

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

**ADDENDUM**  
County Contract No. 2021-0504

This agreement is entered into between the County of El Paso, a political subdivision of the State of Texas ("Customer"), and Pivot Technology Services Corp. d/b/a Computacenter ("Computacenter"). The following provisions are added by agreement of the parties. Quote #SSIQ80002-03, Region 19 Contract #16-7210, and this Addendum comprise the entire agreement between the parties ("Agreement"). This Agreement is effective as of the date executed by both parties.

1.       Computacenter affirms it is the same legal entity as Sigma Technology Solutions, Inc.
2.       Computacenter affirms it merged and consolidated Sigma Technology Solutions, Inc. into Pivot Technology Services Corp. d/b/a Computacenter.
3.       Region 19 Contract #16-7210 is attached as Exhibit A and incorporated by reference for all purposes.
4.       Computacenter affirms its obligations under Region 19 Contract #16-7210.
5.       The parties agree that Quote #SSIQ80002-03, Region 19 Contract #16-7210, and this Addendum comprise the entire Agreement between the parties.

**THE COUNTY OF EL PASO**

By \_\_\_\_\_  
Ricardo Samaniego  
County Judge  
Date: \_\_\_\_\_

**PIVOT TECHNOLOGY SERVICES CORP. d/b/a COMPUTACENTER**

By \_\_\_\_\_  
(name) \_\_\_\_\_  
(title) \_\_\_\_\_  
(Signor must have legal authority to bind corporation)  
Date: \_\_\_\_\_

## **EXHIBIT A**

## **5.0 - CONTRACT TERMS AND CONDITIONS**

### **SIGMA RESPONSE:**

#### **ADDITION TO CONTRACT TERMS AND CONDITIONS**

##### **Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to ASC shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability 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 this 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 such violation.

These Contract Terms and Conditions are part of the final contract in each product and/or service contract awarded as a result of this RFP and are part of the terms and conditions of each Purchase Order or proposal forms issued in connection with this RFP. Vendors are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED DIRECTLY BEHIND THE APPROPRIATE TABS AS IT RELATES TO THE TABLE OF CONTENTS.**

Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by ASC and eliminated from further consideration.

#### ***CONTRACT BETWEEN*** **Education Service Center-Region 19 (ESC-R19) and**

**Sigma Technology Solutions, Inc.** ("Vendor")

#### **For** **Technology, Hardware, Software and Related Goods and Services**

This Contract is entered into between ESC-R19 and Vendor, having submitted a proposal in response to RFP #16-7210 issued by ASC and whose proposal has been accepted and awarded by ASC.

In consideration of the mutual covenants and conditions contained in this Contract and other goods and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, ASC and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Contract, agree as follows:

An Administrative Fee to be paid by the vendor under this contract shall be two (2) percent except as noted otherwise in the RFP.

##### ***Definitions***

The terms used in this Contract shall have the meanings assigned to them in **Intent** and Instructions to Vendors

Section 1.0 of this RFP.

This contract is comprised of the following documents:

- a. Contract with general terms and conditions
- b. RFP in its entirety
- c. Vendor's Proposal
- d. Any additional points negotiated prior to award and/or signed amendments

#### *Use of Contract by ASC members*

Vendor agrees and understands that this RFP and Contract may be used to accomplish work for ASC and ASC members. See TEX. GOV'T. CODE § 2267.407.

#### *Contract Terms; Amendment*

The terms and conditions of this Contract shall govern all procurements conducted hereunder. No pre-published terms on Vendor's Purchase Order, acknowledgments, invoices, or other forms shall have any force or effect unless expressly agreed to by the ASC member and Vendor. No amendment of this Contract shall be permitted unless and until first approved in writing by ASC and, if necessary, the ASC member(s), and no such amendment shall have any effect unless and until a written amendment to this Contract is executed by the ASC Director of Procurement or his designee.

#### *Term of Contract; Renewal of Contract*

The initial term of this Contract is for a period of **one (1) year**, with ASC having the option to renew the Contract for **four (4) additional one-year** terms, at ASC's sole discretion, unless otherwise specified in the Scope of Proposal. See TEX. GOV'T. CODE § 2267.409. Consequently, the total term of the Contract may be for a period of **five (5) years**. The phrase "Term" in this Contract shall mean the then-current Term of the Contract, whether an initial term or a renewal term.

#### *Termination of Contract*

This Contract shall remain in effect until (1) the Contract expires by its terms or (2) the Contract is terminated by mutual consent of ASC and Vendor. In the event of a breach or default of the Contract and/or the RFP by Vendor, ASC reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of ASC and/or ASC members.

ASC further reserves the right to terminate the Contract immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the RFP, this Contract, and/or a Purchase Order or Job Order; (2) make any payments owed; or (3) otherwise perform in accordance with this Contract and/or the RFP. ASC also reserves the right to terminate the Contract immediately, with written notice to Vendor, if ASC believes, in its sole discretion that it is in the best interest of ASC and/or ASC members to do so.

Vendor agrees that ESC Region 19 ASC shall not be liable for damages in the event that ASC declares Vendor to be in default or breach of this Contract and/or the RFP. Vendor further agrees that upon termination of the Contract for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or Vendor.

#### *Buy America Act*

ASC and ASC members have a preference for domestic end products for supplies acquired for use in the United States when spending federal funds. Purchases that are made with non-federal funds or grants are excluded from the Buy America Act. Vendor agrees to comply with Buy America Act and American Recovery & Reinvestment Act of 2009 regarding any federally funded purchases when applicable.



### *Prevailing Wage Rates*

Vendor and all subcontractors of Vendor shall comply with all laws regarding prevailing wage rates, including, but not limited to, TEX. GOV'T. CODE Chapter 2258, applicable to the construction of a public work, and any related federal requirements, including the DAVIS-BACON ACT. In the event TEX. GOV'T. CODE Chapter 2258 applies to a product or service provided by Vendor to ASC or an ASC member, Vendor and any subcontractor(s) shall comply with the prevailing wage rates set by ASC or the ASC member.

### *Compliance with Laws*

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations, the DAVIS-BACON ACT (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland "Anti-Kickback" Act (18

U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), Contract Work Hours and Safety Standards Act (40 U.S.C. § 327-330 / 29 CFR Part 5), the McNamara-O'Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h, Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), Administrative Requirements for Grants and Cooperative Contracts to state, local, and federally recognized Indian tribal

governments (24 CFR Part 85), mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), Purchase Orders under this contract, AZ34-607 as revised will apply, and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights and those mandated by federal agencies making awards of federal funds to ASC and/or ASC members. Federal Agencies may incorporate by references the Federal Acquisition Regulations (FAR) sections that are appropriate to their project requirements. For the entire duration of this Contract, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. All permits will be acquired by Vendor and invoiced to the ASC member at cost as part of the Purchase Order, unless the permits are provided by the ASC member. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the ASC member's Purchase Order or Job Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. The states of individual ASC members may have regulations and laws that govern payment retention and progress payments for public projects. Vendor is responsible for being acquainted with and complying with each state's requirements. When required or requested by ASC or an ASC member, Vendor shall furnish ASC and/or the ASC member with satisfactory proof of Vendor's compliance with this provision with a "certified payroll". It is the member's obligation to inform the Vendor of this requirement and note it in the purchase order. Additionally, all Vendors will complete a Felony Conviction/ Debarment Notice/ Clean Air & Water Act Notice provided by ASC at the time proposals are submitted for consideration of award.

### *Confidentiality*

Vendor and ASC agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and ASC understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that ASC and numerous ASC members are subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability ASC and ASC members, their respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Vendor, ASC, or an ASC member and determined by ASC or the ASC member, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

### *Performance and Payment Bonds*

Vendor agrees to provide performance bonds and/or payment bonds as required by law, based on the amount or estimated amount of any Purchase Order or Job Order, as applicable. TEX. GOV'T. CODE §



2267.411. Pursuant to TEX. GOV'T. CODE § 2253.021, a performance bond is required if a Job Order is in excess of \$100,000 for ASC members that are governmental entities subject to Chapter 2253; a payment bond is required if a Job Order is in excess of \$25,000 for ASC members that are governmental entities subject to Chapter 2253 and are not municipalities or a joint board created under Subchapter D, Chapter 22 of the Tex. Transp. Code, and a payment bond is required if a Job Order is in excess of \$50,000 for ASC members that are governmental entities subject to Chapter 2253 and are municipalities or a joint board created under Subchapter D, Chapter 22 of the TEX. TRANSP. CODE. All the bonds shall be reconciled at the end of each project for actual pass through to the member. Bonds will be listed on the purchase order as a separate line item with no additional fee added.

### *Title and Risk of Loss*

Whenever an ASC member is purchasing (and not leasing) a product under this Contract, title and risk of loss shall pass upon the later of the ASC member's acceptance of the product or payment of the applicable invoice.

### *Warranty Conditions*

All product(s) and/or service(s) provided by the Vendor under this Contract must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of ASC's or the ASC member's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all products and/or services furnished under this Contract shall conform in all respects to the terms of this Contract, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the RFP, Purchase Order, and Job Order. In addition, Vendor warrants that products and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the Vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Contract, the RFP, Purchase Order, or Job Order.

### *Criminal History Review*

Attachment #6-SB 9 Contractor Certification: Contractor Employees and Attachment #7-SB 9 Contractor Certification: Subcontractor forms must be submitted with packet, if applicable.

Prior to commencing any work under the Contract, if Vendor contracts with ASC to provide services, Vendor must certify, on the form provided herein, that for each covered employee of Vendor who will have direct contact with students, Vendor has obtained, as required by TEX. EDUC. CODE Section 22.0834: (a) state criminal history record information from a law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15

U.S.C. Section 1681 et seq.) for each covered employee of Vendor employed before January 1, 2008; and (b) national criminal history record information for each employee of Vendor employed on or after January 1, 2008. Vendor must also obtain similar certifications of compliance with TEX. EDUC. CODE, Chapter 22 requirements from any subcontractors on the form provided herein. Covered employees with disqualifying criminal history are prohibited from serving at ASC or at ASC school district members' locations; Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under TEX. EDUC. CODE § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). The criminal history record information review obligation applies only if Vendor contracts with ASC to provide services; it does not apply to a contract for the purchase of goods, products or real estate.

### *Customer Support*

Vendor shall provide timely and accurate technical advice to ASC staff and ASC members. Vendor shall provide reasonable training to ASC staff and/or ASC members regarding products and/or services supplied under this contract by the Vendor, at no additional charge, if requested by ASC or an ASC member.



### *ASC and/or ASC Members' Property*

In the event of loss, damage, or destruction of any property owned by or loaned by ASC or a ASC member that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify ASC or the ASC member and pay to ASC or ASC member the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of ASC's or ASC member's determination of the amount due. If Vendor fails to make timely payment, ASC or the ASC member may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by ASC or ASC member.

### *Tax Exempt Status*

ASC and all ASC members that are Texas governmental entities or agencies are exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE§ 151.310 for the purchase of tangible personal property. Laws of other states govern the tax status of ASC members in states other than Texas. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. ASC and ASC members shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.

### *Other State Tax Requirements*

Payment of Taxes by ASC Members Outside of Texas – ASC members outside of Texas will pay only the rate and/or amount of taxes identified in Vendor's proposal submitted in response to the RFP as appropriate to the specific ASC member.

State and Local Transaction Privilege Taxes – The ASC member is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sales of products and are the sole responsibility of Vendor, as the seller, to remit. Failure to remit taxes from ASC and/or the ASC member, as the buyer, does not relieve Vendor, as the seller, from its obligation to remit taxes.

### *State of Texas Franchise Tax*

By submitting a proposal in response to the RFP, Vendor certifies that Vendor is not currently delinquent in Vendor's payment of any franchise taxes or other taxes owed to the State of Texas.

### *Tax Responsibilities of Vendor and Indemnification for Taxes*

Vendor is responsible for complying with the tax laws of states and the federal government. Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to Vendor's operation, any persons employed by Vendor, and all subcontractors of Vendor. Vendor shall require all subcontractors to hold ASC and the ASC member harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs, including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

### *IRS W-9*

To receive payment under this Contract, Vendor shall have a current IRS. W-9 Form on file with ASC and/or ASC member.

### *Assignment of Contract*

Vendor may not assign this Contract or any of its rights, duties or obligations hereunder without the prior written approval of ASC. Any attempted assignment of this Contract by Vendor shall be null and void.

Any Purchase Order made as a result of this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of ASC and, if applicable, the ASC member.



### *Notification of Material Change*

Vendor is required to notify ASC when any material change in operations occurs, including changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

### *Performance*

Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to this Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any scope of work, Purchase Order, or Job Order under this Contract. Vendor shall use skilled, trained personnel, who shall be supervised by Vendor.

### *Subcontractors*

If Vendor uses subcontractors in the performance of any part of this Contract, Vendor shall be fully responsible to ASC and ASC members for all acts and omissions of the subcontractors. Nothing in this Contract shall create for the benefit of any such subcontractor any contractual relationship between ASC and any such subcontractor, nor shall it create any obligation on the part of ASC or ASC members to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law. Vendor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractors who perform and/or provide products and services related to this Contract.

### *Non-Appropriation*

Renewal of this Contract, if any, will be in accordance with TEX. LOCAL GOV'T. CODE § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract or obligation imposed on ASC or any ASC member by this Contract, ASC and ASC members shall have the right to terminate this Contract, any Supplemental Contract, Purchase Order, or Job Order without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of ASC or any ASC member if it is determined by ASC or any ASC member, at their sole discretion, that there are insufficient funds to extend this Contract, any Supplemental Contract, any Purchase Order, or Job Order. The parties agree that this Contract, any Supplemental Contract, any Purchase Order, and Job Order are commitments of the current revenue of ASC and ASC members only.

### *Negotiations*

ASC shall determine which responsive proposals are in the competitive range and/or are reasonably susceptible of being selected for award. Proposals not in the competitive range may not be further evaluated. Proposals in the competitive range shall be evaluated on the basis of price and the other evaluation criteria set forth in the solicitation. In the event that ASC decides to conduct negotiations, notice shall be provided to each proposer whose proposal is being considered for award, which notify may identify, in general terms, the elements or factors upon which ASC intends to base its negotiations. Proposers will be assisted, in any way, to bring their proposals up to the level of other proposals through discussions. During the course of negotiations, no proposer's technical proposal or pricing shall be revealed to any other proposer or to any other person who is not involved with the evaluation process. ASC will also not indicate to Vendor a cost or price that it must meet to either obtain further consideration nor will it provide any information about other proposers' proposals or prices.

### *Best and Final Offer*

ASC, in its sole discretion, may request all proposers in the competitive range to submit a Best and Final Offer. Proposers must submit their Best and Final Offers in writing. If Vendor does not respond to the request for a Best and Final Offer, that proposer's most recent offer will be considered to be its Best and Final Offer.

### *Ordering Procedures*

Purchase Orders are issued by ASC or ASC members to the Vendor according to this Contract and any Supplemental Contract between ASC and the ASC member.



ASC members must send Purchase Orders to ASC, unless otherwise stipulated by ASC. ASC may request confirmation of receipt of the Purchase Order from Vendor.

### *Invoices; Payments*

Vendor shall submit invoices, in duplicate, directly to ASC or the ASC member at the appropriate location(s) specified by ASC or ASC member. Each invoice shall include ASC's or the ASC member's Purchase Order number and ASC Contract Number. All invoices shall be itemized to include the type of product(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during ASC's or ASC member's fiscal year in which the product(s) and/or service(s) are purchased. The shipment tracking number or pertinent information for verification of ASC's or ASC member's receipt shall be made available upon request by ASC or ASC member.

ASC or ASC member will make payments directly to Vendor. ASC or ASC member placing the Purchase Order or Job Order with Vendor shall alone be liable and/or responsible for payment for product(s) and/or service(s) ordered and must be invoiced directly by Vendor. Neither ASC nor any other ASC member shall be liable for the indebtedness of any one ASC member.

TEX. GOV'T. CODE § 2251.021 shall govern when payments are due to the Vendor. Payments are due to Vendor by ASC and or any ASC member whose governing body meets only once a month or less frequently, **within forty-five (45) days** after the later of the following: (1) the date ASC or the ASC member receives the products and services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date ASC or the ASC member receives an invoice for the products or service. For ASC members whose governing bodies meet more than once a month or more often, payments are due by those ASC members **within thirty (30) days** after the later of the following:

(1) the date the ASC member receives product(s) under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date the ASC member receives an invoice for product(s) or service(s). Vendor agrees to pay any subcontractors the appropriate share of the payment received from ASC or the ASC member not later than the **tenth (10th) day** after the date the Vendor receives the payment from ASC or the ASC member.

The exceptions to payments made by ASC, an ASC member, and/or Vendor listed in TEX. GOV'T. CODE § 2251.002 shall apply to this Contract.

All awarded Vendors shall be familiar with Arizona Revised Statutes 15-213.01 and 34-456 and shall adhere to these requirements under this contract and other state jurisdictions as appropriate.

### *Reporting*

The Vendor shall provide ASC with a detailed monthly report showing the total dollar volume of all sales under this Contract for the previous month in Microsoft Excel format, in the format and with the information specified by ASC. Reports are due on the **fifteenth (15) day of the month**, after the close of the previous month and shall provide information regarding Purchase Orders and Job Orders during the previous month. Vendor is responsible for collecting and compiling all sales under this Contract from all ASC members and submitting **one (1)** consolidated monthly report. The monthly report shall include, at a minimum, the date of each Purchase Order with scheduled start and completion date, Purchase Order number, ASC member name, city/town, and Purchase Order total dollar amount. Reports shall be submitted in an electronic format to ASC at 6611 Boeing Drive, El Paso, Texas 79925-1010, or electronically mailed to [rcleveland@esc19.net](mailto:rcleveland@esc19.net) with a return receipt request requirement.

### *Pricing Changes*

See RFP specifications and discussion of non-pre-priced items per UPB.

### *ASC Administrative Fee*

On a monthly basis, ASC will invoice Vendor for the ASC Administrative Fee of two (2%) for progress and/or completion payments for work performed.



Vendors completing \$10 million and paying the ASC Fee during the calendar year of the contract year and having no corrective actions resulting from reviews, will be granted a reduced ASC fee of 1.5% which will stay in effect during the next contract year. In the second year the Vendor must (on quarterly review) complete \$2.5 million invoiced delivery orders per quarter as a minimum to maintain this reduced rate or the fee will revert to the initial contract rate of 2%.

The invoice will be based on total sales made through this Contract. Vendor shall remit payment of the ASC Fee to ASC no later than **thirty (30) days** following the end of the month. Failure to pay the ASC Administrative Fee in a timely manner may result in Vendor breaching this Contract and may result in ASC suspending or terminating this Contract. Vendor shall honor and pay ASC the ASC Administrative Fee for any sales resulting from this Contract that occurred within **thirty (30) days** at the completion of on-going work. In the event that the vendors contract is expired or terminated, the vendor agrees to pay ASC's fee for any projects extending beyond that date as those P.O.s are completed within 30 days of close out.

*Administrative Fee Note: Vendor must maintain a good record for compliance audits under the contract and reporting and promptly paying R19 administrative Fees.*

### **Records Retention**

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all product(s)/service(s) provided by the Vendor to ASC and/or ASC members under this Contract. These records and accounts shall be retained by Vendor and made available for review by ASC and ASC members for a period of **not less than three (3) years** from the date of completion of the service(s), receipt of product(s), the date of the receipt by ASC or ASC member of Vendor's final invoice or claim for payment in connection with this Contract, or the date ASC or ASC member makes final payments and closes pending matters in connection with a federal grant, whichever is later. If an audit or a compliance review has been announced, the Vendor shall retain its records and accounts until such audit or compliance review has been completed.

*Texas Government Code SB 1368 includes the following language:*

Contractor (Vendor) is required to make any information created or exchanged with the state (Region 19 ESC) pursuant to this 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.

### *Right to Review and Inspect; Compliance Audits*

ASC, ASC members, any federal agency that has awarded federal funds/grant(s) to ASC or an ASC member, and the Comptroller General of the United States, and/or any of their authorized representatives, shall, upon written notice, have the right to audit and examine all of Vendor's records and accounts relating to this Contract and inspect any project performed by the Vendor relating to this Contract

### *Indemnification*

VENDOR SHALL INDEMNIFY AND HOLD HARMLESS ESC REGION 19 ASC AND EACH ASC MEMBER, INCLUDING ASC'S AND ASC MEMBERS' TRUSTEES, OFFICERS, ADMINISTRATORS, EMPLOYEES, AND AGENTS FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS CONTRACT, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. VENDOR'S OBLIGATIONS UNDER THIS CLAUSE SHALL SURVIVE ACCEPTANCE AND PAYMENT BY ASC OR ASC MEMBER.

### *Governing Law and Exclusive Venue*

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Contract. Any dispute under this Contract involving ASC must be brought exclusively in the state and federal courts located



in El Paso, El Paso County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts. Any dispute not involving ASC but involving an ASC member and Vendor shall be governed by the laws of the state of the ASC member, without regard to its provisions on conflicts of laws, and exclusive jurisdiction and venue shall lie in the city, county, and state of the ASC member.

#### *Multiple Contract Awards; Non-Exclusivity*

In accordance with TEX. GOV'T. CODE §2267.406, ASC reserves the right to award multiple contracts under the RFP, including multiple contracts for each product/service category. Product/Service categories are established at the sole discretion of ASC. Nothing in this Contract may be construed to imply that Vendor has the exclusive right to provide products and/or services to ASC and/or ASC members. During the Term of this Contract, ASC and ASC members reserve the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor. Additionally, although multiple contracts may be awarded under the RFP, no ASC member may complete Delivery Orders between ASC JOC contractors or other JOC contractors for delivery orders in violation of State law.

#### *New Products*

New Products and pricing during the term of the contract shall be reviewed and taken into consideration on an individual basis due to the nature of constantly changing technology.

#### *Promotion of Contract Marketing Plan*

The marketing of Vendor's company, product, and/or services shall be the sole responsibility of Vendor. ASC may only supply Vendor with ASC members' contact lists that contain name, address, phone numbers, and/or email addresses. Other items geared toward the joint-marketing of ASC and Vendor's company, product, and/or services shall be at ASC's sole discretion. Encouraging ASC members to circumvent this Contract by purchasing directly from Vendor may result in suspension or termination of this Contract. For so long as this Contract is valid and enforceable between the parties, Vendor agrees to display the ASC seal in its marketing collateral materials, such as Vendor's website and related marketing

materials. Vendor shall submit all promotional materials to ASC and obtain written approval before Vendor finalizes or publishes promotional material bearing the ASC or ASC name or seal. Vendor may not release any press release or other publication regarding this Contract or ASC unless and until ASC first approves the press release or publication in writing. ASC will work with the Vendor in presenting the cooperative to perspective members in support of the awarded contract.

#### *Website Support*

Vendor agrees to cooperate with ASC in publicizing contract particulars on the ASC website. Vendor also agrees to work with ASC in updating and maintaining current information on Vendor activities related to the Contract on the ASC website. Vendor agrees to provide an electronic version of its logo for use on the ASC website upon request and provide other information as reasonably requested by ASC to help ensure that the ASC website is current and consistently updated.

#### *Safety*

Vendor, its subcontractor(s), and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Contract, including, without limitation, those promulgated by ASC, ASC members, and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by ASC or ASC members. Vendor shall indemnify and hold ASC and/or the ASC member harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

#### *Workforce*

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which



shall be performed under this Contract. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any weapons, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on ASC and ASC members' property, nor may such workers be intoxicated or under the influence of alcohol or drugs on ASC and ASC members' property.

### *Supplemental Contracts*

ASC member and Vendor may enter into a separate, Supplemental Contract. Any Supplemental Contract developed as a result of this Contract and/or the RFP is exclusively between the ASC member and Vendor and shall have no effect or impact on ASC, any other ASC member, or this Contract. Any Supplemental Contract between Vendor and a ASC member is exclusively between that specific ASC member and Vendor and will be subject to immediate cancellation by the ASC member (without penalty to the ASC member) if, in the opinion of the ASC member, the quality, service, and specification requirements, and/or the terms and conditions are not maintained as stated in the Supplemental Contract.

### *Insurance*

Vendor is required to provide ASC and/or the ASC member with copies of certificates of insurance, naming ASC and/or the ASC member as additional insured for Texas Workers Compensation and General Liability Insurance, **within 14 business days of contract award and prior to the commencement of any work under this Contract.** Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to ASC and/or the ASC member prior to commencement of any work under this Contract. The insurance company insuring Vendor shall be licensed in the State of Texas or the state in which the ASC member is located, and shall be acceptable to ASC and/or the ASC member. Vendor shall give ASC or the ASC member a **minimum of ten (10) days'** notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Contract to maintain coverage as specified below. Vendor shall, at all times during the Term of this Contract, maintain insurance coverage with not less than the type and requirements shown below. If the ASC member has higher insurance requirements than those listed below, such may be added to the Purchase Order or Job Order. Such insurance is to be provided at the sole cost of the Vendor. These requirements do not establish limits of Vendor's liability.

Specialty insurance, such as "marine insurance", if required for a purchase order, may be listed as a line item and passed through to the member.

All policies of insurance shall waive all rights of subrogation against ASC, ASC members, and ASC and ASC members' officers, employees and agents.

Upon request, certified copies of original insurance policies shall be furnished to ASC and/or to ASC members.

ASC or ASC member, as requested, shall be named as an "additional insured" on insurance policies.

ASC and the ASC member reserve the right to require additional insurance should ASC or the ASC member deem additional insurance necessary, in their sole discretion.

- Workers Compensation (with waiver of subrogation to ASC and the ASC member), Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
- Statutory and Bodily Injury by Accident: \$100,000 each employee.
- Bodily Injury by Disease: \$500,000, policy limit; \$100,000 each employee
- Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, cratering and underground damage: \$1,000,000 each occurrence
- Limit Bodily Injury and Property Damage combined. \$1,000,000
- Products-Completed Operations Aggregate Limit \$1,000,000 per Job; Aggregate. \$1,000,000, Personal and Advertising Injury Limit.
- Automobile Liability Coverage: \$300,000 Combined Liability Limits Bodily Injury and Property



Damage Combined.

### *Participation in ASC*

Vendor acknowledges and agrees that continued participation in the ASC cooperative purchasing program is subject to ASC's sole discretion and that Vendor may be removed from the ASC program at any time, with or without cause, in ASC's sole discretion. All work resulting from this Contract must cease immediately after completion of the final accepted Purchase Order. Nothing in this Contract or in any other communication between ASC and Vendor may be construed as a guarantee that ASC or ASC members will submit any Purchase Order to Vendor at any time.

### *No Agency or Endorsements*

It is the intention of the parties to this Contract that Vendor is independent of ASC and ASC members, is an independent contractor, and is not an employee, agent, joint venture, or partner of ASC or any ASC member. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venture or partner, between ASC and Vendor, any ASC member and Vendor, ASC and any of Vendor's agents, or any ASC member and any of Vendor's agents. Vendor has no power or authority to assume or create any obligation or responsibility on behalf of ASC or any ASC member, and ASC and ASC members have no power or authority to assume or create any obligation or responsibility on behalf of Vendor. This Contract shall not be construed to create or

imply any partnership, agency, or joint venture, nor shall it be construed or deemed an endorsement of a specific company or product. Vendor agrees that ASC and ASC members have no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

### *Equal Opportunity*

It is the policy of ASC not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

### *Force Majeure*

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

### *Severability*

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

### *Waiver*

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

### *Entire Agreement*

The Contract, the RFP, Vendor's proposal submitted in response to the RFP, the attached and incorporated attachments, addendum, and/or exhibits, if any, and the Supplemental Contract, if any, contain the entire agreement of the parties relative to the purpose(s) of the Contract and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to this Contract. In the event of a conflict between this Contract and the RFP or Vendor's proposal submitted in response to the RFP, this Contract shall control. In the event of a conflict between the RFP and Vendor's proposal submitted in response to the RFP, the RFP shall control. This Contract supersedes any conflicting terms and conditions on any Purchase Order, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Contract.

In addition to this Contract, a Supplemental Contract (agreement) between Vendor and the ASC member may be established to further detail the terms and conditions of the ASC member's specific project. In the event of a conflict between this Contract and the Supplemental Contract, as to ASC, this Contract shall prevail. In the event of a conflict between this Contract and the Supplemental Contract, as to the ASC member, the Supplemental Contract shall prevail unless the Supplemental Contract states otherwise. This supplemental contract may be added to the ASC member's purchase order as an addendum.

### *Notice*

Any notice provided under the terms of this Contract by the parties to any other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the party at the address listed in the signature line of this Contract. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.