

## CONTRACT # 21-062L

This Contract, made effective as of its execution, by and between the **METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS** ("COG"), a nonprofit corporation organized under the laws of the District of Columbia, with an address of 777 North Capitol Street, NE, Suite 300, Washington, DC 20002; and **WITT O'BRIEN's, LLC** ("Contractor"), a limited liability company organized under the laws of the State of Delaware and having a business address at 1201 15<sup>th</sup> Street NW, Suite 600, Washington, DC 20005.

COG and the Contractor agree as set forth below:

### ARTICLE I. CONTRACT DOCUMENTS

- A. The Contract shall consist of this Contract and other documents issued prior to the execution of this Contract including:

Document Title	Exhibit
Request for Proposal 21-002, "Preparedness Planning, Program Management, Administrative and Training & Exercise Services", including all addendums thereto, collectively referred to hereinafter as "the RFP"	A
Contractor's response to the RFP, dated October 2, 2020, including all documents submitted, collectively referred to hereinafter as "the Proposal"	B
COG's Standard Terms and Conditions	C
Cooperative Rider Clause	D

- B. These documents form the Contract and are incorporated into the Contract by reference. In the event there is a conflict between the documents comprising this Contract, the following order of precedence shall apply: (a) This Contract; (b) COG Standard Terms and Conditions (Exhibit C); (c) the Proposal (Exhibit B); then (d) the RFP (Exhibit A). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

### ARTICLE II. DEFINITIONS

Throughout this Contract, the following definitions shall hold:

- A. *Contracting Officer*. The Executive Director of the Metropolitan Washington Council of Governments or their designee. The Contracting Officer is the only party authorized to make changes or amendments, and execute written agreements for same, on COG's behalf.

- B. *National Capital Region ("NCR")*. As defined in 32 CFR § 70.3, the National Capital Region consists of the District of Columbia, Prince George's and Montgomery Counties in Maryland, Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia, and all cities and towns included within the outer boundaries of the foregoing counties.
- C. *Participating Agencies*. A government entity or other organization, located within or outside of the NCR, who uses this Contract as described in the Cooperative Rider Clause (Exhibit D).
- D. *State Preparedness Report ("SPR")*. A self-assessment of a jurisdiction's current capability levels against the capability targets identified in the Threat and Hazard Identification and Risk Assessment.
- E. *Subcontractor*. An individual or business firm contracted by Contractor to perform part or all of the work requested of Contractor.
- F. *Task Order*. Task Orders are requests for proposal issued to the vendors on the Master Contracts. Responses to Task Orders will be evaluated and scored by a technical selection committee.
- G. *Threat and Hazard Identification and Risk Assessment ("THIRA")*. An annual process that helps make the "whole community" safer by understanding the unique risks it faces. The THIRA and State Preparedness Report are completed each year in accordance with the U.S. Department of Homeland Security ("DHS") grant guidance and in support of the Regional Mission.

### ARTICLE III. SCOPE OF WORK

- A. The Scope of Work contained herein is intended to outline general work which Contractor, being one of multiple awardees under the RFP, may be requested to perform, pursuant to this Contract and any Task Orders which may be issued by COG under this Contract. Specific details of scope, time, and budget for each item of work will be provided in each individual Task Order (See Article IV).
- B. The functional areas listed below are not all-inclusive of the services which may be required under any Task Order which may be issued. Some of the Task Order work may require awardees to provide guidance, checklists, or model forms to address the area of work, or to direct or monitor performance of the work, as opposed to Contractor directly performing the work.
- C. *Preparedness Planning*. Preparedness is a continuous process incorporated throughout a comprehensive emergency management program, geared toward ensuring efficient and effective prevention, protection, response, recovery, and mitigation capabilities before, during, and after disasters. As such, key preparedness tasks may include:
  - 1. Development, review, assessment, and/or the update of preparedness plans and associated materials. Plans may include strategic, operational, and/or tactical plans. Examples may include support function plans, function-specific plans, facility-specific plans, incident-specific plans, and continuity of operations plans, among others.
  - 2. Development of supporting documents and tools including reports, white papers, assessments, briefing materials, presentations, operational tools, databases, technical diagrams, socialization material, etc.

3. Development of public outreach materials including brochures, citizens' guides, website content, leaflets, articles, posters, public meetings, community forums, and other methods of public outreach.
- D. *Training*. The NCR offers a comprehensive and effective training program to train state and local officials in disaster mitigation, preparedness, response, and recovery. Jurisdictions across the NCR can and do cope with disasters by preparing in advance through training activities and by using the skills learned to build local teams and coalitions that respond to emergencies. Key tasks may include:
1. The instruction of courses in training program management, design, development, conduct, evaluation, and improvement planning for state and local partners as prescribed by the National Standard Exercise Curriculum. The major focus of the delivered training is at the Intermediate and Advanced levels consistent with that of FEMA and other national accreditation bodies.
  2. Contingency support for the evaluation of responses to incidents or real-world events, including after-action reports.
  3. Assisting in the development, enhancement, and delivery of an extensive array of training opportunities for State and local emergency managers, public officials, members of volunteer relief organizations, professionals in related fields, business sector, and the whole community. This may include:
    - a. Curriculum development
    - b. Direct delivery of new and established training courses
    - c. Conversion of selected training courses from direct delivery to web-based
    - d. Development of training materials for non-English speaking persons or persons with limited English proficiency
    - e. Provide training instructors with specialized experience in the functional roles of the diverse stakeholder community (e.g. law enforcement, fire, etc.)
  4. Reviewing current practices and procedures related to training and exercise development, incorporating other states' model policies and training procedures into the current practice and procedures, and making the appropriate recommendations for the region's training and exercise plan and strategy.
  5. Recommending training and policy development, establishing appropriate training policing and strategies that would promote an effective strategy by assessing real-world incidents, planned events, or accredited exercises, and developing a strategy for improvement.
- E. *Exercise*. Key Exercise tasks may include:
1. Developing, conducting and evaluating discussion-based (seminars, workshops, tabletop exercises, and games) and operations-based exercises (drills, functional and full-scale) utilizing the Homeland Security Exercise and Evaluation Program ("HSEEP") guidelines.
  2. Provision of technical and planning assistance to NCR agencies to support the refinement of processes and/or the correction of areas needing improvement shown during training events.

3. Exercise plans will sufficiently impact the local, multi-jurisdictional, agency or multi-agency operations in a manner similar to what would be expected during an actual incident in regard to casualties, road infrastructure, intelligence sharing, cyber security and other critical infrastructures that may be threatened.
  4. During any background research of plans or details in preparation for an exercise, Contractors must use the most current and accurate information available to plan exercises to ensure and enhance realism and relevance to the District, multi-jurisdictional agencies, or multi-agency partnerships.
  5. Effective project management to ensure identification, development, and management of critical and supportive activities, frequent communication about project status, and use of management timelines (e.g., project management timeline scheduling software).
  6. Performing tasks associated with the design, development, conduct, and evaluation of preparedness exercises, during the term of the contract. Contractors shall provide the necessary labor, equipment, and materials to perform the work and deliver products as described above.
- F. *Disabilities and Access & Functional Needs Expertise.* Contractors shall provide an integrated approach in the application and incorporation of inclusive emergency management practices, as mandated by local, state, and federal laws associated with persons with disabilities and others with access and functional needs.
1. *Administrative Support, Program, & Project Management.* Tasks may include:
    - a. Provide project management, program management, and administrative support services.
    - b. Provide grants and financial management for emergency management functions.
    - c. Provide and/or recommend applicable technology that will help streamline and assist with emergency preparedness.
    - d. Develop, assess, revise information management tools, processes, publications, computer applications, software, and technology as requested.
    - e. Provide support towards Emergency Management Accreditation Program (“EMAP”) compliance.
    - f. Provide support for the Capability Assessment and Prioritization Process (“CAPP”), which includes collecting, collating, validating, and reporting for the annual THIRA and SPR process, as well as project prioritization associated with the grant funding process.
    - g. Provide subject matter expertise to support District agencies with the implementation of the National Incident Management System (“NIMS”) and Incident Command System (“ICS”).
- G. In all of these tasks, Contractor may be required to work with various partners and key stakeholders from public and non-public sector entities, incorporating feedback and concurrence from all primary, support, coordinating, and cooperating agencies.

#### ARTICLE IV. TASK ORDER PROCESS

- A. Once COG is provided with grant funding, the grant Project Management Plan ("PMP") and Statement of Work ("SOW"), COG will develop a description of the services that are to be the subject of a particular Task Order. The criteria may vary and will be listed in each Task Order proposal request when issued.
- B. Contractor will be invited to submit, for consideration, a supplemental proposal in response to each issued Task Order, and COG or a member jurisdiction will determine whether to award a given Task Order to Contractor.
- C. Task Orders will be issued by the Executive Director, or his designee, to the Contractor to accomplish work to be performed under this Contract. Some of the Task Order work may require Contractor to provide guidance, checklists, or model forms to address the area or work, or to direct or monitor performance of the work, as opposed to Contractor directly performing the work.
- D. Task Orders issued by COG will be on a Time and Materials basis, with a Not-to-Exceed ceiling amount. Task Orders issued by Participating Agencies may issue Task Orders under alternate structures.
- E. The selected Contractor must be capable of explaining, defending, and justifying the various aspects and conclusions of a project before senior management, elected officials, regulatory agencies, technical experts, the general public, and media organizations, as directed. Contractors will be required to effectively manage the work and complete the project in a timely and cost-effective manner. The Contractor must develop a general work plan for each project initiated via a Task Order and will be required to regularly track progress and make progress reports, throughout the duration of each Project.

#### ARTICLE V. LABOR CATEGORIES

- A. Scoring criteria will be based on labor category distribution for fair market value of the labor categories. All rates provided will be the fully loaded hourly rates excluding any other direct cost associated with the project. Scoring will be based on the fairness and reasonableness of the rates and that proposed staff meet the criteria for the position. The labor rates provided should be used during the Task Order process to determine prices for proposed tasks.
- B. *Subject Matter Expert*. Provides subject area expertise, guidance and expert technical analyses, and advice in specific technical areas to support management, organizational, and business decisions for clients. Participates in meetings, task groups, teams, reviews, and other environments to assist in collaborative results. Prepares reports, presentations, and papers to document findings, opinions, and recommendations. Supervises teams in accomplishing tasks and trains subordinate technical staff in the technical aspects of assigned work. Required qualifications: Bachelor's degree, Master's degree or equivalent experience, with 10+ years of related work experience.
- C. *Project Executive*. Makes authoritative decisions and recommendations having a significant impact on processes and strategic plans. Negotiates critical and sometimes controversial issues with industry counterparts in other organizations. Displays a high degree of project management expertise and program oversight experience. Individuals at this level exhibit a high degree of creativity, foresight, and mature judgment in anticipating and solving unprecedented engineering and planning complexities, determining overall program objectives and requirements, and developing standards for planning activities. Required

qualifications: Bachelor's degree, Master's degree or equivalent experience, with 10+ years of related work experience.

- D. *Project Manager*. Responsible for the day-to-day operations of the engagement including contractual/business aspects. Responsibilities of the Project Manager include, but are not limited to, providing assistance to the Project Executive; enforcement of the contract provisions; serving as the primary point of contact for Contract communications; maintaining appropriate staffing levels; implementation of quality assurance and control measures; review of daily activity; review and submittal of invoices; and overall management and oversight of action planning and process improvements. Required qualifications: Bachelor's degree, post-graduate work, or equivalent experience, with 5-10 years of related work experience.
- E. *Senior Planner / Exercise Planner / Trainer*. Applies diversified knowledge of consulting and emergency planning practices to a broad variety of assignments and related fields. Make decisions independently regarding strategic and action planning complexities and methods. At this level, supervision and guidance relate largely to overall project objectives, critical issues, new concepts, and policy matters. A supervisor would be consulted concerning unusual problems and developments. Required qualifications: Bachelor's degree, post-graduate work, or equivalent experience, with 5 or more years of related work experience.
- F. *Planner II / Exercise Planner II / Trainer II*. Independently evaluates, selects, and applies standard planning, analytical, or scientific techniques and procedures. Individuals at this level use judgment to make minor adaptations and modifications to solutions. Individuals must also perform work involving conventional plans, investigations, surveys, structures, or equipment with relatively few complex features for which there are few precedents. In addition, the Planner II may be individually responsible for a single phase of a project, thus having oversight and responsibility for its successful management. Required qualifications: Bachelor's degree or equivalent industry experience, with 3-5 years of related work experience.
- G. *Planner I / Exercise Planner I / Trainer I*. The Planner I performs standard analytical work requiring the application of standard techniques and procedures. Assignments may include higher-level work for training/development purposes. Supervisor screens for unusual complexities and selects the non-routine procedures to be applied. Individuals at this level receive close supervision on new aspects of assignments. Required qualifications: Bachelor's degree or equivalent experience, with 1-2 years of related work experience.
- H. *Analytical Aide*. The Analytical Aide is an entry-level employee responsible for providing a wide array of routine analytical tasks to Supervisory staff. Examples of analytical support include, but are not limited to, data entry, spreadsheet, database, presentation, or graphics modifications and development. Required qualifications: Bachelor's degree or equivalent experience.
- I. *Administrative Specialist*. Assistants are responsible for a wide array of administrative duties including, but not limited to, the following: maintaining work product records, project filing, word processing, document proofing, project communications and correspondence, and assisting the Project Manager on miscellaneous administrative and clerical tasks. Required qualifications: Associates degree or equivalent experience (5 years of related work experience).

## **ARTICLE VI. RESPONSIBILITIES OF THE CONTRACTOR**

- A. The Contractor shall be responsible for the following:
- a. Timely completion of the Project, in accordance with the requirements of this Contract.
  - b. Administration of the Project and of subcontracts, if any, in accordance with all applicable related services as needed.
  - c. The Contractor shall supervise and direct all project activities. All project personnel employed by the Contractor shall be adequately qualified to perform services under this Contract. The key personnel for the Project shall be those identified in Contractor's Proposal, or shall have comparable skills and qualifications, which Contractor shall provide upon request. The Contractor is authorized to enter into subcontracts as may be necessary or desirable for completion of the Project. Upon commencement of performance, and thereafter, any time a new subcontractor is engaged, Contractor shall provide COG with a complete list of the subcontractors who will be performing any services in connection with this Contract. Substitution of subcontractors must be requested in writing, in advance, and must be authorized in writing by the COG Contracting Officer.

## **ARTICLE VII. RESPONSIBILITIES OF COG**

- A. COG shall be responsible for the following:
- a. Issuing Task Orders as appropriate and necessary.
  - b. Providing relevant data in support of the Project or Task Order, as appropriate and necessary.
  - c. Conducting performance evaluations of the Contractor at COG's discretion or as requested by Participating Agencies.
  - d. Reviewing any proposed subcontracts for consistency with the terms of this Contract.
  - e. Informing Contractor of any material requirements, due to funding grants or otherwise, affecting its performance or compensation of the Contract.

## **ARTICLE VIII. PERIOD OF PERFORMANCE**

- A. The Period of Performance shall be thirty-six (36) months, commencing January 1, 2021 and terminating on December 31, 2023.
- B. Individual Task Orders issued in the final year of the Contract may have a Period of Performance which extends beyond this date and may terminate at a later date, independent of this Contract's termination date. In such cases, all terms and conditions of this Contract shall apply to work continuing to be performed under such a Task Order, until that Task Order is completed.
- C. COG may, at its own discretion, and based upon successful performance, extend any contract awarded as a result of this procurement for up to two (2) additional one-year

periods. For each extension period, the Contractor shall notify the Participating Agency at least forty-five (45) days prior to any increase taking effect.

- D. During the Period of Performance, including any extension, the Rider Clause (Exhibit D) shall be in full effect and binding on the Contractor.

#### **ARTICLE IX. INVOICES AND PAYMENTS**

- A. It is understood that payment to the Contractor by COG is dependent upon COG's receipt of funds from its sponsoring agencies.
- B. Contractor's Invoice(s) must include the Project Name, the COG contract number (see above), the Task Order number, and the Purchase Order number.
- C. Contractor's invoice(s) for COG-issued Task Orders shall be mailed on a weekly basis. Invoices shall be sent via e-mail to the attention of COG Accounts Payable, [payable@mwkog.org](mailto:payable@mwkog.org), with courtesy copies (cc) to the Contracts & Purchasing Division, [purchasing@mwkog.org](mailto:purchasing@mwkog.org), or to other addresses as COG may direct Contractor in writing.
- D. Contractor shall promptly provide additional details, information, documentation, or other back-up materials in support of an invoice, as may be requested by COG.
- E. The payment for each invoice shall be sent to Contractor within 30 days following receipt of the invoice.
- F. No claim for extra work, services, or materials not specifically herein provided done or furnished by Contractor will be allowed by COG, nor shall Contractor do any work or furnish any materials not covered by these specifications and the Contract unless the same is ordered or confirmed in writing by COG.
- G. Any such work or materials which may be done or furnished by Contractor without such written order first being given shall be at said Contractor's own risk, cost and expense, and Contractor agrees that without such written order, he shall make no claim for compensation for work or materials so done or furnished.

#### **ARTICLE X. COOPERATIVE PURCHASING**

- A. COG, as an agent to the Participating Agencies, reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of this Contract to other public and non-profit agencies. This is conditioned upon mutual agreement, based on the attached Cooperative Rider Clause (Exhibit D), of all parties.
- B. Contractor agrees to notify COG of any Participating Agencies that desire to use the Contract within thirty (30) days of receiving said requests, and to perform reporting as required at Article VII, below. A Rider Request Form (sample included in Exhibit D) needs to be submitted and approved prior to any work performed for a Participating Agency.
- C. COG assumes no authority, liability, or obligation on behalf of (a) any Participating Agency using this Contract, (b) the Contractor, or (c) any other entity with respect to work performed for a Participating Agency under this Contract.
- D. Participating Agencies may have other or additional terms and conditions that must be met by the Contractor.



## **ARTICLE XI. PARTICIPATION, SALES REPORTING, AND ADMINISTRATIVE FEES**

- A. Contractor shall provide summary information on the use of this contract by Participating Agencies, through the purchasing program described in Exhibit D, to COG on a semi-annual basis to allow COG to monitor the program's use and benefit to its members.
- B. Semi-annual reporting Due Dates:
  - a. November 30 of each year, covering the prior period of May 1 – October 31.
  - b. May 31 of each year, covering the prior period of November 1 – April 30.
- C. The semi-annual report will provide sales data broken down by item, quantity, unit cost and total for each individual Participating Agency within the timeframe laid out above. Contractor is responsible for establishing an accounting system or process that will enable the tracking and reporting of sales to Participating Agencies under this RFP.
- D. Contractor shall pay an administrative fee paid to COG equivalent to three percent (3.00%) of gross invoices to Participating Agencies under this specification. The successful Proposer will be responsible for tracking and rebating this fee to COG semi-annually, based on gross sales for the periods described above and due on November 30th and May 31st of each calendar year.
- E. Failure to provide timely reporting can result in the termination of the contract for cause, at COG's sole discretion.

## **ARTICLE XII. TRAVEL EXPENSES**

- A. Travel costs inside the NCR are the complete responsibility of the Contractor. Travel outside of the NCR is not contemplated to be within the scope of this Contract; however, in the event such travel is necessary, a request for authorization must be submitted to COG in advance of anticipated travel. In all instances, COG's per diem and reimbursement rate will follow the GSA standard.

## **ARTICLE XIII. CHANGES**

- A. The parties hereto agree that any modification or change in any aspect of this Contract must be accomplished in writing by both parties before it is considered a contract requirement. Neither party shall be bound, or authorized to pay for, any item or service that is not authorized by this Contract or a modification or change executed by the parties in accordance with this paragraph.
- B. The parties hereto may, from time to time, propose changes in the Statement of Work to be performed by the Contractor. Such changes, including material scope of work changes, time schedule and report delivery changes, budget revisions that increase, decrease, or change the Contract's total compensation must be mutually agreed upon in writing and approved by and between COG and the Contractor resulting in an amendment to the Contract.

## **ARTICLE XIV. NON-EXCLUSIVITY AND NON-GUARANTEES**

- A. The Contractor expressly acknowledges and agrees that this Contract is not exclusive. The Contractor expressly acknowledges and agrees that COG may use, or procure, at its sole discretion, services which are identical or similar to the services described in this Contract from other parties.

- B. The Contractor expressly acknowledges and agrees that the actual quantity of services to be requested and ordered is at the sole discretion of COG and its member jurisdictions, and there is no obligation or guarantee of a specific number of services to be requested, or Task Orders awarded, herein.

THE PARTIES hereto have executed this Contract as of the day, month and year first above written.

METROPOLITAN WASHINGTON  
COUNCIL OF GOVERNMENTS ("COG"):

WITT O'BRIEN'S, LLC  
("Contractor")

By:   
Chuck Bean (Mar 9, 2021 15:47 EST)

By: 

Name: Chuck Bean

Name: Greg Fenton

Title: Executive Director

Title: Chief Operating Officer

Date: Mar 9, 2021

Date: Mar 9, 2021

## **EXHIBIT A: THE RFP**

Request for Proposal 21-002, "Preparedness Planning, Program Management, Administrative and Training & Exercise Services", is incorporated into the Contract via reference as Exhibit A, including the following Addenda:

- Addendum #1, dated September 18, 2020
- Addendum #2, dated September 21, 2020
- Addendum #3, dated September 21, 2020

## EXHIBIT B: THE PROPOSAL

Contractor's response to the RFP, including all documents submitted, collectively referred to hereinafter as "the Proposal", are incorporated into the contract via reference as Exhibit B.

The Pricing Structure as set forth in the Proposal is printed here for reference.

Position	Full Loaded Hourly Rate 1 <sup>ST</sup> Year	Full Loaded Hourly Rate 2 <sup>nd</sup> Year	Full Loaded Hourly Rate 3 <sup>rd</sup> Year
SUBJECT MATTER EXPERT	\$275.00	\$275.00	\$275.00
PROJECT EXECUTIVE	\$300.00	\$300.00	\$300.00
PROJECT MANAGER	\$250.00	\$250.00	\$250.00
SENIOR PLANNER; SR. EXERCISE PLANNER; SENIOR TRAINER	\$195.00	\$195.00	\$195.00
PLANNER II ; EXERCISE PLANNER II; TRAINER II	\$165.00	\$165.00	\$165.00
PLANNER I; EXERCISE PLANNER I; TRAINER I	\$110.00	\$110.00	\$110.00
ANALYTICAL AIDE	\$100.00	\$100.00	\$100.00
ADMINISTRATIVE SPECIALIST	\$90.00	\$90.00	\$90.00

## EXHIBIT C: COG Standard Terms and Conditions

This document sets out provisions generally applicable to Metropolitan Washington Council of Governments ("COG") contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and special conditions, if any.

This document and the Contract are intended to be complementary and shall be construed accordingly. However, should there be a direct contradiction between the terms and conditions contained herein and the Contract, then the Contract shall govern and control those contradictory terms and conditions. As used herein, the term "COG" includes COG, its various members, agencies, employees or agents as may be appropriate. The term "Contract" shall include a document entitled "agreement" or any other title on a document that is denoting a contract.

### I. Amendment

This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.

### II. Bankruptcy

Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify COG immediately. Upon learning of the actions herein identified, COG reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights COG may have as provided in this agreement or by law.

### III. Compliance with Law

The Contractor hereby represents and warrants that:

- A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor, enforceable in accordance with its terms;
- B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with all applicable professional standards;
- C. It is qualified to do business in the jurisdictions covered by the Contract and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- D. It is not in arrears in the payment of any obligations due and owing to any agency involved in this agreement, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- E. It shall comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

- F. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

#### **IV. Contingent Fee Prohibition**

The Contractor, architect or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.

#### **V. Counterparts**

This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

#### **VI. Force Majeure**

Neither COG nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, declaration of emergency, or war where such cause was beyond, respectively, COG's or Contractor's reasonable control. COG and/or its members and Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

#### **VII. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the District of Columbia without regard to principles of conflicts of law.

#### **VIII. Indemnification**

1. The Contractor shall protect, hold free and harmless, defend and indemnify COG from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, the performance of the work or failure to perform its obligations under this Contract.
2. This obligation of indemnification shall apply to any acts or omissions, negligent conduct, , including acts or omissions of Contractor's agents or employees; except that it shall not be applicable to injury, death or damage to the property arising from the sole negligence of COG, their officers, agents and employees.

#### **IX. Independent Contractor**

- A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although COG reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, COG cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by COG relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is

responsible for determining the appropriate means and manner of performing the work.

- B. Contractor represents and warrants that Contractor is not an employee of COG, is not currently employed by the Federal Government, and is not an officer, employee or agent of COG.
- C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
- D. Contractor agrees to immediately provide COG notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without COG's written consent, any obligation of COG to indemnify Contractor for any actions under this Contract.

#### **X. Insurance Requirements**

- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name COG as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with COG prior to the time any services are rendered. Contractor shall maintain coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form (Accord Form).
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with COG to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name COG and/or individual members, their employees, and agents as ADDITIONAL INSURED.
- C. Contractor shall, upon request, provide COG with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required the governing jurisdiction's law in effect for each year of this Contract.
- D. All insurance policies shall have a minimum 30 days' notice of cancellation. Immediate written notice to COG and members involved in the contract shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
- E. When insurance coverage is renewed, Contractor shall provide new certificates of insurance prior to expiration of current policies to all contracting agencies.

#### **XI. Civil Rights Requirements - 29 U.S.C. § 62, 42 U.S.C. § 2000, 42 U.S.C. § 602, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332**

- 1. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of federal law, the PROPOSER agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the PROPOSER agrees to comply with applicable federal implementing regulations. The clauses of Appendix A and E of the U.S. DOT Standard Title VI Assurances (USDOT 1050.2A) are incorporated herein by reference.

2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

a) Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the PROPOSER agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.* (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of this PROJECT. The PROPOSER agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the PROPOSER agrees to comply with apprenticeship. In addition, the PROPOSER agrees to comply with any implementing requirements the funding federal agency may issue.

b) Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and other applicable law, the PROPOSER agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the PROPOSER agrees to comply with any implementing requirements the funding federal agency may issue.

c) Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the PROPOSER agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission,



"Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the PROPOSER agrees to comply with any implementing requirements the funding federal agency may issue.

3. The PROPOSER also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance, modified only if necessary, to identify the affected parties.

## **XII. Ownership of Documents and Materials**

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to COG upon request and shall become and remain the exclusive property of COG upon termination or completion of the services. These jurisdictions shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. COG shall be the owner for the purposes of copyright, patent or trademark registration.
- B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to COG and/or members of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with COG and/or members.
- C. The Contractor shall indemnify and save harmless COG from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless COG, their officers, agents, and employees with respect to any claim. Action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

## **XIII. Payments**

- A. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after COG's receipt of a proper invoice from the Contractor.
- B. **Electronic Payment** means the payment of money to a vendor by electronic means, including by means of a Purchase Card (P-card) or Automated Clearing House (ACH) funds transfer method.
- C. COG has implemented a P-Card Program utilizing MASTERCARD networks. Purchases from this contract will be made utilizing COG's P-Card.
- D. Contractors will receive payment from the P-Card in the same manner as other credit card purchases. The payments typically are transferred within 48 hours.

- E. Accordingly, contractors must presently have the ability to accept these P-Cards or take whatever steps necessary to implement their ability before the start of the contract term, or contract award by the COG. COG reserves the right to revise this program as necessary.
- F. In rare cases, ACH transactions will be acceptable as a form of payment to our contractors. Please keep in mind the turn-around time on ACH transactions can be as long as 30 days.

#### **XIV. Records**

- A. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder.
- B. Contractor acknowledges and agrees that the COG and their duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three (3) years, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.
- C. All subcontracts shall also comply with these provisions.

#### **XV. Remedies**

- A. **Corrections of errors, defect and omissions.** Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to COG. The acceptance of the work set forth herein by COG shall not relieve the Contractor of the responsibility of subsequent corrections of such errors.
- B. **Set Off.** COG may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by COG, their agents, employees of recipients of its services, by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.
- C. **Cumulative.** All rights and remedies of COG/ members and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the COG by law.

#### **XVI. Responsibility of Contractor**

- A. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by COG, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.
- C. If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in subparagraph A above, it shall, if required by COG, perform at its own expense and without additional cost to COG, those services necessary for the correction of any deficiencies or damages resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to COG under the "Remedies" paragraph, or otherwise available by law.

**XVII. Severability/Waiver**

- A. COG and Contractor agree that, if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- B. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract.

**XVIII. Subcontracting or Assignment**

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of COG. COG have the right to withhold such consent for any reason COG deem appropriate.

**XIX. Survival**

The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

**XX. Termination**

- A. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, COG may terminate the Contract by written notice to the Contractor.
- B. The notice shall specify the acts or omissions relied upon as cause for termination.
- C. All finished or unfinished work provided by the Contractor shall, at COG's option, become COG's and/or member's property. COG shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the

damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and COG can affirmatively collect damages.

**XXI. Termination of Contract for Convenience**

- A. The performance of work under this Contract may be terminated by COG, in whole or in part, upon written notice to the Contractor, when COG determines such termination is in the best interest of COG. The termination for convenience is effective on the date specified in COG's written notice.
- B. COG will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

**XXII. Termination of Multi-Year Contract**

- A. If COG fail to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either COG's and/or members rights or the Contractor's rights under any termination clause in this Contract.
- B. The effect of termination of the Contract hereunder will be to discharge both the Contractor and COG from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. COG shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**XXIII. Time is of the essence**

Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.

**XXIV. Whole Contract**

This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.

## **Attachment F: COG Cooperative Rider Clause**

The COG Cooperative Purchasing Program works to aggregate the public entity and non-profit purchasing volumes in the National-Capital region of Maryland, Virginia, and Washington, D.C.

### **I. Format**

- A. COG serves as the Lead Agency of this procurement and has included this Cooperative Rider Clause indicating its willingness to allow other public entities to participate in this procurement ("Participating Agency") pursuant to the following Terms and Conditions.

### **II. Terms**

- A. A Participating Agency, through its use of this Cooperative Rider Clause, agrees to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the Participating Agency.
- B. A Participating Agency may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.

### **III. Other Conditions - Contract and Reporting**

- A. The resulting contract shall be governed by and "construed" in accordance with the laws of the State/jurisdiction in which the Participating Agency is officially located.
- B. Contract obligations rest solely with the Participating Agency only.
- C. Contractor must provide semi-annual contract usage reporting information to COG, including but not limited to quantity, unit pricing, and total volume of sales by entity, on demand, and without further approval of Participating Agency;

*Semi-annual reporting Due Dates beginning from Contract execution:*

- November 30, covering May 1 – October 31
  - May 31, covering November 1 – April 30
- D. Contractor is required to report any Participating Agency that is added to the contract and a **COG Rider Clause Approval Form** must be filled out by the Participating Agency and approved by COG (see form below).
  - E. Contractor must provide to COG a semi-annual administrative fee of three percent (3.0%) on all gross sales at the time of the semi-annual report submission due dates listed above.
  - F. Significant changes in total contract value may result in further negotiations of contract pricing with the Lead Agency and any Participating Agency.

Other entities outside of the COG Region are eligible to use this Rider Clause with permission.

The **Rider Approval Form** must be filled out for all users, except the government of the District of Columbia.

## IV. Participating Members

### COG Member Governments

#### • District of Columbia

##### **Maryland**

- Town of Bladensburg
- City of Bowie
- City of College Park
- Charles County
- City of Frederick
- Frederick County
- City of Gaithersburg
- City of Greenbelt
- City of Hyattsville
- Montgomery County
- Prince George's County
- City of Rockville
- City of Takoma Park

##### **Virginia**

- City of Alexandria
- Arlington County
- City of Fairfax
- Fairfax County
- City of Falls Church
- Loudoun County
- City of Manassas
- City of Manassas Park
- Prince William County

##### **Other Local Governments**

- Town of Herndon
- Spotsylvania County
- Stafford County
- Town of Vienna

##### **Public Authorities/Agencies**

- Alexandria Renew Enterprises
- District of Columbia Water and Sewer Authority
- Metropolitan Washington Airports Authority
- Montgomery County Housing Opportunities Commission
- Potomac & Rappahannock Transportation Commission/ Omni Ride
- Prince William County Service Authority
- Upper Occoquan Service Authority
- Washington Metropolitan Area Transit Authority

- Washington Suburban Sanitary Commission

##### **School Systems**

- Alexandria Public Schools
- Arlington County Public Schools
- Charles County Public Schools
- District of Columbia Public Schools
- Frederick County Public Schools
- Loudoun County Public Schools
- City of Manassas Public Schools
- Montgomery College
- Montgomery County Public Schools
- Prince George's County Public Schools
- Prince William County Public Schools
- Spotsylvania County Schools
- Winchester Public Schools

##### **State Agencies**

- Maryland-National Capital Park and Planning Commission

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### BALTIMORE METROPOLITAN COUNCIL

- City of Annapolis
- Anne Arundel County
- Anne Arundel County Public Schools
- Anne Arundel Community College
- City of Baltimore
- Baltimore City Public Schools
- Baltimore County
- Baltimore County Public Schools
- Community College of Baltimore County
- Carroll County
- Harford County
- Harford County Public Schools
- Harford Community College
- Howard County
- Howard County Public Schools System
- Howard Community College
- Queen Anne's County
- Queen Anne's County Public Schools



**COG Rider Clause  
Approval Form**

This form must be executed for any Participating Agency, both within and outside of the Metropolitan Washington Council of Governments (COG) region, to use the COG Cooperative Rider Clause to ride solicitations and contracts.

*NOTE: Effective January 1, 2019, COG does not authorize the use of the MAPT/COG Cooperative Rider Clause without this form being completed and approved.*

-----  
Participating Agency Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_  
-----

Solicitation/Contract Information:

Name Solicitation/Contract \_\_\_\_\_

Lead Agency/Contract Holder \_\_\_\_\_

Contact Person \_\_\_\_\_

Solicitation/Contract Number \_\_\_\_\_ Other Reference \_\_\_\_\_  
-----

Vendor Information:

Contractor Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Contact Person \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

*See questions on next page.*

*Note: This is NOT a vendor form.*

**Questions -**

**YES**    **NO**

- |   |       |       |
|---|-------|-------|
| 1. Is the Participating Agency's specifications/scope of work the same or very similar to that in the Contract?   | _____ | _____ |
| 2. Is the Contract active and currently in force?   | _____ | _____ |
| 3. Please confirm your understanding that the vendor must pay a fee to COG based on sales for using this Contract.  | _____ | _____ |
| 4. Is riding this Contract within the rules and regulations of the Participating Agency and approved by the Participating Agency's Purchasing Department? | _____ | _____ |

**Participating Entity**

**Metropolitan Washington  
Council of Governments**

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_