

STATE OF TEXAS)
)
COUNTY OF EL PASO)

ADDENDUM TO THE AGREEMENT BETWEEN THE COUNTY AND INSIGHT
RELATING TO THE COTTON VALLEY CONNECT BROADBAND PROJECT

This Addendum is entered into between the County of El Paso, a political subdivision of the State of Texas, (“Client” or “El Paso County” or “County”), and Insight Public Sector, Inc. (“Insight”), collectively referred to as the Parties. The Parties agree to modify and clarify any applicable agreement, exhibit, and any other applicable terms and conditions (collectively, “Agreement”) with the provisions in this Addendum. If any provision in the Agreement conflicts with this Addendum, this Addendum controls. The Agreement and this Addendum comprise the entire agreement between the Parties relating to the Cotton Valley Connect Broadband Project (“Project”).

The Parties agree the following provisions are added to and supersede the Agreement:

1. Covered Services. In exchange for compensation as stated herein, Insight shall provide to the County technical grant application and project design and installation services as more fully described in Insight’s Statement of Work No. 4010071048 (“SOW”).
2. Agreement Documents. This Agreement is the result of a cooperative purchasing arrangement Equalis Group Purchasing Program Region 10 ESC has with County and Insight. Insight’s contract with Region 10 ESC (Cooperative Contract No. EQ-013120-01C) is attached and incorporated by reference as Exhibit 1. Insight’s resulting SOW is attached and incorporated by reference as Exhibit 2. **If there is an express conflict between the terms of this Addendum and any other Agreement Document, the terms of this Addendum shall govern, then those of the Cooperative Contract No. EQ-013120-01C, then those of Insight’s SOW.** The terms of Exhibits 1 and 2 and this Addendum shall be read in harmony, if possible, in order to give effect to all.
3. Compensation. The County shall pay, and Insight shall accept, as full and complete payment for Insight’s timely and satisfactory performance of all its Agreement obligations the price of no more than **Two Million Seven Hundred Ninety-Eight Thousand Seven Hundred Sixty-One Dollars and Twenty-Six Cents (\$2,798,761.26)**. The price shall constitute the Contract Price, as further specified in Insight’s SOW, which shall not be modified except by Change Order pursuant to Texas law including, but not limited to, Texas Governmental Code Section 262.031, and as provided in the Agreement.
4. Cooperative Pricing Held Firm. Insight agrees to honor Cooperative Contract #EQ-013120-01C pricing until satisfactory completion of the Project regardless of whether Contract No. EQ-013120-01C is renewed or terminated.
5. Tax Status. The County shall not be liable for any taxes from which it is exempt due to its status as a tax-exempt political subdivision of the State of Texas. The County’s Tax

Identification Number is 746000762.

6. Payment and Late Fees. The Texas Prompt Payment Act, Texas Government Code Sec. 2251.001 et seq., governs the applicable interest rate for late payments by the County.
7. Annual Appropriations. Insight acknowledges that funding to pay for products, services, and obligations referenced in the Agreement is subject to annual appropriations by the County's governing body, and any termination, liability, indemnity, or other provision to the contrary shall not apply to County. County shall not be obligated for payment for any fiscal period for which funds have not been appropriated.
8. How Services Are Accepted. Provision 3.3 of Insight's SOW shall be deleted in its entirety and replaced with the following: "After Insight performs a Service or delivers a Deliverable to Client, if the Service or Deliverable does not meet the material requirements described in the SOW, then Client will provide Insight with a written explanation describing how the requirements were not met within 15 County business days following the date the Service or Deliverable was delivered to Client ("Acceptance Period"). Acceptance does not preclude the County from seeking remedies for latent defects.
9. Client Responsibilities. Provisions 3.5.3 through 3.5.7 found in Insight's SOW are deleted in their entirety and replaced with the following:

3.5.3. Client will provide Insight the necessary access to its internal experts, location(s), and workspace required to complete and support the Project.

3.5.4. Client will provide the necessary hardware, software, and internet circuits required for the successful completion of the project prior to Insight's arrival. Insight is responsible for all permit and licensing requirements for this Project.

3.5.5. Client is responsible for the procurement of Project-related product and material, unless otherwise specified in writing. Product and material are defined as any items purchased, owned and/or provided by Client that Insight is required to use for fulfillment of any Services described herein. Notwithstanding the preceding, Insight is solely responsible for providing and securing its own equipment, machines, and transportation to be used in the completion of the Project, including but not limited to tools, ladders, forklifts, cranes, excavators, haulers, or any other vehicle.

3.5.6. Client is not responsible for onsite storage. Insight is solely responsible for obtaining and securing onsite and offsite storage of Project products, materials, equipment, machines, and vehicles for the duration of the Project.

3.5.7. In the event that the County is not awarded the Grant Award and Insight is storing any Project-related products or materials, Insight will deliver or make available to the County during County business hours the products and materials within thirty calendar days of receipt of the notice of non-award.

10. Unincorporated Areas. Parties agree that Tornillo, Texas and Fabens, Texas are

unincorporated areas within the County of El Paso, Texas and any reference to them as municipalities are deleted and replaced with reference to them as unincorporated areas.

11. County Project Manager and Representatives. The County Project Manager for the Project is Robert Read. His office location and mailing address is 500 E. San Antonio Ave, Suite 302, El Paso, Texas, 79901, and is available via telephone at (915) 546-2159. From time to time, the County Project Manager may send County representatives from County Information Technology, County Public Works, or any other County department or office. Insight shall allow any such County representatives onto the work sites to inspect or review any and all Project work.
12. Contract Timelines. All limitations of time in this Agreement are material and are of the essence of this Agreement.
13. Project Records. All documents relating to the Project, or any designated portion of the Project, which are in the possession of Insight, or any subcontractor, shall be made available to the County for inspection and copying upon written request by the County. Furthermore, these documents shall be made available, upon request by the County, to any state, federal or other regulatory authority and any such authority may review, inspect, and copy such records. These records include, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, audio recordings, videos, and all other writings or things which document the Project, its design, and construction. These records expressly include those documents reflecting the cost of installation to Insight. Insight shall maintain and protect these documents for at least 4 years after final completion of the Project, or for any longer period of time as may be required by law or good construction practice.
14. Modifications/Amendments. The Agreement terms and conditions may not be amended or modified except in writing and executed by both parties to the Agreement and authorized by their respective governing bodies.
15. Termination. In the event either party materially breaches the Agreement and fails to remedy the breach after sixty (60) calendar days' written notice to the notifying party's reasonable satisfaction, the notifying party, in addition to exercising any other available rights or remedies, may terminate this Agreement. The County may terminate this Agreement without cause by providing thirty (30) calendar days' written notice. Termination will not affect County's obligation with respect to payment for satisfactory service received through the termination date.
16. Insight Representations and Warranties. Insight shall perform its services consistent with all rules applicable to its professional practice and licensure, and the professional skill and standards ordinarily provided by like professionals practicing in the same/similar locality under same/similar circumstances. Insight shall perform its services as expeditiously as is consistent with such professional skill, standard of care, and orderly progress of the Project. Insight and those it contracts/retains/employs to do Project work or services, shall have all necessary licenses, certifications, permits or other authorizations necessary to perform on the Project until their duties and obligations have been fully satisfied. Insight assumes full

responsibility to the County for the improper acts and omissions of Insight, its employees, or others employed or retained by Insight in connection with the Project.

17. Independent Contractor. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee between the County and Insight. Insight shall be deemed at all times to be an independent contractor. The County shall not be subject to any obligations or liabilities of Insight incurred in the performance of the Agreement. Insight shall be fully responsible for payment of any and all taxes and insurance, including, but not limited to federal, state and local income taxes, and payroll taxes (such as FICA, federal and state unemployment insurance, etc.) and shall make such statutory filings as may be required by law.
18. Governing Law and Venue. The parties acknowledge that County is a political subdivision of the State of Texas. As such, the Agreement shall be governed by the laws of the State of Texas without regard to its conflicts of law principles. The laws of the State of Texas shall govern the validity, construction, interpretation, and effect of this Agreement. Venue and jurisdiction shall lie in El Paso County, Texas.
19. No Waiver. For any and all disputes arising out of the Contract, both parties retain all rights and remedies available to them under Federal and State law.
20. No Assignment. Insight shall not sell, assign, transfer, or convey any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the County.
21. Indemnification. Any reference to County releasing, defending, indemnifying or holding harmless Insight or any other entity is deleted. Any language where County assumes risk or liability of any entity is deleted. Pursuant to Texas Constitution art. XI, section 7, exculpatory indemnity obligations cannot be paid from current revenues and neither a tax nor interest and sinking fund has been set, adopted, or established for the payment of any obligation in the Agreement.
22. Government Transparency. The County is subject to the Open Meetings Act and the Public Information Act, Chapters 551 and 552, respectively, of the Texas Government Code, which may require the disclosure of information despite any confidentiality, proprietary, or other provisions to the contrary in the Contract terms and conditions between the parties.
23. Government Protections. Nothing in any of the terms and conditions which comprise the Agreement modifies or waives any governmental or official immunity or limitation of liability enjoyed by County, its elected officials, or employees at common law or under other Texas law.
24. Israel. If applicable, pursuant to Texas Government Code Section 2271.002, Insight verifies it does not boycott Israel and will not boycott Israel as defined in Section 2271.001(1), for the duration of the Agreement. This provision is applicable if Insight employees at least 10 full-time employees and this contract has a value of at least \$100,000.

25. Firearm Trade Association. If applicable, pursuant to Texas Government Code Section 2274.002, Insight verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not, during the term of this contract, discriminate against a firearm entity or firearm trade association. This provision is applicable if Insight employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000.
26. Insurance. At its own expense, Insight shall procure and maintain for the Agreement term, the insurance listed below in the indicated amounts. All such policies of insurance shall be written by insurance underwriters authorized to do business in the State of Texas. Except for professional liability and workers' compensation, these policies shall name the County as an additional insured. Insight shall furnish to the County Risk Manager a certificate from each insurer showing insurance to be in effect as required before commencing work on the Project. This certificate shall provide that written notice of cancellation or any material change in said policy shall be delivered by the insurer to the County Risk Manager at least thirty (30) days in advance of such cancellation or change. In addition, Insight shall require its contractors and consultants maintain professional liability and/or general liability insurance as appropriate for the work and services provided.

General Liability

\$2,000,000 – annual aggregate limit
\$1,000,000 – each occurrence
\$1,000,000 – annual aggregate per Project
\$1,000,000- personal and advertising injury
\$1,000,000 – products/completed operations – aggregate
\$500,000 – fire legal damage liability
\$5,000 - premises medical expense
Waiver of subrogation

Automobile

\$1,000,000 – each occurrence
Waiver of subrogation

Professional Liability (Errors and Omissions)

\$1,000,000 - annual aggregate per Project

Workers' Compensation

\$1,000,000 – Employers Liability – each accident
\$1,000,000 – Employers Liability – each employee
\$1,000,000 – Employers Liability – disease – policy limit
Statutory Limits
Waiver of Subrogation

SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the parties execute this agreement on the 30th day of October, 2023.

THE COUNTY OF EL PASO, TEXAS

INSIGHT PUBLIC SECTOR, INC.

By _____
County Judge Ricardo A. Samaniego
Date: _____

By Scott Friedlander
Scott Friedlander (Dec 7, 2023 15:51 EST)

(Name) Scott Friedlander

(Title) President

(Signor must have legal authority to bind their entity)
Date: 12/7/2023 _____







2337-OP Cotton Valley Connect Broadband Project Addendum CLEAN FINAL 10.19.2023

Final Audit Report

2023-12-07

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