defend and hold harmless LANGAN and LANGAN's parent companies, subsidiaries, affiliates, partners, officers, directors, shareholders, and employees for any and all, damage obligations, liabilities, judgments and losses, including reasonable attorneys' fees and all other expenses and disbursements, to which LANGAN may be subject, arising from or relating to (i) any unknown site condition or subterranean structures of which LANGAN does not have actual knowledge; (ii) any errors, omissions or inconsistencies in any data documents, records or information provided by the CLIENT on which LANGAN reasonably relied; (iii) any breach of contract, tort, error, omission, wrong, fault, or failure to comply with law by the CLIENT or third party over whom LANGAN has no control; (iv) the transport, treatment, removal or disposal of all Samples; and (v) the CLIENT's unauthorized use or copyright violation of plans, reports, documents and related materials prepared by LANGAN.

In connection with any construction project, CLIENT agrees to insert the following wording into any General Contract, Construction Management Agreement, or foundation contractor's contract: "To the extent permitted by law, and to the extent not proven to be caused in whole or in part by an indemnitee's own negligence, the contractor and its subcontractors of any tier shall indemnify, defend, save and hold harmless the CLIENT and LANGAN from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever (including reasonable attorneys' fees and litigation costs) which arise out of or are connected with or are claimed to arise out of or claimed to be connected with the design (to the extent the design is based on calculations, plans and drawings by contractor or anyone acting by, through or under contractor for which contractor is responsible) and performance of work by the contractor, or any act or omission of the contractor. Without limiting the generality of the foregoing, such defense and indemnity shall include all liability, damages, loss, claims, demands and actions on account of personal injury, death, property damage or any other economic loss to any indemnitee, any of indemnitees' employees, agents, contractors or subcontractors, licensees or invitees, or sustained by any other persons or entities, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality of the foregoing, workers' compensation), contractual, tort or other liability of any indemnitee, contractor, subcontractor or any other persons."

In connection with any damages, loss, suit, claim or proceeding arising from or otherwise related to the execution of excavation, support of excavation, foundations, or underpinning activities, CLIENT agrees to use all reasonable efforts to seek defense and indemnification from the Contractor and Subcontractor responsible for the work, and, to the extent the CLIENT is entitled to be or is otherwise indemnified by contractors/subcontractors, CLIENT shall not seek indemnification from LANGAN.

Payment by CLIENT in accordance with Section D of this Agreement is a condition precedent to LANGAN's indemnification obligations.

In the event any part of this indemnification is determined to be void as a matter of law, then the clause shall automatically be reformed to be consistent with the law and apply the parties' intent to the maximum extent permissible by law.

## **J. LIMITATION OF LIABILITY**

To the fullest extent permitted by law, the total liability, in the aggregate, of LANGAN and its officers, directors, partners, employees, agents, and subconsultants, to CLIENT, and anyone claiming by, through, or under CLIENT, and to any third parties granted reliance by LANGAN per Section O, for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way relating to this Project or Agreement, from any cause or causes, including but not limited to tort (including negligence and professional errors and omissions), strict liability, breach of contract, or breach of warranty, shall not exceed an aggregate amount equal to the total compensation received by LANGAN or \$100,000, whichever is greater. The CLIENT may negotiate a higher limitation of liability for an additional fee, which is necessary to compensate for the greater risk assumed by LANGAN.

To the extent damages are covered by property insurance, LANGAN and the CLIENT waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. LANGAN and the CLIENT, as appropriate, shall require of the contractors, subcontractors, consultants, subconsultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

## **K. WAIVER OF CONSEQUENTIAL DAMAGES**

LANGAN and the CLIENT waive all consequential or special damages, including, but not limited to, loss of use, profits, revenue, business opportunity, or production, for claims, disputes, or other matters arising out of or relating to the services provided by LANGAN regardless of whether such claim or dispute is based upon breach of contract, willful misconduct or negligent act or omission of either of them or their employees, agents, subconsultants, or other legal theory. This mutual waiver shall survive termination or completion of this Agreement.

## **L. INSURANCE**

LANGAN agrees to maintain workers' compensation insurance as required by law and general liability, automobile and professional liability insurance with limits of \$1,000,000. Certificates of insurance will be issued to the CLIENT upon written request.

The CLIENT agrees that it will require the construction manager, general contractor and, the contractor(s) responsible for performing the work reflected by or relating to LANGAN's services on the Project, to name LANGAN as an additional insured on its Commercial General Liability and Excess/Umbrella insurance policies inclusive of operations, completed operations, and products liability coverage provisions. Such additional insured coverage shall be provided by endorsement CG 20 32 04 13 (for ongoing operations) and endorsement CG 20 37 04 13 (for completed operations).

To the fullest extent permitted by law, CLIENT hereby waives all rights of recovery under subrogation against LANGAN and its consultants.

## **M. FORCE MAJEURE**

LANGAN will not be responsible or liable for any delays in performance, failure of performance or additional costs incurred by CLIENT related to any force majeure event, including but not limited to fire, flood, explosion, the elements, or other catastrophe, unforeseen existing or subsurface conditions, acts of God, war, riot, civil

disturbances, terrorist act, strike, lock-out, refusal of employees to work, labor disputes, inability to obtain materials or services, recognized health threats as determined by the World Health Organization, the Center for Disease Control, or local governments or health agencies (including but not limited to health threats of COVID-19, H1N1, or similar infectious diseases), or delays caused by the CLIENT, its agents, contractors, subcontractors, consultants, subconsultants or employees, or any governmental regulation or agency, or for any other cause beyond the reasonable control of LANGAN.

#### **N. OPINION OF COST**

Consistent with the Standard of Care in Section B of these General Terms and Conditions, any opinions rendered by LANGAN as to costs, including, but not limited to, opinions as to the costs of construction, remediation and materials, shall be made on the basis of its experience and shall represent its judgment as an experienced and qualified professional familiar with the industry. LANGAN cannot and does not guarantee that proposals, bids, or actual costs will not vary from its opinions of cost. LANGAN's services required to bring costs within any limitation established by the CLIENT will be paid for as Additional Services.

#### **O. PROJECT DELIVERABLES**

All reports, opinions, notes, drawings, specifications, data, calculations, and other documents prepared by LANGAN and all electronic media prepared by LANGAN are considered its project Deliverables to which LANGAN retains all rights. The CLIENT acknowledges that electronic media are susceptible to unauthorized modification, deterioration, and incompatibility; and therefore, the CLIENT cannot rely upon the electronic media version of LANGAN's Deliverables. All Deliverables provided by LANGAN to the CLIENT as part of the Services are provided for the sole and exclusive use of the CLIENT with respect to the Project. Reliance upon or reuse of the Deliverables by third parties without LANGAN's prior written authorization is strictly prohibited; provided, however, that LANGAN, in its sole discretion, may agree to grant reliance to a single relying party subject to (i) the payment by CLIENT of a reliance fee equal to 10 percent (10%) of the amount paid by CLIENT for the Deliverables upon which reliance is to be granted, and (ii) acceptance by the relying party of Langan's standard reliance letter (a copy of which will be provided to CLIENT and relying party upon request).

If the CLIENT distributes, reuses, or modifies LANGAN's Deliverables without the prior written authorization of LANGAN, or uses LANGAN's Deliverables to complete the project without LANGAN'S participation, the CLIENT agrees, to the fullest extent permitted by law, to release LANGAN, its officers, directors, employees and subconsultants from all claims and causes of action arising from such distribution, modification or use, and shall indemnify and hold LANGAN harmless from all costs and expenses, including the cost of defense, related to claims and causes of action arising therefrom or related thereto.

LANGAN will not sign any documents that certify the existence of conditions whose existence LANGAN cannot ascertain, or execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement. In the event LANGAN is required to execute any certifications, it is understood and agreed that: (i) the words "certify" or "certification" shall mean an expression of LANGAN's professional opinion based upon available information and consistent with the Standard of Care; and (ii) such certification does not constitute a warranty or guarantee by LANGAN.

#### **P. CONFLICTS OF INTEREST**

LANGAN provides engineering and other services on behalf of many companies and individuals; thus, during the time LANGAN is providing services to CLIENT it may also provide engineering and other services, unrelated to the services LANGAN is providing to CLIENT, to other present or future clients of LANGAN with interests adverse to CLIENT'S interests. CLIENT agrees that LANGAN'S services to CLIENT will not disqualify LANGAN from providing services to other clients in matters that are unrelated to the services LANGAN is providing to CLIENT, and CLIENT hereby waives any conflict of interest with respect to those services. LANGAN agrees not to use or disclose any proprietary or other confidential information of a nonpublic nature concerning CLIENT, which is acquired by LANGAN as a result of its service to CLIENT, in connection with any other matter, unless required to do so by law.

#### **Q. TERMINATION AND SUSPENSION**

Except as otherwise provided in this Agreement, this Agreement may be terminated by either party upon not less than seven (7) calendar days' written notice should the other party fail substantially to perform in accordance with the terms and conditions of this Agreement through no fault of the party initiating the termination. If the defaulting party fails to cure its default within the seven (7) calendar day notice period or fails to commence action to cure its default if the cure cannot reasonably be completed within the seven (7) days, the non-defaulting party may terminate the Agreement.

Failure of the CLIENT to make payments to LANGAN in accordance with this Agreement shall be considered substantial non-performance and grounds for termination or suspension of services at LANGAN's option after such seven (7) day notice period or anytime thereafter. In the event of suspension for non-payment, LANGAN shall have the right to: (i) withhold its project Deliverables; and (ii) demand advanced payment for future services. Furthermore, LANGAN will be compensated for all services performed and reimbursable expenses incurred prior to such termination and all termination expenses.

In the event of a suspension of services or termination of the Agreement by LANGAN in accordance with this Section Q, LANGAN will have no liability for any delay or damage of any kind actually or allegedly caused by such suspension of services or termination. CLIENT shall not withhold amounts from LANGAN'S compensation to impose a penalty or damages on LANGAN, or to offset sums requested by or paid to contractors for the cost of changes in their work unless LANGAN agrees or has been found liable for the amounts.

#### **R. DISPOSAL OF SAMPLES**

All samples, contaminated or otherwise ("Samples"), collected by LANGAN while performing services under this agreement remain the property and responsibility of the CLIENT. LANGAN may dispose of Samples in its possession after ninety (90) calendar days from the date the samples are taken unless otherwise required by law or other arrangements are mutually agreed to in writing by the parties. At all times, any and all rights, title and responsibility for Samples shall remain with the CLIENT. Under no circumstances shall these rights, title and responsibility be transferred to LANGAN, and nothing contained in this Agreement shall be construed as requiring LANGAN to assume the status of an owner, operator, generator, storer, transporter or person who arranges for disposal, under any federal or state law or regulation. CLIENT shall reimburse LANGAN for the actual cost of disposal plus 15%.

#### **S. RIGHT TO REFERENCE PROJECT**

The CLIENT agrees that LANGAN has the authority to use its name as the CLIENT and a general description of the Project as a reference for other prospective clients.

#### **T. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the parties hereto and their respective successors and assigns. Neither party may assign or transfer this Agreement without the prior written consent of the other party, provided, however, that LANGAN can assign this Agreement, without consent, to a subsidiary or affiliate of LANGAN. The parties agree that this Agreement is not intended to give any benefits, rights, actions or remedies to any person or entity not a party to this Agreement, as a third-party beneficiary or otherwise under any theory of law.

If LANGAN is requested to execute a consent to assignment of this Agreement to a lender or other entity providing financing for the Project, LANGAN, in its sole but reasonable discretion, may agree to execute any such document provided it does not materially alter LANGAN's risk exposure or obligations under this Agreement, and provided the assignee agrees to: (i) pay any amounts due and owing at the time of assignment; (ii) pay any amounts to become due subsequent to such assignment; and (iii) be bound by the terms and conditions of this Agreement.

#### **U. DISPUTE RESOLUTION**

LANGAN and the CLIENT agree that any disputes arising under this Agreement and the performance thereof shall be subject to non-binding mediation as a prerequisite to further legal proceedings, which proceeding must be brought in a court of competent jurisdiction in the state in which the office of LANGAN that issued the Proposal is located. LANGAN and CLIENT waive any right to a trial by jury.

All actions by CLIENT against LANGAN, and by LANGAN against CLIENT whether for breach of contract, tort or otherwise, shall be brought within the period specified by applicable law, but in no event more than five (5) years following substantial completion of LANGAN'S services. CLIENT and LANGAN unconditionally and irrevocably waive all claims and causes of action not commenced in accordance with this paragraph.

If the CLIENT asserts a claim against LANGAN relating to allegations of professional negligence in performance of LANGAN'S services under this Agreement, LANGAN will be entitled to reimbursement of any costs incurred by LANGAN in the defense of the professional negligence claim, including any expenses incurred as part of LANGAN'S professional liability insurance deductible, to the extent LANGAN is successful in its negligence defense.

#### **V. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which the office of LANGAN that issued the Proposal is located.

#### **W. ENTIRE AGREEMENT**

Unless a separate agreement is executed by the parties, upon receipt of direction to proceed from CLIENT and commencement of the SERVICES by LANGAN, and regardless of whether CLIENT signs the Proposal, these General Terms and Conditions will govern LANGAN's performance of the Services.

This Agreement (consisting of these General Terms and Conditions, the accompanying Proposal and LANGAN's Fee Schedule, if applicable) constitutes the entire agreement between the parties, supersede any and all prior agreements or representations of the parties to this agreement and conflicting terms on documents created by the CLIENT, and may not be modified, amended, or varied except by a document in writing signed by the parties hereto.



**Department of Information Resources**

**DIR-CPO-6027 Appendix A Standard  
Contract Terms and Conditions Master  
Cooperative Contract**

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## 1 CONTRACT SCOPE

Successful Respondent shall make the products and services specified in the Contract available for purchase by Eligible Customers under the terms and conditions provided by the Contract.

## 2 NO QUANTITY GUARANTEES

The Contract is not exclusive to Successful Respondent. Eligible Customers may obtain products and services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products or services will be procured through the Contract.

## 3 DEFINITIONS

Except as otherwise expressly provided herein, all capitalized terms used in the Contract shall have the meanings given to them in this Section.

### 3.1 Business Day

Refers to days on which normal business operations are typically conducted, excluding weekends and national holidays specified in Texas Government Code Section 662.003. If the Contract calls for performance on a day that is not a Business Day, then performance will occur on the next Business Day. Unless otherwise stated, a Business Day begins at 12:00 a.m. and ends at 11:59 p.m., Central Time.

### 3.2 Compliance Check

An audit or similar review of Successful Respondent's compliance with the Contract performed by a third-party auditor, DIR staff, or their designees.

### 3.3 Contract

The Master Cooperative Contract between DIR and Successful Respondent, including all Appendices, Exhibits, and other attachments thereto. Notwithstanding the foregoing, unless expressly provided or the context otherwise requires, references to the Contract in conjunction with Section or Article references shall be deemed references to the body of the Contract.

### 3.4 Customer

An entity that purchases goods or services under the Contract.

### 3.5 Customer Data

Any data or information of or regarding a Customer that is provided to or obtained by Successful Respondent in connection with the negotiation and execution of the Contract or the performance of Successful Respondent's obligations under the Contract. For the avoidance of doubt, Customer Data includes information about Customers provided by DIR to Successful Respondent.

Customer Data does not include:

- (a) financial and accounting information (including costs, expenditures, billing collections, revenues, and finances) of Successful Respondent or its Third-Party Providers;
- (b) information created by Successful Respondent to measure the productivity and efficiency of its products and services or to improve the processes and procedures used by Successful Respondent in the performance of its obligations under the Contract;
- (c) human resources and personnel information of Successful Respondent or its Third-Party Providers; or
- (d) information with respect to third-party contracts or licenses of Successful Respondent, its affiliates or subcontractors and used in the performance of its obligations under the Contract.

### 3.6 Eligible Customer

Any entity designated by DIR or by law as eligible to purchase goods and services through DIR's cooperative contracts program, including any of the following entities identified in Texas Government Code Section 2054.0525:

- (a) a state agency;
- (b) a local government;
- (c) the legislature or a legislative agency;
- (d) the supreme court, the court of criminal appeals, or a court of appeals;
- (e) a public hospital owned or operated by this state or a political subdivision or municipal corporation of this state, including a hospital district or hospital authority;
- (f) an independent organization certified under Texas Utilities Code Section 39.151, for the ERCOT power region;
- (g) the Texas Permanent School Fund Corporation;
- (h) an assistance organization, as defined by Texas Government Code Section 2175.001;
- (i) an open-enrollment charter school, as defined by Education Code Section 5.001;
- (j) a private school, as defined by Education Code Section 5.001;
- (k) a private or independent institution of higher education, as defined by Education Code Section 61.003;
- (l) a public safety entity, as defined by 47 U.S.C. Section 1401;
- (m) a volunteer fire department, as defined by Texas Tax Code Section 152.001; and
- (n) a governmental entity of another state.

The Parties acknowledge and agree that the scope of Eligible Customers is subject to modification by the Texas Legislature, and that the then-current statutory definition for "Eligible entity" shall control for all purposes.

### **3.7 Designated Reseller**

Refers to the company or companies designated by Successful Respondent to provide products, services, and support resources to Customers under this Contract as referenced in Section 7 of the Master Contract.

### **3.8 DIR**

Refers to the Texas Department of Information Resources.

### **3.9 Effective Date**

Refers to the date on which the last party signs the Contract.

### **3.10 Invoice**

Refers to an instrument submitted by Successful Respondent to Customer for payment of goods or services.

### **3.11 Purchase Agreement**

Refers to the binding documents or set of documents used by Customer and accepted by Successful Respondent to purchase products or services from Successful Respondent under the Contract. A Purchase Agreement may take the form of a fiscal purchase order, Statement of Work, service agreement, procurement card, purchase order, fiscal form, other authorized instrument, or a combination of such documents.

### **3.12 State**

Refers to the State of Texas.

### **3.13 Statement of Work (SOW)**

Refers to a document entered into between Customer and Successful Respondent that states the requirements for a Purchase Agreement, including deliverables, performance specifications, and other requirements specific to the Successful Respondent under the Purchase Agreement that are not specified in the Contract.

### **3.14 Successful Respondent**

Refers to the party identified as either "Successful Respondent" or "Vendor" in Section 1.1 of the Contract.

### **3.15 Third-Party Provider**

Refers to an affiliate, subcontractor, vendor, reseller, order fulfiller, manufacturer, publisher, distributor, Designated Reseller, or other person or entity designated or directed by Successful Respondent to provide products or services to a Customer in performance of, related to, or in support of a Purchase Agreement issued under the Contract.

## 4 GENERAL PROVISIONS

### 4.1 Entire Agreement

The Contract constitutes the entire agreement between DIR and Successful Respondent. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in the Contract is binding or valid.

Customers shall execute a Purchase Agreement with Successful Respondent to purchase products or services under the Contract. The Contract and the Purchase Agreement constitute the entire agreement between the Customer and Successful Respondent. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in the Contract or the Purchase Agreement is binding or valid.

### 4.2 Modification of Contract Terms and Amendments

(a) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract.

(b) Except as provided below, the parties to the Contract may only modify or amend the Contract upon mutual written agreement signed by authorized representatives of both DIR and Successful Respondent.

(c) Notwithstanding Section 4.2(b) above, DIR reserves the right, in its sole discretion, to unilaterally, upon thirty (30) calendar days written notice to Successful Respondent without the Successful Respondent's written consent or signature, amend the Contract prior to award and throughout the term of the Contract to incorporate any modifications necessary for DIR's compliance with all applicable state and federal laws, regulations, requirements, and guidelines, or to satisfy a procedural change due to DIR system upgrades or additions.

(d) Notwithstanding Section 4.2(b) above, the parties may modify or amend Appendix B, Historically Underutilized Business Subcontracting Plan ("HSP"), by mutual agreement through written correspondence without an amendment to the Contract.

(e) Customers do not have authority to modify the terms of the Contract. However, the Master Cooperative Contract authorizes Additional Agreements that do not conflict with the Contract and that are acceptable to both Customer and Successful Respondent to be added in a Purchase Agreement and given effect. No Additional Agreement added in a Purchase Agreement can conflict with or diminish a term or condition of the Contract. In the event of a conflict between a Purchase Agreement and the Contract, the Contract controls.

(f) Customer and Successful Respondent will negotiate and enter into written agreements regarding Statements of Work, service level agreements, remedies, acceptance criteria, information confidentiality, security requirements, limitation of liability (if any), and other terms specific to their Purchase Agreements under the Contract.

### 4.3 Invalid Term or Condition

(a) To the extent any term or condition of the Contract conflicts with an applicable state or

United States law or regulation, that Contract term or condition is void and unenforceable. By executing a Contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of the term or condition and DIR does not waive the applicable state or United States law or regulation which conflicts with the Contract term or condition.

(b) If a term or condition in the Contract, or the application of a term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances remains valid and in full force and effect.

#### 4.4 Assignment

(a) DIR may assign the Contract or its rights and obligations under the Contract without prior written approval to: 1) a successor in interest (another state agency as designated by the Texas Legislature) or 2) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

(b) A Customer may assign a Purchase Agreement issued under the Contract or its rights and obligations under the Purchase Agreement without prior written approval to: 1) a successor in interest (another state agency as designated by the Texas Legislature) or 2) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority.

(c) Successful Respondent shall not assign or delegate the Contract or its rights or obligations under the Contract, including by operation of law or through a change in control, without prior written approval from DIR. Any attempted assignment or delegation in violation of this provision is null and void and has no effect.

(d) Successful Respondent shall not assign or delegate a Purchase Agreement or its rights or obligations under the Purchase Agreement, including by operation of law or through a change in control, without prior written approval from the Customer. Any attempted assignment or delegation in violation of this provision is null and void and has no effect.

#### 4.5 Survival

(a) All Purchase Agreements shall survive the expiration or termination of the Contract for the term of the Purchase Agreement, unless the Customer terminates the Purchase Agreement sooner. However, regardless of the term of the Purchase Agreement, no Purchase Agreement shall survive the expiration or termination of the Contract for more than three (3) years (the "Survival Term").

(b) In all instances of expiration or termination of the Contract, Successful Respondent shall continue to report all sales and pay the DIR Administrative Fees for the duration of the Survival Term. For the avoidance of doubt, Successful Respondent shall report even in months where sales are \$0.

(c) Any provision of this Contract that contemplates performance or observance subsequent

to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement shall survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

(d) The following provisions are among those that survive termination of the Contract or a Purchase Agreement:

- (1) Contract Section 5, and Section 10.4 of this Appendix A regarding the DIR Administrative Fee, and any and all payment obligations for which invoices were provided to Customer prior to the termination or expiration of the Contract;
- (2) Section 4.10, Warranty and Return Policies;
- (3) Section 4.12, Non-solicitation of Customer Employees;
- (4) Section 5, Intellectual Property Matters;
- (5) Section 6, Data Terms;
- (6) Section 13, Indemnification and Liability;
- (7) Section 10.4, Required Reports;
- (8) Section 10.5, Records and Audit;
- (9) Sections 12.6 and 12.7 regarding Rights Upon Termination;
- (10) Section 14, Required Insurance Coverage; and
- (11) Section 15.7, Confidentiality and the Texas Public Information Act.

#### **4.6 Choice of Law**

The Contract is governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions.

#### **4.7 Compliance with Laws**

Successful Respondent shall comply with all laws and regulations applicable to the Contract and to the goods and services purchased under the Contract through a Purchase Agreement, as these laws and regulations currently exist and may be amended throughout the term of the Contract and any applicable Purchase Agreement.

#### **4.8 Limitation of Authority**

Successful Respondent has no authority to act for or on behalf of DIR or the State except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Successful Respondent may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

#### **4.9 Independent Contractor**

Successful Respondent agrees and acknowledges that during the existence of the Contract and

any resulting Purchase Agreements, it is furnishing services in the capacity of an independent contractor and that Successful Respondent and its personnel are not employees of the Customer, DIR, or the State of Texas.

#### **4.10 Warranty and Return Policies**

Customers may provide written notice to Successful Respondent of errors, inaccuracies, or other deficiencies in products or services provided by Successful Respondent under a Purchase Agreement within thirty (30) calendar days of receipt of an Invoice for the products or services. Successful Respondent shall correct the error, inaccuracy, or other deficiency at no additional cost to Customer.

In addition to the minimum warranty provided above, Successful Respondent shall adhere to Successful Respondent's then-currently published policies concerning warranties and returns. Warranty and return policies offered to Customers shall not be more restrictive or more costly than warranty and return policies for other similarly situated customers for similar products and services.

#### **4.11 Force Majeure**

DIR, Customer, or Successful Respondent may be excused from performance under the Contract or a Purchase Agreement for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, court order, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome (each such event, an "Event of Force Majeure"), on the condition that the party experiencing an Event of Force Majeure has prudently and promptly acted to take all steps that are within the party's control to ensure performance and to shorten the duration or impact of the Event of Force Majeure. The party suffering an Event of Force Majeure shall provide notice of the Event to the other parties when commercially reasonable. Subject to this Section, non-performance due to an Event of Force Majeure shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Agreement if Customer determines that Successful Respondent will not be able to deliver services in a timely manner to meet the business needs of the Customer. Upon request by DIR or Customer, Successful Respondent shall provide copies of its most recent business continuity and disaster recovery plans.

#### **4.12 Non-Solicitation of Customer Employees**

Successful Respondent shall not solicit, directly or indirectly, any DIR employee who is associated with the Contract during the Contract term or for a period of ninety (90) calendar days following the expiration or termination of the Contract. Further, Successful Respondent shall not solicit, directly or indirectly, any Customer employee who is associated with a Purchase Agreement during the Purchase Agreement term or for a period of ninety (90) calendar days following the expiration or termination of the Purchase Agreement. For the avoidance of doubt, the publication of a generally available advertisement or solicitation and the consideration and hiring of a person responding to such a solicitation is not a breach of this Section, unless the advertisement or solicitation is undertaken as a means to circumvent this Section. This provision shall not operate or

be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.

#### **4.13 General Requirements of Lease Documents**

The following general terms apply to all lease-type documents and agreements entered into in connection with the Contract or a Purchase Agreement.

- (a) All leases and lease-related documents are Additional Agreements as defined in the Contract.
- (b) Leases shall not automatically renew at the end of the term.
- (c) Any fees beyond those set forth in Appendix C, Pricing Index, must be explicitly identified in the lease documents. This includes but is not limited to early termination fees, shipping fees, return fees, and any other charge or fee related to the lease.
- (d) Remedies for breach of the lease must include all remedies available in the Contract. Successful Respondent may not disclaim damages or establish exclusive remedies in the lease documents.
- (e) Customers shall not be required to obtain consent before relocating a piece of leased equipment, but the Successful Respondent may require a reasonable form of notice of the relocation.
- (f) Customers shall not indemnify Successful Respondent.

#### **4.14 Submission of Written Complaints**

A person may submit a written complaint to DIR using the form provided on DIR's webpage at the following address: <https://dir.texas.gov/form/complaints>.

#### **4.15 Captions**

The captions contained in the Contract, Appendices, and Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision.

### **5 INTELLECTUAL PROPERTY MATTERS**

#### **5.1 Intellectual Property Matters Definitions**

##### **5.1.1 Work Product**

Means all deliverables produced by Successful Respondent for Customer under a Statement of Work issued pursuant to the Contract, including all tangible or intangible items or things that have been or will be prepared, created, developed, produced, invented or conceived at any time after the Effective Date in connection with, or as a result of, the services provided under the Contract, including but not limited to any:

- (a) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts,

configurations, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or websites, other written or machine readable expression of works fixed in any tangible media, and all other copyrightable works);

(b) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin;

(c) ideas, designs, concepts, personality rights, methodologies, processes, techniques, apparatuses, inventions, formulas, approaches, specifications, systems, discoveries, or improvements, including any patents, trade secrets and know-how;

(d) domain names;

(e) any copies, and similar or derivative works to any of the foregoing, all documentation and materials related to any of the foregoing;

(f) all other goods, services, or deliverables to be provided to Customer under the Contract or a Statement of Work; and

(g) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented, or conceived for the use or benefit of Customer in connection with the Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit:

(1) by any Successful Respondent personnel or Customer personnel; or

(2) any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of which was created, invented or conceived by that person while affiliated with Customer.

### **5.1.2 Intellectual Property (IP) Rights**

Means the worldwide legal rights or interests, including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights, evidenced by or embodied in:

(a) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how;

(b) any work of authorship, including any copyrights, moral rights, or neighboring rights;

(c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin;

(d) domain name registrations; and

(e) any other proprietary or similar rights.

The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

### 5.1.3 Third Party IP

Means the Intellectual Property Rights of any third party that is not a party to the Contract or a Purchase Agreement issued under the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract or a Purchase Agreement issued under the Contract.

### 5.1.4 Successful Respondent IP

Shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Successful Respondent:

- (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information, or funding from or on behalf of Customer relating to the services or Work Product; or
- (b) after the Effective Date if tangible or intangible items or things were independently developed by Successful Respondent outside Successful Respondent's provision of services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Successful Respondent or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Successful Respondent or its personnel, any portion of which was created, invented or conceived by the person while affiliated with Customer.

## 5.2 Ownership

As between Successful Respondent and Customer, the Work Product and any associated Intellectual Property Rights are and shall be owned exclusively by Customer, and not Successful Respondent. Successful Respondent specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Successful Respondent agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Successful Respondent acknowledges that Successful Respondent and Customer do not intend Successful Respondent to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Successful Respondent, to all Successful Respondent materials, premises, and computer files containing the Work Product. Successful Respondent and Customer, as appropriate, will cooperate with one another and execute other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work

Product by Successful Respondent. Successful Respondent will not make or retain any copies of the Work Product or any documentation or other products and results of the services without the prior written consent of Customer.

### 5.3 Further Actions

Successful Respondent, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of further documents in a form determined by Customer. In the event Customer shall be unable to obtain Successful Respondent's signature due to the dissolution of Successful Respondent or Successful Respondent's unreasonable failure to respond to Customer's repeated requests for signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Successful Respondent irrevocably designates and appoints Customer and its duly authorized officers and agents as Successful Respondent's agent and Successful Respondent's attorney-in-fact to act for and in Successful Respondent's behalf and stead to execute and file any document and to do all other lawfully permitted acts to further any purpose with the same effect as if executed and delivered by Successful Respondent, provided however that no grant of right to Customer is applicable if Successful Respondent fails to execute any document due to a good faith dispute by Successful Respondent with respect to the document. It is understood that this power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute applications and to take all other action concerning the Work Product, and Successful Respondent shall cooperate in the preparation and prosecution of all applications and in any legal actions and proceedings concerning the Work Product.

### 5.4 Waiver of Moral Rights

Successful Respondent irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Successful Respondent may now have or which may accrue to Successful Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Successful Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of Moral Rights. The term "Moral Rights" refers to any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not the right is denominated or referred to as a moral right.

### 5.5 Confidentiality

All documents, information and materials forwarded to Successful Respondent by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Successful Respondent under Section 5.8 Successful Respondent License to Use. Hereunder, Successful Respondent shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in

any manner without the prior written approval of Customer.

## 5.6 Injunctive Relief

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of those rights would cause substantial and irreparable harm to Customer's business. Therefore, Successful Respondent acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract, upon a request by Customer, without requiring proof of irreparable injury as injury should be presumed.

## 5.7 Return of Materials Pertaining to Work Product

Upon the request of Customer, but in any event upon expiration or termination of the Contract, or a Statement of Work, Successful Respondent shall surrender to Customer (1) all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data; and (2) all other documents or materials (generated or developed by Successful Respondent or furnished by Customer to Successful Respondent, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in that Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Successful Respondent by Customer or by anyone else that pertain to the Work Product, including originals and copies.

## 5.8 Successful Respondent License to Use

Customer grants to Successful Respondent a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the services to Customer. Except as provided in this Section, neither Successful Respondent nor any Third-Party Provider shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

## 5.9 Third-Party Underlying and Derivative Works

- (a) To the extent that any Successful Respondent IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the services, Successful Respondent grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to
- (1) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon Successful Respondent IP or Third-Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and
  - (2) authorize others to do any or all of the foregoing. Successful Respondent agrees to notify Customer on delivery of the Work Product or services if the materials include any

Third-Party IP.

- (b) On request, Successful Respondent shall provide Customer with documentation indicating a third party's written approval for Successful Respondent to use any Third-Party IP that may be embodied or reflected in the Work Product.

## 5.10 Agreement with Third Party Providers

Successful Respondent agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any Third Party Providers, prior to their providing services or Work Product pursuant to the Contract, and that Successful Respondent shall maintain the written agreements at all times during performance of the Contract, which are sufficient to support all performance and grants of rights by Successful Respondent. Successful Respondent will promptly give copies of the agreements to the Customer upon request.

## 5.11 License to Customer

Successful Respondent grants to Customer, at no additional charge, a worldwide, non-exclusive, perpetual, irrevocable, royalty free right and license, solely for the Customer's internal business purposes, to use, reproduce, modify, display, perform (by any means), transmit, distribute, store, prepare derivative works of, and otherwise exploit any Successful Respondent IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Successful Respondent IP remain in Successful Respondent.

## 5.12 Successful Respondent Development Rights

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in the Contract shall preclude Successful Respondent from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, on the condition that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by the competitive materials. To the extent that Successful Respondent wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Successful Respondent and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for the desired use.

# 6 DATA TERMS

## 6.1 Authorized Use of Customer Data

Successful Respondent and its Third-Party Providers shall not use Customer Data for any purpose other than the fulfillment of this Contract. Successful Respondent shall not use Customer Data in any manner for purposes of training artificial intelligence technologies unless Successful Respondent obtains Customer's prior written consent. Successful Respondent shall not sell, assign, lease, or encumber Customer Data.

## 6.2 Data Location

Regardless of any other provision of the Contract or its incorporated or referenced documents, all Customer Data for Customers located in the State of Texas must remain and be located, handled, stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the United States, unless the Customer provides specific written authorization for Customer Data to be located elsewhere. All Customers located outside the State of Texas may allow data location and handling outside of the United States at the Customer's discretion. **NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE U.S.-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.**

## 6.3 Data Classification

Upon request of a Customer that is a Texas state agency, Successful Respondent shall coordinate with Customer to implement a data classification scheme, as required under Texas Government Code Section 2054.161, for any data used in or produced from the products and services.

## 6.4 Data Breach Notification and Response

In the event that Successful Respondent discovers, is notified of, or knows of any actual, suspected, or threatened data breach that compromises or could reasonably be expected to compromise Customer Data through unauthorized use, disclosure, or acquisition, Successful Respondent shall promptly, but no later than eight (8) hours after such discovery, provide notice of such breach to the affected Customer and, if the affected Customer is located in Texas, to DIR. After such notification, Successful Respondent shall:

- (a) investigate to determine the nature, cause, and extent of the breach;
- (b) take any action necessary to contain the incident and remediate, as soon as practicable and to the extent practicable, any harmful effect of the breach known to Successful Respondent;
- (c) provide Customer and DIR with regular updates on the status of the breach; and
- (d) cooperate with Customer in providing any required notices regarding the breach.

## 7 ACCESSIBILITY STANDARDS

### 7.1 General Accessibility Requirements

- (a) Under Texas Government Code Chapter 2054, Subchapter M, and DIR implementing rules, DIR and certain Customers must procure electronic and information resources that comply with the accessibility standards defined in Texas Administrative Code Title 1 Chapter 206 and Chapter 213, and in the Worldwide Web Consortium WCAG 2.1 AA technical standard as applicable when products or services are available in the commercial marketplace or when products are developed in response to procurement solicitations. All associated documentation must also be in an accessible format. Examples of accessible format include: properly formatted PDFs created by exporting documents instead of creating a jpeg file; alt text for images; keyboard-only navigation; color contrast; compatible with zoom magnification; graphics include labels and do not rely solely on color.
- (b) The Parties acknowledge and agree that accessibility requirements are subject to modification by relevant legislative bodies, and that the then-current accessibility requirements shall control for all purposes.
- (c) Successful Respondent shall work with Customer to ensure that the products and services provided pursuant to the Contract and any associated Purchase Agreement comply with the Customer's accessibility requirements.

### 7.2 Specific Accessibility Requirements

- (a) Successful Respondent shall cooperate with Customers, including by providing the information and documents identified below, to ensure that Customers are able to comply with all applicable accessibility laws and standards in purchasing products and services under this Contract.
- (b) Upon Customer request, Successful Respondent must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) WCAG Edition (Version 2.4 or higher) or URL links to specific ACRs located on manufacturer webpages (where available) for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product, product family, or service (as applicable) requested by such Customer. Instructions on how to complete this document are included in the template itself. Successful Respondent may provide ACRs based on earlier versions of the VPAT® template if completed ACRs already exist, and there have been no changes to the product or service since the time of the original document completion. If Successful Respondent claims that a proposed product, family of products, or service is exempt from accessibility requirements, it must specify the exempt product or family of products and the basis for the exemption in "Notes" located in the product information section of the VPAT 2.4 or higher.
- (c) Upon Customer request, Successful Respondent must provide a completed, current, and accurate Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services and services that include user accessed, online components) which documents Successful Respondent's capability

or ability to produce accessible electronic and information resources.

- (d) For non-COTS offerings, Successful Respondent must ensure that the accessibility standards defined in Texas Administrative Code Title 1 Chapter 206 and Chapter 213, and other applicable standards, are integrated into key phases of the project development lifecycle including but not limited to planning, design, development, quality assurance testing, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by Customers.
- (e) Upon Customer request, Successful Respondent must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) Vendor Self-Assessment.
- (f) Upon Customer request, Successful Respondent must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, methods, and prior work.

## **8 CONTRACT PROMOTION**

### **8.1 Texas State Agencies Required to Purchase Through DIR Contracts**

Texas Government Code Section 2157.068 requires Texas state agencies to buy commodity items using contracts developed by DIR unless the agency obtains an exemption from DIR.

Successful Respondent shall direct all Texas state agencies to coordinate all sales through existing DIR contracts unless Customer demonstrates that it has obtained a written exemption from DIR. Institutions of higher education are exempt from this Section.

### **8.2 Endorsements**

DIR does not endorse vendors, products, or services. The existence of this Contract does not indicate in any way that DIR endorses, approves, or otherwise recommends Successful Respondent or its offerings.

### **8.3 Public Disclosure**

Successful Respondent shall not make public disclosures or news releases about the Contract without prior written approval of DIR.

### **8.4 Internet Access to Contract and Pricing Information**

No later than thirty (30) calendar days after the Effective Date, Successful Respondent shall establish and maintain a webpage specific to the services awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Successful Respondent's webpage. Successful Respondent must use a web hosting service that provides a dedicated internet protocol address. Successful Respondent must ensure their webpage is secured using modern encryption standards, including maintaining a valid and up-to-date security certificate, requiring all users to access the site via Hypertext Transfer Protocol Security (HTTPS), and configuring the hosting environment to enforce secure protocols.

Successful Respondent shall provide DIR with timely written notice of any change in URL or other information needed to access the site or maintain the link.

The Contract constitutes a public document under Texas law and Successful Respondent shall not restrict access to Contract terms and conditions, including pricing, by any means including but not limited to use of restrictive technology or passwords. DIR may terminate the Contract without penalty if Successful Respondent does not meet the webpage requirements.

The webpage must include:

- (a) a detailed list of products or services awarded;
- (b) the current MSRP or list price and the applicable discount percentage for all products or services awarded, or a mechanism to obtain pricing, as applicable;
- (c) Successful Respondent contact information, including name, telephone number and email address;
- (d) instructions for obtaining quotes and entering into Purchase Agreements;
- (e) the Contract number with a hyperlink to the Contract's DIR webpage;
- (f) the DIR logo in accordance with the requirements of Section 8.8; and
- (g) any additional information that the Master Cooperative Contract identifies as required to be included on the webpage.

## **8.5 Accurate and Timely Contract Information**

Successful Respondent agrees to accurately and completely post, maintain, and display the webpage information above in an objective and timely manner. Successful Respondent shall, at its own expense, correct any non-conforming or inaccurate information posted at Successful Respondent's webpage within ten (10) Business Days after written notification by DIR.

## **8.6 Webpage Compliance Checks**

DIR may conduct periodic Compliance Checks of the information posted for the Contract on Successful Respondent's webpage. Upon request by DIR, Successful Respondent shall provide verifiable documentation that pricing listed on this webpage is compliant with the pricing as stated in the Contract.

## **8.7 Responsibility for Webpage Content**

Successful Respondent is solely responsible for administration, content, intellectual property rights, and all materials on Successful Respondent's webpage. DIR may require a change of Contract-related content if, in the opinion of DIR, it does not adequately represent the Contract.

## **8.8 DIR and Customer Logos**

Successful Respondent may use a Customer's logo only upon prior written approval from that Customer.

Successful Respondent may use the DIR logo in the promotion of the Contract to Customers with

the following stipulations:

- (a) the logo may not be modified in any way;
- (b) the size of the DIR logo must be equal to or smaller than Successful Respondent's logo;  
and
- (c) the DIR logo is only used to communicate the availability of services under the Contract to Customers.

Any other use of the DIR logo requires prior written permission from DIR.

## 8.9 Successful Respondent Logo

If DIR receives Successful Respondent's prior written approval, DIR may use Successful Respondent's name and logo in the promotion of the Contract to communicate the availability of services under the Contract to Customers. DIR may use the logo on the DIR webpage or on printed materials. Any use of Successful Respondent's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract gives DIR any right, title, or interest in or to Successful Respondent's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Successful Respondent.

## 8.10 Trade Show Participation

DIR may require Successful Respondent to participate in no more than two (2) DIR-sponsored trade shows each calendar year. Successful Respondent understands and agrees that participation is at Successful Respondent's expense and includes providing a staffed booth display or similar presence. DIR will provide a minimum of four (4) months advance notice of any required participation. Successful Respondent must display the DIR logo at all DIR-sponsored trade shows. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on Successful Respondent's booth.

# 9 PURCHASE AGREEMENTS, INVOICES, AND PAYMENTS

## 9.1 Purchase Agreements

Customers must place Purchase Agreements directly with Successful Respondent. Purchase Agreements become effective and binding upon Successful Respondent when accepted by Successful Respondent.

## 9.2 Invoices

- (a) Successful Respondent shall submit Invoices directly to Customer. Customer shall make all payments for services purchased under the Contract and provide any acceptance of those services to Successful Respondent.
- (b) Invoices must be timely and accurate. Each Invoice must match Customer's Purchase Agreement and include any written changes that may apply, as it relates to services, prices, and quantities. Invoices must include the Customer's Purchase Agreement number or other

pertinent information for verification of receipt of the products and services by the Customer.

(c) Successful Respondent shall not list the DIR Administrative Fee as a separate line item when it provides pricing or Invoices to Customer.

### **9.3 Payments**

Successful Respondent and Customers shall comply with Texas Government Code Chapter 2251, commonly known as the Texas Prompt Payment Act, as applicable. For Customers that are not subject to Texas Government Code Chapter 2251, Customer and Successful Respondent must agree to acceptable payment terms in the Purchase Agreement. Payment under the Contract does not foreclose the right to recover wrongful payments at a later time.

### **9.4 Tax-Exempt**

Government entity Customers are typically exempt from the assessment of State sales, use and excise taxes under Texas Tax Code Section 151.309 and from Federal Excise Tax under 26 United States Code Sections 4253(i) and (j). All Customers shall provide evidence of tax-exempt status to Successful Respondent upon request.

### **9.5 Travel Expense Reimbursement**

Pricing for services provided under the Contract exclude any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may be separately available, and includes personal vehicle mileage or commercial coach transportation, hotel accommodations, parking, and meals. Reimbursement amounts must not exceed the amounts authorized for state employees as adopted by each Customer; and all reimbursement rates must not exceed the maximum rates established for state employees under the current State Travel Management Program (<https://comptroller.texas.gov/purchasing/programs/travel-management/>). Successful Respondent must not include travel time as part of the amounts payable by Customer for any services rendered under the Contract. Successful Respondent must obtain Customer's written pre-approval for any anticipated travel expenses. Customer may reject payment for travel expenses which are not pre-approved in writing. The DIR Administrative Fee does not apply to travel expense reimbursement.

### **9.6 Shipping and Handling**

Prices to Customers shall include all shipping and handling fees. Shipments will be Free on Board Customer's destination. Successful Respondent may not charge additional fees for standard shipping and handling. If a Customer requests expedited or special delivery, Customer must pay for any additional charges for expedited or special delivery.

## 10 CONTRACT ADMINISTRATION

### 10.1 Service, Sales, and Support of the Contract

Successful Respondent shall provide service, sales, and support resources to serve all Customers. Successful Respondent shall sell, market, and promote products and services available under the Contract. Successful Respondent shall use best efforts to ensure that Eligible Customers are made aware of the existence of the Contract.

### 10.2 Contract Managers

DIR and Successful Respondent shall each designate a contract manager ("Contract Manager") to support the Contract (respectively, the "DIR Contract Manager" and "Successful Respondent Contract Manager"). DIR will post information regarding each Contract Manager on its webpage for the Contract. DIR may require a change in Successful Respondent Contract Manager if Successful Respondent Contract Manager is not, in the sole opinion of DIR, adequately serving the needs of the State.

#### 10.2.1 DIR Contract Manager

Upon execution of the Contract, DIR shall provide Successful Respondent with written notification of the DIR Contract Manager's name and contact information.

The DIR Contract Manager's duties include but are not limited to:

- (a) managing the Contract and monitoring compliance;
- (b) advising DIR of Successful Respondent's performance under the Contract; and
- (c) periodic verification of pricing and monthly reports submitted by Successful Respondent.

#### 10.2.2 Successful Respondent Points of Contact

(a) Upon execution of the Contract, Successful Respondent shall provide DIR with written notification of

- (1) Successful Respondent Contract Manager's name and contact information;
- (2) Successful Respondent sales representative name and contact information;
- (3) Successful Respondent Accounts Payable contact name and contact information; and
- (4) name and contact information of Successful Respondent personnel responsible for submitting reports and payment of DIR Administrative Fees.

(b) Successful Respondent Contract Manager's duties shall include but are not limited to:

- (1) marketing and management of the Contract;
- (2) facilitating dispute resolution between Successful Respondent and Customers; and
- (3) advising DIR of Successful Respondent's performance under the Contract.

## 10.3 Required Meetings

DIR may require Successful Respondent and any Third-Party Providers to participate in meetings throughout the life of the Contract. In addition to the meetings specifically identified below, DIR, in its sole discretion, may require participation in additional meetings, including meetings to review Successful Respondent's performance under the Contract. Meetings will be held virtually or in person at a location selected by DIR in Austin, Texas, and at a date and time mutually acceptable to DIR and Successful Respondent. DIR shall bear no cost for the time and travel of Successful Respondent for attendance at any meeting.

### 10.3.1 Orientation Meeting

No later than thirty (30) calendar days after execution of the Contract, Successful Respondent shall attend an orientation meeting to discuss the content and procedures of the Contract to include administrative requirements for reporting and administrative fee payments.

### 10.3.2 End of Contract Transition Meeting

In its sole discretion, DIR may require participation in meetings related to the termination or expiration of the Contract.

## 10.4 Required Reports

### 10.4.1 Reporting Responsibility

Successful Respondent shall file any necessary reports. DIR may verify required reports and take any actions necessary to enforce its rights under the Contract. If DIR requests any additional documentation needed to verify the reports, Successful Respondent shall provide all required documentation at no cost.

### 10.4.2 Detailed Monthly Vendor Sales Report

(a) Using the Vendor Sales Report (VSR) portal, Successful Respondent shall submit a monthly sales report detailing sales activity under the Contract for the previous month period. This includes months in which there are no sales. Monthly sales reports may be submitted between the first (1st) and the fifteenth (15th) of each month and are due no later than the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report is due on the next Business Day. For example, Successful Respondent must submit its monthly sales report for January between February 1st and February 15th.

(b) The sales report shall include, at a minimum, the following information per transaction: the detailed sales for the period, Customer name, Invoice date, Invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Agreement number, contact name, Customer's complete billing address, the estimated DIR Administrative Fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each sales report must contain all information listed above per transaction or the report will be rejected and returned to Successful Respondent for correction.

(c) Successful Respondent shall reference the Contract number, reporting period, and DIR Administrative Fee amount on any remittance instruments.

#### **10.4.3 DIR Cost Avoidance Reports**

As part of the performance measures reported to State leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Successful Respondent shall provide DIR with a detailed report of a representative sample of products or services sold under the Contract. The report shall contain: product or service description, MSRP or list price, and price to Customer under the Contract. If Successful Respondent holds a current contract with a Consortium for the same types of offerings awarded on the DIR contract, Successful Respondent may be requested to provide the customer pricing on the awarded Consortium contract.

#### **10.4.4 Historically Underutilized Business (HUB) Subcontract Reports**

Successful Respondent shall electronically provide each Customer with its HUB Subcontracting Report as required by Texas Government Code Chapter 2161. DIR shall be copied on all reports submitted to Customer.

#### **10.4.5 Accurate and Timely Submission of Reports and DIR Administrative Fees**

(a) Successful Respondent shall submit sales reports and DIR Administrative Fee payments accurately and timely in accordance with the due dates specified in this Section. Successful Respondent shall correct any inaccurate reports or DIR Administrative Fee payments within three (3) Business Days of written notification by DIR. Successful Respondent shall deliver any late sales reports or late DIR Administrative Fee payments within three (3) Business Days upon written notification by DIR. If Successful Respondent is unable to correct inaccurate sales reports or DIR Administrative Fee payments or deliver late sales reports and DIR Administrative Fee payments within three (3) Business Days, Successful Respondent shall contact DIR and provide a corrective plan of action, including the timeline for completion. The corrective plan of action is subject to DIR approval.

(b) If Successful Respondent fails to correct inaccurate sales reports or cure the delay in timely and accurate delivery of sales reports and payments within the corrective plan of action timeline, DIR may, at DIR's expense, require an independent third-party audit of Successful Respondent's records as specified in Section 10.5, Records and Audit. DIR will select the auditor (and all payments to auditor will require DIR approval). If DIR finds that Successful Respondent is responsible for inaccurate reports, DIR may invoice Successful Respondent for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.

(c) Failure to timely submit three (3) reports or DIR Administrative Fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day, up to \$1000/month, for each Business Day the report or payment is due, or suspension or termination of Successful Respondent's Contract.

(d) For Customers whose payments are processed by the Comptroller of Public Accounts, the volume of payments made to Successful Respondent through the Comptroller and the

administrative fee based thereon are presumed correct unless Successful Respondent can demonstrate to DIR's satisfaction that Successful Respondent's calculation of DIR's administrative fee is correct.

## **10.5 Records and Audit**

### **10.5.1 Review by State Auditor**

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. Acceptance of funds under the Contract by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Successful Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Successful Respondent shall ensure all subcontractors are aware of this clause and that a requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, an entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

### **10.5.2 Review by DIR or its Designee**

Successful Respondent agrees that DIR, a DIR designee, or third-party auditor may conduct an audit, Compliance Check, or other similar investigation of Successful Respondent's compliance with the Contract.

### **10.5.3 Records Retention and Access**

(a) Successful Respondent shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final, and unappealable resolution of all Compliance Check, audit, or litigation issues that arise under the Contract, whichever is later. The records shall include per transaction: Customer name, Invoice date, Invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Agreement number, contact name, Customer's complete billing address, the calculations supporting each DIR Administrative Fee owed under the Contract, HUB Subcontracting Reports, and other documentation as may be requested.

(b) Successful Respondent shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, Purchase Agreements, and any other items relevant to the performance of the Contract to DIR, the State Auditor's Office, and other persons or entities designated by DIR for the purposes of inspecting, auditing, conducting a Compliance Check, or copying the records.

(c) Successful Respondent shall provide copies and printouts requested by DIR without charge. DIR shall use best efforts to provide Successful Respondent ten (10) Business Days' notice prior to inspecting, conducting a Compliance Check, or copying Successful Respondent's records. Successful Respondent's records, whether paper or electronic, shall be

made available during regular office hours. Successful Respondent personnel familiar with Successful Respondent's records shall be available to DIR staff and designees as needed. Successful Respondent shall provide adequate office space to DIR staff and designees during the performance of the inspection, audit, or Compliance Check. If DIR finds that Successful Respondent is responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Successful Respondent must pay within thirty (30) calendar days of receipt.

## 10.6 Proof of Financial Stability and Notice of Financial Events

Either DIR or Customer may require Successful Respondent to provide proof of financial stability prior to or at any time during the Contract term. In the event that Successful Respondent becomes insolvent or is the subject of any bankruptcy or receivership proceeding prior to or during the Contract term or a Purchase Agreement term, Successful Respondent shall provide written notice to DIR and to Customer within five (5) Business Days of the insolvency or initiation of the bankruptcy or receivership proceedings.

## 11 DISPUTE RESOLUTION

### 11.1 No Waiver

A party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right to demand strict compliance with that or any other provision.

Nothing in this Contract or in any Purchase Agreement constitutes a waiver of any defense or immunity whatsoever.

### 11.2 Dispute Resolution Process

(a) Disputes arising under the Contract or a Purchase Agreement shall be resolved in accordance with Texas Government Code Chapter 2260. The contested case process provided in Texas Government Code Chapter 2260 is the Successful Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract or Purchase Agreement.

(b) Except as provided in Texas Government Code Section 2251.051, Successful Respondent shall continue performance while the dispute is being resolved unless the Customer has terminated the Purchase Agreement.

(c) For Customers not subject to Texas Government Code Chapter 2260, disputes arising between a Customer and Successful Respondent shall be resolved in accordance with the dispute resolution process of the Customer.

(d) DIR shall not be a party to any dispute between Customers and Successful Respondent unless DIR, in its sole discretion, decides to intervene.

(e) In any dispute with a unit of State government as defined in Texas Government Code Section 2260.001, the exclusive venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise states its applicability to the contracting Customer. If litigation does not involve any unit of State government, then venue

is fixed in the state or federal courts of the Texas county where the Customer is primarily situated, unless the specific venue is otherwise identified in a statute which directly names or otherwise states its applicability to the contracting Customer.

### 11.3 Vendor Performance Reporting Required

Texas state agencies are required by rule (34 Texas Administrative Code Section 20.108(b)) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.00.

## 12 TERMINATION

### 12.1 Absolute Right to Terminate

DIR shall have the absolute right to immediately terminate the Contract without recourse in the following circumstances:

- (1) Successful Respondent becomes listed on the prohibited vendors list authorized by Executive Order #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;
- (2) Successful Respondent becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration;
- (3) Successful Respondent becomes suspended or debarred from doing business with the State of Texas;
- (4) Successful Respondent is or becomes statutorily ineligible to receive state contracts;
- (5) DIR receives notice of potential criminal violations by Successful Respondent, whether or not the potential violations directly impact the provision of goods or services under the Contract; or
- (6) DIR receives notice of any actual, suspected, or threatened data breach as described in Section 6.4.

DIR shall provide Successful Respondent with written notice of termination. DIR will use reasonable efforts to provide notice (to the extent allowed by law) to Successful Respondent within five (5) Business Days after the termination.

### 12.2 Immediate Suspension

- (a) DIR may, in its sole discretion, elect to suspend Successful Respondent for any of the following:
  - (1) Any of the same reasons as the absolute right to terminate set forth above;
  - (2) Successful Respondent fails to pay the DIR Administrative Fee or timely file

required reports; or

(3) DIR in its sole discretion determines that suspension is in the best interests of the State.

(b) While suspended, Successful Respondent shall not make any new sales under the Contract until it receives further written notice from DIR. Successful Respondent may be ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer.

(c) DIR will use reasonable efforts to provide notice (to the extent allowed by law) to Successful Respondent within five (5) Business Days after the suspension .

(d) Successful Respondent may provide a written response and request an opportunity to present its position. DIR will review Successful Respondent's response but is under no obligation to provide formal response.

(e) The suspension ends when DIR either provides written notice that the suspension is lifted or provides notice of the termination of the Contract in accordance with this Section 12.

## **12.3 Termination for Non-Appropriation**

### **12.3.1 Termination for Non-Appropriation by Customer**

Customers may terminate a Purchase Agreement if funds sufficient to pay its obligations under the Contract are not appropriated:

- (a) by the governing body on behalf of local governments;
- (b) by the Texas legislature on behalf of state agencies; or
- (c) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Texas Government Code Chapter 317.

In the event of termination, Customer will not be in default or breach under a Purchase Agreement or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, for any damages, or for any other amounts caused by or associated with termination.

### **12.3.2 Termination for Non-Appropriation by DIR**

DIR may terminate the Contract if funds sufficient to pay its obligations under the Contract are not appropriated by:

- (a) Texas legislature; or
- (b) budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Texas Government Code Chapter 317.

In the event of termination, DIR will not be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, for any damages or for any other amounts caused by or associated with termination.

## 12.4 Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving Successful Respondent thirty (30) calendar days' written notice. A Customer may terminate a Purchase Agreement by giving Successful Respondent thirty (30) calendar days' written notice.

## 12.5 Termination for Cause

### 12.5.1 Termination for Cause by DIR

DIR may, upon written notice to Successful Respondent, terminate the Contract in whole or in part as of the termination date specified in the notice if Successful Respondent:

- (a) Commits a material breach of this Contract which is not cured within thirty (30) calendar days after notice of breach from DIR, or such other applicable timeframe for cure expressly provided herein; or
- (b) Commits a material breach of this Contract which is not capable of being cured within the period specified in the notice.

### 12.5.2 Termination for Cause by Successful Respondent

(a) Successful Respondent may terminate the Contract in whole as of the termination date specified in its notice if Successful Respondent issues a written notice of default to DIR upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract, upon the following preconditions:

- (1) First, the Successful Respondent must comply with the requirements of Texas Government Code Chapter 2260 in an attempt to resolve a dispute;
- (2) Second, if the dispute remains unresolved after complying with Texas Government Code Chapter 2260's dispute resolution provisions, then Successful respondent shall give DIR thirty (30) calendar days from receipt of notice to cure said default. If DIR fails to cure the default within the timeframe allowed, the Successful Respondent may, at its option and in addition to any other remedies it may have available, terminate the Contract.

(b) Successful Respondent may terminate a Purchase Agreement in whole or in part as of the termination date specified in its notice if Successful Respondent issues a written notice of default to Customer upon the occurrence of a material breach of any covenant, certification, representation, warranty, or provision of the Contract or Purchase Agreement, subject to the following preconditions:

- (1) First, the Successful Respondent must follow the dispute resolution process described in Section 11.2 above;
- (2) Second, if the dispute remains unresolved, the Successful Respondent shall give Customer thirty (30) calendar days from receipt of notice to cure said default. If Customer fails to cure said default within the timeframe allowed, the Successful Respondent may, at its option and in addition to any other remedies it may have available, terminate a Purchase Agreement.

### 12.5.3 Termination for Cause by Customer

(a) Customers are not parties to the Contract and therefore have no power to terminate the Contract.

(b) Customer may, upon written notice to Successful Respondent, terminate a Purchase Agreement in whole or in part as of the termination date specified in the notice if Successful Respondent:

- (1) Commits a material breach of a Purchase Agreement which is not cured within thirty (30) calendar days after notice of breach from Customer, or such other applicable timeframe for cure expressly provided in the notice or in the Purchase Agreement; or
- (2) Commits a material breach of a Purchase Agreement which is not capable of being cured within the period specified in the notice or in the Purchase Agreement.

(c) Customer may immediately suspend or terminate a Purchase Agreement without advance notice in the event Successful Respondent fails to comply with confidentiality, privacy, security requirements, environmental, or safety laws or regulations, if that non-compliance relates or may relate to Successful Respondent's provision of goods or services to the Customer.

### 12.6 Customer Rights Under Termination of Contract

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and any Purchase Agreement issued prior to the termination or expiration of the Contract. A Purchase Agreement and certain rights and obligations survive the expiration or termination of the Contract in accordance with Section 4.5.

### 12.7 Successful Respondent Rights Under Termination of Purchase Agreement

In the event a Purchase Agreement expires or is terminated, a Customer shall pay all amounts due for products or services ordered prior to the effective expiration or termination date and ultimately accepted by Customer. Certain rights and obligations survive the expiration or termination of the Contract in accordance with Section 4.5.

### 12.8 Transition Assistance

Upon request by Customer prior to expiration or termination of a Purchase Agreement, Successful Respondent shall provide reasonable and necessary assistance to accomplish a complete transition of the products or services from Successful Respondent to Customer or any replacement provider designated by Customer without any interruption of or adverse impact on the products or services. Successful Respondent shall perform services related to the transition at no additional cost beyond what would be paid under a Purchase Agreement. Customer and Successful Respondent may identify specific transition services needed in a Purchase Agreement.

## 13 INDEMNIFICATION AND LIABILITY

### 13.1 Indemnification

(a) SUCCESSFUL RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS DIR, THE

STATE OF TEXAS, AND CUSTOMERS, AND THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, ASSIGNEES, AND DESIGNEES FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, RESULTING FROM, OR RELATED TO:

(1) any acts or omissions of Successful Respondent, its employees, or Third Party Providers in or in connection with the execution or performance of the Contract and any Purchase Agreements issued under the Contract;

(2) any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Agreements issued under the Contract;

(3) any breach, disclosure, ransomware attack, or exposure of data or information of or regarding DIR or any Customer that is provided to or obtained by Successful Respondent in connection with the Contract, including DIR data, Customer Data, confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data by Successful Respondent, its employees, representatives, agents, or Third-Party Providers in or in connection with the execution or performance of the Contract and any Purchase Agreements issued under the Contract; and

(4) tax liability, unemployment insurance, workers' compensation, or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Agreements issued under the Contract.

(b) Successful Respondent shall coordinate the defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit. Successful Respondent may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. For non-Texas state agency Customers, Customer's legal counsel shall coordinate the defense with Successful Respondent. Successful Respondent and the Customer shall furnish timely written notice to each other and to DIR of any claim.

(c) This section is not intended to and shall not be construed to require Successful Respondent to indemnify or hold harmless DIR or Customers for any claims or liabilities resulting from the negligent acts or omissions of DIR or Customer or their employees.

## 13.2 Infringements

If Successful Respondent becomes aware of an actual or potential claim of an Infringement, or Customer provides Successful Respondent with notice of an actual or potential claim of an Infringement, Successful Respondent shall pay all costs as defense, including attorneys' fees, and may (or in the case of an injunction against Customer, shall), at Successful Respondent's sole expense:

(a) procure for Customer the right to continue to use the affected portion of the product or

service, or

- (b) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

### 13.3 Property Damage

In the event of loss, damage, or destruction of any tangible or real property of Customer or the State due to the negligence, misconduct, wrongful act or omission on the part of Successful Respondent, its employees, agents, representatives, or third-party providers, Successful Respondent shall pay the full cost of either repair, reconstruction, or replacement of the property, at the Customer's sole election. Customer shall determine the cost, which Successful Respondent shall pay within ninety (90) calendar days after the date Successful Respondent receives Customer's written notice of the cost.

### 13.4 Limitation of Liability

- (a) For any claim or cause of action arising under or related to the Contract, to the extent permitted by the Constitution and the laws of the State, none of the parties are liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of those damages.
- (b) Successful Respondent and a Customer may include in a Purchase Agreement a term limiting Successful Respondent's liability for damages in any claim or cause of action arising under or related to the Purchase Agreement; on the condition that any such term may not limit Successful Respondent's liability below two-times the total value of the Purchase Agreement. This value includes all amounts paid and amounts to be paid over the life of the Purchase Agreement to Successful Respondent by the Customer as described in the Purchase Agreement.
- (c) Notwithstanding the foregoing or anything to the contrary, any limitation of Successful Respondent's liability contained in this Contract or in a Purchase Agreement shall not apply to: claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under the Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of a violation.

## 14 REQUIRED INSURANCE COVERAGE

### 14.1 General Insurance Requirements.

- (a) As a condition of the Contract, Successful Respondent shall provide the listed insurance coverage to DIR within ten (10) Business Days of execution of the Contract if Successful Respondent may provide services which require that Successful Respondent's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers.
- (b) In addition, when engaged by a Customer to provide services on Customer premises, Successful Respondent shall, at its own expense, secure and maintain the specified

insurance coverage, and shall provide proof of the insurance coverage to Customer within ten (10) Business Days following the execution of a Purchase Agreement.

- (c) Successful Respondent may not begin performance under the Contract until it provides proof of insurance coverage to DIR. Successful Respondent may not begin performance under a Purchase Agreement until it provides proof of insurance coverage to Customer and Customer approves the proof of coverage.
- (d) If Successful Respondent's services under the Contract will not require Successful Respondent to perform work on Customer premises, or to use vehicles to conduct work on behalf of Customers, Successful Respondent may certify to those facts and agree to provide notice and the required insurance if the facts change. DIR will provide a form for the Certification of Off-Premises Customer Services, which Successful Respondent shall execute. An executed Certification shall satisfy the insurance requirements.
- (e) Successful Respondent acknowledges that Customer may have additional insurance requirements.
- (f) Proof of additional insured coverage for DIR shall be provided to DIR. Proof of additional insured coverage for Customer shall be provided to Customer.

## 14.2 Provider and Additional Insured Requirements

All required insurance must be issued by companies that have a minimum A rating and a minimum Financial Size Category Class of VII from AM Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Agreement issued to Successful Respondent thereunder.

## 14.3 Commercial General Liability

Commercial general liability must include \$1,000,000.00 per occurrence for bodily injury and property damage with a separate aggregate limit of \$2,000,000.00; medical expenses per person of \$5,000.00; personal injury and advertising liability of \$1,000,000.00; products/completed operations aggregate limit of \$2,000,000.00; and damage to premises rented limit of \$50,000.00. Customers may require additional umbrella/excess liability insurance. The policy shall contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under the Contract;
- (b) Independent contractor coverage;
- (c) DIR and Customer listed as an additional insured; and
- (d) Waiver of subrogation.

## 14.4 Workers' Compensation Insurance

Workers' compensation insurance and employers' liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act found in Texas Labor Code Title 5, Subtitle A, and minimum policy limits for employer's liability of \$1,000,000 per

accident, \$1,000,000 disease per employee and \$1,000,000 per disease policy limit.

#### **14.5 Business Automobile Liability Insurance**

Business automobile liability insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following provisions:

- (a) Waiver of subrogation; and
- (b) DIR and Customer listed as an additional insured.

### **15 SUCCESSFUL RESPONDENT OBLIGATIONS**

#### **15.1 Drug Free Workplace Policy**

Successful Respondent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 United States Code Sections 8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 Code of Federal Regulations Part 280, Subpart F182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may be issued.

#### **15.2 Ability to Conduct Business in Texas**

Successful Respondent shall be validly formed and currently authorized to do business under the laws of its state of organization and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code Chapter 9. Upon request by DIR, Successful Respondent shall provide all documents and other information necessary to establish Successful Respondent's authorization to do business in the State of Texas and under the laws of its state of organization.

#### **15.3 Equal Opportunity Compliance**

Successful Respondent shall abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws, the laws of the State of Texas, and the laws of the state in which Successful Respondent's primary place of business is located. In accordance with those laws, regulations, and executive orders, Successful Respondent agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Successful Respondent under the Contract. If Successful Respondent is found to be not in compliance with these requirements during the term of the Contract, Successful Respondent shall take appropriate steps to correct these deficiencies. Upon request, Successful Respondent will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

## 15.4 Use of Subcontractors

If Successful Respondent uses any subcontractors in the performance of the Contract, Successful Respondent must make a good faith effort in the submission of its Appendix B, HSP, in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). Successful Respondent must provide a revised copy of Appendix B, HSP, and obtain DIR's approval of the HSP before it can engage additional subcontractors in the performance of the Contract or remove subcontractors currently engaged in the performance of the Contract. Successful Respondent is solely responsible for the performance of its obligations under the Contract.

## 15.5 Responsibility for Actions

Successful Respondent is solely responsible for its actions and those of its Third Party Providers. Successful Respondent agrees that neither Successful Respondent nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

## 15.6 Taxes, Worker's Compensation, and Unemployment Insurance

Successful Respondent agrees and acknowledges that during the existence of the Contract, Successful Respondent is entirely responsible for the liability and payment of Successful Respondent's and its employees' taxes of whatever kind, arising out of the performances in the Contract. Successful Respondent shall comply with all applicable state and federal laws, including laws regarding wages, taxes, insurance, and workers' compensation. Successful Respondent agrees and acknowledges that Successful Respondent and its employees, representatives, agents, and subcontractors shall not be entitled to any state benefit or benefit of another governmental entity Customer. Customer, DIR, and the State shall not be liable to Successful Respondent, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance, workers' compensation, or any benefit available to a state employee or employee of another governmental entity Customer.

## 15.7 Confidentiality and the Texas Public Information Act

Successful Respondent acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code Section 552.003 are subject to the Texas Public Information Act. Successful Respondent also acknowledges that DIR and governmental body Customers will comply with the Public Information Act, all opinions of the Texas Attorney General's office concerning the Act, and applicable judicial orders or opinions interpreting the Act.

## 15.8 No Recordings

Successful Respondent shall not record any meeting, call, conference, or other communication with DIR, a Customer, or an Eligible Customer, without prior written consent of DIR, the Customer, or the Eligible Customer, as applicable.

## 15.9 Security of Premises, Equipment, Data and Personnel

Successful Respondent or Third-Party Providers may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to a Customer. Successful Respondent and Third-

Party Providers shall preserve the safety, security, and the integrity of the personnel, premises, equipment, and other property, including data, information, files, and materials belonging to Customer, in accordance with the instruction of Customer and to the degree in which Successful Respondent or Third-Party Provider protects its own information. Successful Respondent shall be liable for all damage to Customer-owned, leased, or occupied property and equipment caused by Successful Respondent or a Third-Party Provider. If Successful Respondent or Third-Party Provider fails to comply with Customer's security requirements, then Customer may immediately terminate the Purchase Agreement.

### **15.10 Background and Criminal History Investigation**

Prior to commencement of any services, background and criminal history investigation of Successful Respondent's employees and Third-Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Successful Respondent conduct the background checks itself. Should any employee or Third-Party Provider of Successful Respondent who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background or criminal history check, then Customer may immediately terminate its Purchase Agreement and related Service Agreement or request replacement of the employee or Third-Party Provider in question.

### **15.11 Overcharges**

Successful Respondent assigns to DIR all claims for overcharges associated with the Contract which arise under the antitrust laws of the United States, 15 United States Code Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Texas Business and Commerce Code Chapter 15.

### **15.12 Use of State Property**

Successful Respondent shall not use equipment, property, location, or any other resources of a Customer, DIR, or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers, and telephones using State of Texas long distance services. Upon demand by Customer, Successful Respondent shall immediately reimburse Customer for any charges it incurs by using a Customer's equipment for any purpose other than performing services under this Agreement. Such use shall constitute breach of contract and may result in termination of the Contract, the Purchase Agreement, and other remedies available to DIR and Customer under the Contract and applicable law.

### **15.13 Immigration**

Successful Respondent shall comply with all requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments. Successful Respondent shall require its subcontractors to comply with the requirements of this Section and Successful Respondent is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Successful Respondent and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

#### **15.14 Product or Services Substitutions**

Successful Respondent must not make substitutions to products or services without the prior written consent of DIR or Customer, as applicable.

#### **15.15 Secure Erasure of Hard Disk Capability**

Successful Respondent agrees that all managed products or services equipped with hard disk drives such as computers, telephones, printers, fax machines, scanners, multifunction devices, shall have the capability to securely erase, destroy, or render unreadable data written to the hard drive prior to final disposition of the managed products or services, either at the end of product's useful life or the end of the related Purchase Agreement for such products or services, in accordance with 1 Texas Administrative Code Chapter 202 or NIST 800-88.

#### **15.16 Successful Respondent Reporting Requirements**

Successful Respondent shall comply with Texas Business and Commerce Code Chapter 110, requiring computer technicians to report images of child pornography.

### **16 REQUIRED CLAUSES AND CERTIFICATIONS**

#### **16.1 Antitrust Affirmation**

Successful Respondent represents and warrants that, in accordance with Texas Government Code Section 2155.005, neither Successful Respondent nor the firm, corporation, partnership, or institution represented by Successful Respondent, 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, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of its Response to any competitor or any other person engaged in the same line of business as Successful Respondent.

#### **16.2 Buy Texas**

To the extent applicable, in accordance with Texas Government Code Section 2155.4441, Successful Respondent agrees that during the performance of a Purchase Agreement 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.

#### **16.3 Child Support Obligation Affirmation**

Successful Respondent certifies that it is not currently delinquent in the payment of any franchise tax owed to the State and is not ineligible to receive payment under Texas Family Code Section 231.006. Successful Respondent acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

#### **16.4 Cloud Computing Risk and Authorization Management Program (TX-RAMP)**

If the services to be provided under a Purchase Agreement include cloud computing services, Successful Respondent shall comply with the requirements of the Texas Risk and Authorization Management Program ("TX-RAMP"), as provided by Texas Administrative Code Title 1 Section

202.27 and Section 202.77 and the TX-RAMP Program Manual ("Program Manual"). Successful Respondent shall maintain program compliance and certification throughout the term of the Purchase Agreement, including providing all quarterly and ongoing documentation required by the Program Manual and any other continuous monitoring documentation or artifacts required by the Customer issuing the Purchase Agreement. Upon request from DIR or the Customer issuing the Purchase Agreement, Successful Respondent shall provide all documents and information necessary to demonstrate Successful Respondent's compliance with TX-RAMP.

## **16.5 Computer Equipment Recycling Program**

If the products and services to be provided include the purchase or lease of computer equipment, Successful Respondent certifies that it is in compliance with Texas Health and Safety Code Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 Texas Administrative Code Chapter 328.

## **16.6 Contracting Information Responsibilities**

Successful Respondent represents and warrants that it will comply with the requirements of Texas Government Code Section 552.372(a) as applicable. Except as provided by Texas Government Code Section 552.374(c), the requirements of Texas Government Code Chapter 552 Subchapter J, may apply to the Contract or Purchase Agreements, and Successful Respondent agrees that the Contract or Purchase Agreements can be terminated if Successful Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

## **16.7 COVID-19 Vaccine Passport Prohibition**

Successful Respondent certifies that, under Texas Health and Safety Code Section 161.0085, Successful Respondent is not ineligible to receive the Contract.

## **16.8 Critical Infrastructure Affirmation**

Pursuant to Texas Government Code Section 2275.0102:

(a) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Respondent is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure;

(b) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not owned by or the majority of stock or other ownership interest of Successful Respondent is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; and

(c) Successful Respondent, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Successful Respondent, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical

infrastructure.

## 16.9 Additional Certification Regarding Foreign Ownership

Pursuant to Texas Executive Order GA-48, Respondent certifies that neither it, nor its holding companies or subsidiaries, is:

- (a) Listed in Section 889 of the 2019 National Defense Authorization Act; or
- (b) Listed in Section 1260H of the 2021 National Defense Authorization Act; or
- (c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R Section 791.4; or
- (d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R Section 791.4.

## 16.10 Cybersecurity Training

In accordance with Texas Government Code Section 2054.5192, for any contract with a Texas state agency or institution of higher education, if Successful Respondent, or a subcontractor, officer, or employee of Successful Respondent, will have access to a state computer system or database, then Successful Respondent shall ensure that the officer, employee, or subcontractor shall complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by Customer Texas state agency or institution of higher education. The cybersecurity training program must be completed by the officer, employee, or subcontractor during the term of the Contract and during any renewal period. Successful Respondent shall verify to the Customer Texas state agency or institution of higher education completion of the program by each officer, employee, or subcontractor.

## 16.11 Data Management and Security Controls

If a Purchase Agreement is subject to Texas Government Code Section 2054.138, Successful Respondent shall meet the security controls required by the Purchase Agreement and shall periodically provide to the Customer evidence that Successful Respondent meets all required security controls.

## 16.12 Dealings with Public Servants

Successful Respondent represents and warrants that it has not given, offered to give, and do not intend 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.

## 16.13 Deceptive Trade Practices; Unfair Business Practices

- (a) Successful Respondent represents and warrants that neither Successful Respondent nor any of its subcontractors has been
  - (1) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Texas Business and Commerce Code Chapter 17, or

(2) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

(b) Successful Respondent certifies that it has no officers who have served as officers of other entities who have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation, or other proceeding.

#### **16.14 Debts and Delinquencies**

Successful Respondent acknowledges and agrees that, to the extent Successful Respondent 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 Successful Respondent is otherwise owed under the Contract may be applied toward any debt Successful Respondent owes the State of Texas until the debt is paid in full.

#### **16.15 Energy Company Boycotts**

If Successful Respondent is required to make a verification pursuant to Texas Government Code Section 2276.002, Successful Respondent verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract.

#### **16.16 Entities that Boycott Israel**

In accordance with Texas Government Code Section 2271.002, Successful Respondent certifies that either:

- (a) It meets an exemption criterion under 2271.002; or
- (b) It does not boycott Israel and will not boycott Israel during the term of the Contract.

#### **16.17 E-Verify Program**

Pursuant to Texas Government Code Chapter 673, Successful Respondent shall, as a condition of the Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- (a) all people employed by Successful Respondent to perform duties within Texas; and
- (b) all persons, including subcontractors, assigned by Successful Respondent to perform work pursuant to the Contract within the United States of America.

#### **16.18 Excluded Parties**

Successful Respondent 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.

#### **16.19 Executive Head of a State Agency Affirmation**

Pursuant to Texas Government Code Section 669.003, relating to contracting with an executive

head of a Texas state agency, no person who served as an executive of DIR in the past four (4) years was involved with or has any interest in the Contract. If Successful Respondent employs or has used the services of a former executive of DIR, then Successful Respondent shall provide the following information to DIR: name of the former executive, the date of separation from DIR, the position held with Successful Respondent, and the date of employment with Successful Respondent.

#### **16.20 Financial Participation Prohibited**

Under Texas Government Code Section 2155.004, Successful Respondent certifies that the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

#### **16.21 Firearm Entities and Trade Associations Discrimination**

If Successful Respondent is required to make a verification pursuant to Texas Government Code Section 2274.002, Successful Respondent verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

#### **16.22 Foreign Terrorist Organizations**

In accordance with Texas Government Code Section 2252.152, Successful Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.

#### **16.23 Former Agency Employees**

Successful Respondent 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 DIR during the twelve (12) month period immediately prior to the date of execution of the Contract.

#### **16.24 Human Trafficking Prohibition**

In accordance with Texas Government Code Section 2155.0061, the individual or business entity named in the Contract is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

#### **16.25 No Conflicts of Interest**

Successful Respondent 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 the appearance of impropriety, and, if these facts change during the course of the Contract, certify Successful Respondent shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety.

#### **16.26 Prior Disaster Relief Contract Violation**

Under Texas Government Code Section 2155.006 and Section 2261.053 it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment

withheld if this certification is inaccurate.

### 16.27 Public Information

Pursuant to Texas Government Code Section 2252.907, Successful Respondent 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. Each State governmental body Customer should include in their Purchase Agreement any additional terms regarding the specific format by which Successful Respondent must make the information accessible by the public.

### 16.28 Suspension and Debarment

Successful Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration, nor is Successful Respondent subject to any Federal Executive Orders issued banning certain entities or countries.

### 16.29 Additional Certifications

Successful Respondent certifies, represents, and warrants that:

- (a) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (b) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Successful Respondent, which if determined adversely to Successful Respondent, will have a material adverse effect on the ability to fulfill its obligations under the Contract;
- (c) as of the Effective Date of the Contract, it is not listed in any of the Divestment Statute Lists published on the Texas Comptroller of Public Accounts webpage (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
- (d) all equipment, materials, works, and services to be used in performing and fulfilling the requirements of the Contract shall be of high professional quality and workmanship and consistent with or better than applicable industry standards, if any;
- (e) it has complied with Texas Government Code Section 556.0055 and its restriction on lobbying expenditures; and
- (f) its receipt of appropriated or other funds under this Agreement is not prohibited by Texas Government Code Section 556.005 or Section 556.008.

### 16.30 No False Statements

Successful Respondent represents and warrants that all information provided by Successful Respondent is current, complete, true, and accurate. During the term of the Contract, Successful Respondent shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Successful Respondent shall fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the

certifications, representations, and warranties and any changes thereto.

### **16.31 Updates to Certifications**

Successful Respondent shall report to the DIR Contract Manager within five (5) Business Days any change to the information contained in the Certification Statement of Exhibit A of the RFO or Section 16, Successful Respondent Certifications of this Appendix A to the Contract. Successful Respondent shall fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and the status of conflicts of interest.

### **16.32 Customers May Require Additional Certifications**

Successful Respondent acknowledges that each Customer may require additional certifications or representations in addition to the certifications in this Contract.

**<END OF APPENDIX A>**

## **INTERLOCAL COOPERATION CONTRACT for Information Resources Technologies**

THIS INTERLOCAL COOPERATION CONTRACT is entered into by and between The City of Santa Fe Purchasing Division, New Mexico [DIR Customer], with its principal place of business at 2651 Siringo Road Building H, Santa Fe, NM 87505 and the STATE OF TEXAS, acting by and through the DEPARTMENT OF INFORMATION RESOURCES, 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701 [DIR], pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 for Texas based Customers and Section 2054.0565, Texas Government Code, for out of state Customers.

### **I. STATEMENT OF PURPOSE:**

The purpose of this Interlocal Cooperation Contract [Contract] is to allow DIR Customer to purchase information resources technologies through DIR Contracts.

### **II. CONSIDERATION:**

- a. Per the Interlocal Cooperation Act, Texas Government Code, § 791.025, or other applicable law, the DIR Customer satisfies the requirement to seek competitive bids for the purchase of goods and/or services.
- b. DIR agrees to allow DIR Customer to procure information resources technologies through existing Vendor contracts and Vendor contracts that DIR may enter into during the term of this interlocal cooperation contract, in accordance with specifications submitted through purchase orders from Customer. All DIR Vendor contracts shall be made available to the DIR Customer via the DIR Internet web site. DIR Customers utilizing the Cooperative Contracts shall issue a Purchase Order directly to the relevant Vendor. DIR Customers utilizing a DIR Contract for which DIR is the fiscal agent, the DIR Customer's Purchase Order shall be issued to DIR.
- c. DIR Customer agrees to notify DIR of any substantial problems in quality or service in relations with a vendor under a DIR vendor contract.

### **III. PAYMENT FOR GOODS AND SERVICES:**

- a. DIR Customer shall comply with Chapter 2251, Texas Government Code, or applicable local law, in making payments to the Vendor. Payment under a DIR Contract shall not foreclose the right to recover wrongful payments.
- b. Payments must be made in accordance with laws and procedures applicable to DIR Customer.
- c. DIR Customer agrees to pay the rates and/or prices set by DIR with its vendors. DIR Customer understands these rates and/or prices include a DIR administrative fee.
- d. All purchases executed under a DIR Contract will require a DIR Customer purchase order.

### **IV. TERM OF CONTRACT:**

This Interlocal Cooperation Contract shall begin when fully executed by both parties and shall continue until terminated.

Either party, upon written notice, may terminate this contract on thirty (30) days advance written notice. Customers shall pay for all goods and services received through the effective date of termination.

**V. GOVERNING LAW AND OTHER REPRESENTATIONS:**

DIR Customer:

[ ] Unit of Texas Local Government hereby certifying that is has statutory authority to perform its duties hereunder pursuant to Chapter \_\_\_\_\_, Texas \_\_\_\_\_ Code.

[X] Non-Texas State agency or unit of local government of another state hereby certifying that it has statutory authority to enter in to this Interlocal Agreement and perform its duties hereunder pursuant to NEW MEXICO STATUTES (NMSA) SECTIONS 13-1-135 COOPERATIVE PROCUREMENT AUTHORIZED OR 13-1-129 PROCUREMENT UNDER EXISTING CONTRACTS.

**VI. CERTIFYING FUNCTION:**

Department of Information Resources acting as the owner of the DIR Contracts hereby certifies the eligibility of the DIR Customer to use the DIR Contracts.

**VII. TERMS AND CONDITIONS FOR OUT OF STATE DIR CUSTOMERS:**

SELECTIONS PER THE GOVERNING LAW OF THE OUT OF STATE DIR CUSTOMER:

1. In any issue concerning this Interlocal Contract, or the DIR Contracts, in which DIR is involved shall be governed by the law of the State of Texas, excluding the conflict of law provisions.
2. Exclusive Venue for any litigation whatsoever involving DIR is the state district court of Travis County, Texas.
3. DIR Customer's use of the DIR Contracts shall be governed by the law of the State of New Mexico, excluding the conflicts of law provisions.
4. Exclusive Venue for litigation arising between DIR Customer and Vendor from use of the DIR Contracts is state or federal courts located in Santa Fe, County, NM.
5. The following dispute resolution procedures shall be used to resolve disputes arising from use of the DIR Contracts: A mutually agreeable alternative dispute resolution method must be sued before initiation of a judicial action.

**VIII. Notification**

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

DIR Customer:

Contact Name: ROBERT RODARTE  
Customer Name: THE CITY OF SANTA FE PURCHASING OFFICE  
Address: 2651 SIRINGO ROAD BUILDING H  
City, State, Zip Code: SANTA FE, NM 87505  
Phone Number: 505.955.5712  
Facsimile: 505.955.5714  
Email: RRODARTE@SANTAFENM.GOV

This Interlocal Cooperation Contract is executed to be effective as of the date of the last party to sign.

**CITY OF SANTA FE PURCHASING OFFICE**

Authorized By: Signature on File

Name: ROBERT RODARTE

Title: PURCHASING OFFICER

Date: 4/1/16

**THE STATE OF TEXAS, acting by and through the DEPARTMENT OF INFORMATION RESOURCES**

Authorized By: Signature on File

Name: Dale Richardson

Title: Chief Operations Officer

Date: 4/12/2016

Office of General Counsel: Signature on File Date: 4/6/2016











# GB-Langan\_Memo,\_contract,\_attachments\_signed\_by\_PW

Final Audit Report

2026-06-12

Created:	2026-06-04
By:	AP (aeperez@santafenm.gov)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAAYc4hGWW16zhxgAyeJZSTX7dWYR6pd33H
Documents:	Langan_Memo,_contract,_attachments_signed_by_PW.pdf (98 pages)

## "GB-Langan\_Memo,\_contract,\_attachments\_signed\_by\_PW" History

-  Document created by ALYSSA PEREZ (aeperez@santafenm.gov)  
2026-06-04 - 4:14:24 PM GMT- IP address: 63.232.20.2
-  Document emailed to ALYSSA PEREZ (aeperez@santafenm.gov) for filling  
2026-06-04 - 4:17:19 PM GMT
-  Signer ALYSSA PEREZ (aeperez@santafenm.gov) entered name at signing as AP  
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Form filling Date: 2026-06-04 - 4:18:47 PM GMT - Time Source: server- IP address: 63.232.20.2 - Signature Appearance Selected: TYPE
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-  Document sent to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign  
2026-06-04 - 4:21:16 PM GMT
-  Email viewed by JoAnn Lovato (jdlovato@santafenm.gov)  
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