

**CONTRACT FOR SERVICES
BETWEEN THE
OFFICE OF THE GOVERNOR, TEXAS FILM COMMISSION
AND THE
TEXAS ARCHIVE OF THE MOVING IMAGE**

RFP No. 301-6-0001

This Contract for services regarding the statewide moving image archive program is made and entered into by and between the Office of the Governor, Texas Film Commission, hereinafter referred to as "OOG," or "TFC," and the Texas Archive of the Moving Image ("TAMI" or "Contractor"), OOG and Contractor are hereinafter referred to collectively as the "Parties."

A.1 DESCRIPTION AND REQUIREMENTS

A.1.1 Description of Services Required

The Texas Film Commission ("TFC"), by and through the Office of the Governor of Texas ("OOG"), hereby contracts with Texas Archive of the Moving Image ("TAMI" or "Contractor"), pursuant to Texas Government Code, Section 485.028, for services relating to the operation of a statewide moving image archive program (Program) in accordance with the specifications contained herein. In particular, the services are for a Program designed to preserve and catalogue Texas history via moving images (films and video media) while improving the public's access to archiving processes and materials. The results of the Program will provide a service to the public, enhance the ability of the TFC to market Texas as a moving image production location, provide accurate reference and stock footage material to filmmakers, and maintain a working presence throughout the State.

A.1.2 Primary Term of the Contract

The Contract shall commence on October 1, 2015, and shall terminate on August 31, 2017, unless terminated earlier pursuant to Section A.4.1 of this Contract.

A.1.3 Renewal and Extension Options

The OOG shall have the right to renew the primary term of the Contract for up to two additional one-year renewal periods, after which the contract may be extended once for up to six months. The OOG shall provide the Contractor with written notice of its intention to extend the term of the Contract in writing at least thirty (30) days prior to the Contract termination date. The primary term plus the optional extended term(s), if any, shall constitute the "contract period."

A.1.4 Maximum Liability Amount

The Contractor shall stipulate and agree that the OOG's total liability to Contractor, including consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations as set forth in any resulting Contract or arising out of any performance described herein shall

not exceed TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) per fiscal year for each fiscal year of the two-year initial contract term beginning September 1, 2015 through August 31, 2017.

A.1.5 Definitions

- A. **Acceptable Quality Level:** The level of performance for required services, as determined in the sole discretion of the OOG, below which the Contractor may not be paid, or Contractor may be required to re-perform or provide reimbursement to OOG.
- B. **Addendum:** A modification of the specifications issued by OOG.
- C. **Agency (OOG).** The governmental agency, as identified in this Contract, for receipt of the commodity/service. The agency is the Office of the Governor of Texas, Texas Film Commission.
- D. **Business Day:** Monday through Friday, 8:00 a.m. through 5:00 p.m., except for scheduled State of Texas and national holidays, as indicated on the website of the State Auditor's Office at: <http://www.hr.sao.state.tx.us/compensation/holidays.html>.
- E. **Contract:** The contract awarded as a result of OOG RFP No. 301-6-0001 and all exhibits thereto, any addendum issued in conjunction with this Contract, the successful Contractor's proposal, and any subsequent submission by Contractor, shall all be fully incorporated therein as exhibits.
- F. **Contractor:** Texas Archive of the Moving Image (TAMI).
- G. **CPA:** The Comptroller of Public Accounts.
- H. **Fiscal Year:** The State of Texas fiscal year period beginning September 1 and ending August 31.
- I. **Historically Underutilized Businesses (HUBs):** Business that is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman, and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations, and management of the entity's affairs. See, Texas Government Code, Title 10, Subtitle D, Chapter 2161, 34 Texas Administrative Code, Chapter 34, Subchapter B. <http://www.window.state.tx.us/procurement/prog/hub/>.
- J. **OOG:** The Office of the Governor, to include the Economic Development and Tourism Office and the Texas Film Commission within the Office of the Governor.
- K. **Party/Parties:** The Office of the Governor and/or Contractor separately or collectively.
- L. **Program:** The Texas Moving Image Archive Program, including as proposed in the response submitted by the Contractor to the OOG as a result of this RFP No. 301-6-0001.
- M. **RFP:** Request for Proposal No. 301-6-0001.
- N. **TAC:** The Texas Administrative Code, which is the publication for state administrative rules and regulations.
- O. **TFC:** The Texas Film Commission, within the Office of the Governor, as established by Texas Government Code Chapter 485.

- P. **TPASS:** The Texas Procurement and Support Services, a division of the Comptroller of Public Accounts.
- Q. **Monthly Service Fee:** The fixed monthly fee charged by the Contractor to fully compensate the Contractor, and supporting subcontractors if applicable, for the costs of all of the Contractor's in-house services and expenses required to complete all work under this Contract. The monthly service fee includes, but is not limited to, all labor and incidental and normal business operating expenses, such as local and long distance phone (landline and mobile) calls; facsimile; routine travel; postage; local courier service; internal copying; production media, equipment, supplies; materials, parking and other ongoing services performed or required for routine performance.
- R. **Work Product:** For purposes of this Contract "work product" is defined to include all reports, statistical analysis, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced or generated in connection with this Contract. Work product includes "works-for-hire" as may be further defined herein.

A.2 STATEMENT OF WORK – SERVICE REQUIREMENTS

- A.2.1 Overview of the Texas Image Archive Program.** Contractor will provide services and operational support for the Texas Image Archive Program, which will provide technical resources regarding archiving moving image projects, improve public access to the moving image heritage of Texas, and discover, preserve, and collect and preserve the film and video history of Texas. The Program has been ongoing since 2008, and provides a public service to assist organizations statewide with image archival, restoration, and retrieval, and provides technical assistance regarding the preservation of moving images and digitization work. More than 20,000 films and videos have been digitized and archived since the program's inception in 2008.
- A.2.2 Service Requirements.** Services shall include, but are not limited to, the requirements contained in this Contract, the Contractor's Proposed Work Plan, the Contractor's response to the RFP, and the RFP and any addenda. Services set forth that contain the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception. Commodities/Services set forth that contain the words "may" or "can" allow Contractors to offer alternatives to the manner in which the commodities/services are provided. The requested services and corresponding deliverables are as follows:
- (a) **Community Outreach & Public Education.** The Program must contain a public outreach component that will educate Texans on the importance of moving image preservation, as well as how to take care of moving image footage. It should also educate individuals on the history of the moving image industry in Texas. The successful Contractor will work closely with local communities and municipalities, as well as other organizations relevant to moving image preservation, such as historical societies and professional media organizations.
- i. **Digitization Opportunities** – The Program must provide opportunities for Texans to have their moving image projects digitized if the project is donated to the Program.
 - ii. **Database & Public Access** – The Program must provide an electronic collection of moving image projects that is accessible by the general public, including via the Internet.

- iii. Education (K through 12) – The Program must provide instruction for teachers on how to use the Texas Moving Image Archive Program collection in their classrooms and must provide teaching materials.
 - iv. The Program must provide materials for the Texas Film Commission to use for promotional and marketing purposes from a collection of moving image projects to demonstrate Texas life during particular time periods, or in different regions. These materials may be used as reference material for film research or to market the archives as a source for stock footage.
- (b) **Program Plan.** On or before June 30 of each year beginning after the effective date of the Contract, the Contractor shall be responsible for development and submission of an annual Program Plan for the services the Contractor proposes to undertake during the upcoming fiscal year. The Program Plan shall include the Contractor's evaluations and recommendations for all proposed activities and projects, to be undertaken in a manner that will most effectively utilize the funds allocated by the OOG for the Texas Moving Image Archive Program. The Program Plan must include an estimated budget for all proposed projects, activities, services to be performed, as well as recommendations of specific goals and measurements that demonstrate the Contractor's success in meeting the goals and objectives of the Program. The Program Plan must be approved by OOG prior to implementation. Any changes made to the Program Plan throughout the year must be approved by OOG in writing.

A.2.3 Measurement and Performance Tracking

The OOG will monitor the performance of the Contract. All services under the Contract shall be performed at an acceptable quality level and in a manner consistent with acceptable film archive and Texas primary education industry standards, custom, and practice.

Satisfactory performance, as determined by the OOG, includes, but is not limited to the following:

- (a) At least one (1) in-person meeting conducted with the OOG per quarter.
- (b) A quarterly report of the following performance measures:
 - i. number of moving images digitized.
 - ii. ranking of the electronic collection of moving image projects by page views made available to the public online.
 - iii. Copies of all new lesson plans created with the collection's digitized moving images.
- (c) At least one short form digital film per quarter that that promotes the available footage and purposes of the Texas Moving Image Archive program.
- (d) Communication with the OOG throughout the Program's timeline.
- (e) A report produced at the end of each fiscal year on the progress of the Program, as well as an actual expenditure list for the year.

A.2.4 Contractor Staffing Requirements

The Contractor shall dedicate qualified professional staff who are experienced in video production, video archival practices, and in the provision of technical assistance with archiving and preserving

moving images and digitization work as necessary to provide services under the Contract. The Contractor must dedicate a contract manager to oversee all activities and services performed and provided under the Contract, including responsibility for the management, accounting for the entire contract, billing, and reporting. The account manager will be OOG's primary day-to-day contact.

A.2.5 Subcontractors

In the event that the Contractor should determine that it is necessary or expedient to subcontract for any of the performances herein, the Contractor shall submit a copy of the proposed subcontract to the OOG and shall obtain the written approval from the OOG before subcontracting the subject performances. The successful Contractor, in subcontracting for any performances specified herein, expressly understands and agrees that the OOG shall not be liable in any manner to the Contractor's subcontractor(s). In accordance with Texas Government Code, Chapter 2251 (Texas Prompt Payment Act), the Contractor shall, upon receipt of payment from the OOG, pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the vendor receives the payment. Upon request of the OOG, Contractor shall provide documentation in a form acceptable to the OOG to support confirmation of payments made by Contractor to subcontractors. In no event shall this section or any other provision of this Contract be construed as relieving the Contractor of the responsibility for ensuring that all performances rendered under this Contract, and any subcontracts thereto, are rendered in compliance with all of the terms of this Contract.

A.3 FINANCIAL TERMS AND CONDITIONS

A.3.1 Compensation

The OOG's total liability to Contractor, including consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations, and for reimbursement of all expenses, if any, as set forth in this Contract or arising out of any performance herein shall not exceed **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)** per fiscal year for each fiscal year of the two-year initial contract term beginning September 1, 2015 through August 31, 2017. Any increase(s) in the contract amount for subsequent fiscal years, any renewals or extensions, or as a result of increases in available funding, shall require an amendment to the Contract pursuant to section A.4.2, which will specify the new line item amount and new contract total.

The parties agree that any act, action or representation by either party, their agents or employees that purports to increase the contract total is voidable by the OOG, unless this Contract is amended pursuant to this section. The OOG reserves the right, in its sole discretion, to provide additional funding to cover unanticipated costs of the program that it may deem to be in the best interest of the State and the Program. The OOG shall not be responsible for payment of any additional monthly fees or compensation to the Contractor in the event that the Contractor's actual costs and expenses required to complete work under this Contract exceeds the Contractor's compensation as provided in this section.

A.3.2 No Reimbursement of Expenses

No reimbursement for operating expenses or out-of-pocket costs of any kind will be provided under this Contract. Contractors are expected to develop their monthly service fee proposals to incorporate their projected operating and out-of-pocket expenses for the Program.

A.3.3 Continued Appropriations

This Contract is contingent upon the continued availability of appropriated state funds. This Contract shall terminate, without liability or penalty to OOG, in the event that appropriations are not available.

A.3.4 No Debt Against the State

This Contract shall not be construed as creating any debt by or on behalf of the OOG State of Texas, and all obligations of the State of Texas, regarding this Contract, are subject to the continued availability of funds, per Section A.3.3.

A.3.5 Contract Notices

The OOG shall issue written notice for all contract, contract renewal or extension notices, and authorizations for the purchase of services specified in the contract performance requirements. No authorization for the purchase of any services is provided until the Contractor/Contractor receives such written notice.

The Contractor shall identify the person authorized to receive direction from OOG, to manage the work being performed, and to act on behalf of the Contractor as its Contract Manager. The Contractor shall ensure that its representative, or his or her designee, is available at all times for consultation with OOG.

A.3.6 Acceptance of Work Performed

All work performed by the Contractor shall be accepted in writing by OOG before payment will be approved. Acceptance shall be based upon Contractor's compliance with all contract requirements. OOG will not pay for work which is of poor quality and/or fails to fully comply with the contract requirements. Should OOG determine, in its sole discretion, that the Contractor's work is of poor quality and/or Contractor fails to perform services in compliance with the contract requirements, OOG may require the Contractor to promptly re-perform the services in conformity with the contract requirements at no additional cost to OOG, or OOG may reject payment of invoices for Contractor's work without penalty or further obligation to the Contractor. OOG may further require new performance or a refund in the event that work is discovered after payment has been made to be either unauthorized or below the Accepted Quality Level. Failure to perform work in compliance with all contract requirements may result in termination of the contract for reason of default, in accordance with A.4.1(b).

A.3.7 Invoicing and Payment

- a. The Contractor shall submit itemized monthly invoices for all services completed per the contract requirements. All statements for services shall be submitted to the OOG on a timely basis once every thirty (30) days. Invoice amounts shall be in U.S. dollars.
- b. Each invoice presented must include: (1) OOG RFP #301-6-0001; (2) the Contractor's Tax Identification Number (TIN); (3) the name and division of the OOG contact; (4) a brief itemization of the services provided under this Contract; (5) description of each service and the dollar amount attributable to each; and (5) the name of the entity or individual providing the services to which each costs are attributable. Upon the request of the OOG, the Contractor must submit to the OOG any additional documentation or explanation the OOG may require to support or document the requested payment under this Contract.

- c. By submission of the invoices, Contractor is warranting the following: (1) its invoices have been carefully reviewed to ensure that all invoiced services have been performed or delivered; (2) that the services have been performed in compliance with all terms of the Contract; (3) that the amount of each new invoice added together with all previous invoices does not exceed the amount stated in Section A.3.1; and (4) the charges shown on the invoice are allowable costs that are reasonable, necessary, and where applicable, such expenses do not exceed the amounts provided for in this Contract, and that all supporting documentation is attached.
- d. Invoices and payment inquiries shall be submitted directed to:
Accounts.Payable@gov.texas.gov or by mail to:
Office of the Governor
Accounts Payable
P.O. Box 12878
Austin, Texas 78711-2878
- e. Each invoice is subject to review and approval by OOG before payment will be processed. Normal payment processing time for services which have been completed, delivered to, and approved by OOG is thirty (30) calendar days after receipt of a valid, uncontested invoice. OOG will incur no penalty for late payment if payment is made in thirty (30) or fewer days from receipt of goods or services and an uncontested invoice. Payments shall be made in accordance with Chapter 2251, Texas Government Code (Texas Prompt Payment Act).
- f. Any invoice that does not comply with the minimum requirements stated above, or that does not comport with the limitations on expenditures as set forth in this Section may not be considered valid and may be subject to rejection and/or return to the Contractor.

A.3.8 Tax Identification Information Required

As a prerequisite to the OOG's ability to process any payments to Contractor under this Contract, Contractor shall provide the OOG with required tax and payee identification information in the form of a completed "Application for Texas Identification Number" (available on the Comptroller of Public Accounts' website at <http://www.window.state.tx.us/taxinfo/taxforms/ap-152.pdf>). If Contractor has previously completed the required documentation to obtain a Texas Identification Number (TIN) prior to the effective date of this Contract, Contractor may satisfy this requirement by providing the OOG with Contractor's current TIN, name, and address to permit the OOG to verify registration in the TINS System with the Texas Comptroller of Public Accounts.

A.3.9 Access to Records, Records Retention, and Audit

- a. **Access to Records.** The OOG, through any of its duly authorized representatives, shall have access to books, records, documents, financial records and any other information, pertinent to performance of all work under this Contract for the purpose of audit, review, inspection, copying, and/or audit. This right of access applies to services performed by, or financial records pertaining to, all subcontracts and subcontractor services. The Contractor shall provide proper facilities for such access and inspection, or otherwise promptly make such records available to the OOG or its authorized representatives through the production or copying of any documents or information required by the OOG at Contractor's expense. The Contractor shall also allow such access to the work product it has created for the OOG hereunder as may be necessary to enable any new OOG Contractor to accomplish a smooth transition to the new Contractor

- b. **Records Retention.** Records shall be maintained by the Contractor and made available during the entire performance period of this Contract and until seven (7) years from date of final payment by OOG for the services provided under this Contract. In addition, those records relating to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until completion of such action and resolution of all issues which arise from it, or until the end of the aforementioned seven (7) year period, whichever is later. .

- c. **Right to Audit.** Contractor will cooperate fully in any review conducted by OOG or its authorized representatives related to services provided under this Contract. The OOG has the authority to monitor, inspect, assess, and review the fiscal, contractual, or performance of the Contractor with respect to the Contract, including all information related to any services provided under this Contract or billed to the OOG. Contractor will remedy in a timely manner, any weaknesses, deficiencies, contract noncompliance, or audit exceptions found as a result of a review by the OOG or its authorized representatives. Such remedy can include a refund or offset of contract payments or any other appropriate actions deemed necessary by the OOG. Acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office to audit or investigate the expenditure of funds under this Contract or any subcontract. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

A.3.10 Delivery of Notices.

Any notice required or permitted under this Contract to be provided by one party to the other party must be in writing and correspond with the contact information noted in this section. At all times, Contractor will maintain and monitor at least one active electronic mail (e-mail) address for the receipt of Contract-related communications from the OOG. It is the Contractor's responsibility to monitor this e-mail address for Contract-related information.

- a. **Contractor's Contact Information.** The mailing address of the Contractor for all notices is:

Caroline Frick
Executive Director and Contract Manager
Texas Archive of the Moving Image
501 N. IH 35, Suite 204
Austin, TX 78702
cfrick@texasarchive.org

- b. **Office of the Governor's Contact Information.** The mailing address of the OOG for all notices is:

Heather Page, Director
Texas Film Commission
Office of the Governor of Texas
P.O. Box 13246
Austin, TX 78711
heather.page@gov.texas.gov

A.4 ADDITIONAL CONTRACTUAL TERMS AND CONDITIONS

A.4.1 Termination

- a. **Termination for Convenience.** The OOG reserves the right, in its sole discretion and at its sole option, to terminate this Contract, in whole or in part, without a penalty, by notifying Contractor in writing of such termination. Such notification of termination shall state the effective date of such termination and if no effective date is specified, the termination shall be effective upon the date of the notification. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, immediately cease all services, or if an effective date is specified, cease all services on the effective date. The OOG shall be liable for payments limited only to the portion of work authorized by OOG in writing and completed prior to the effective date of cancellation, provided that OOG shall not be liable for any work performed that is not acceptable to OOG and/or does not meet contract requirements.
- b. **Termination for Default.** In the event that Contractor fails to provide the agreed upon services according to the provisions of this Contract, or fails to comply with any of the terms or conditions of this Contract, the OOG may, upon written notice of default to Contractor, immediately terminate all or any part of this Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law, or under this Contract.
- c. **No Liability Upon Termination.** If the Contract is terminated for any reason, the OOG and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination.
- d. **Remedies.** Notwithstanding any exercise by the OOG of its rights of early termination pursuant to this section, Contractor shall not be relieved of any liability to the OOG for damages due to the OOG by virtue of any breach of this Contract by Contractor or for amounts otherwise due the OOG by Contractor. However, Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

A.4.2 Amendments and Changes

Any amendment or change to the Contract whether by modification or supplement, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the Contractor and OOG. Neither party to this Contract will be bound by any oral statements, contracts, or representations contrary to the written contract requirements and terms and conditions.

The OOG reserves the right to amend this Contract through execution of a unilateral amendment provided to the Contractor with ten (10) days' notice prior to execution of the amendment under the following circumstances: (1) to correct an obvious clerical error in this Contract; (2) to incorporate new or revised federal or state laws, regulations, rules, or policies that are required to be included as part of the Contract; (3) to change the designated OOG mailing address for this Contract; or (4) to change the designated Contractor mailing address for this Contract. All other changes require a bilateral amendment signed and approved by both parties.

A.4.3 Governing Law, Remedies, Venue

The Contract shall be governed, construed, and interpreted under the laws of the State of Texas. Notwithstanding any other terms in this Contract, or any exhibits or addenda hereto, or any other documents included in this contract, all claims, counterclaims, disputes, and other matters in question between OOG and the Contractor arising out of or relating to the contract or the breach thereof, will be decided in accordance with the dispute resolution procedures of Texas Government Code, Chapter 2260 as set forth in section A.4.25, and any resulting action shall be in the Travis County District Court in the City of Austin, Travis County, Texas.

OOG, without limiting any other rights or remedies it may have by law, equity or under the Contract, will have the right to impose and collect liquidated damages and will have the right to institute an action for actual damages and/or injunctive relief and/or to terminate the Contract immediately. OOG's termination of this Contract shall not limit or waive any remedies the OOG may have for breach by Contractor of its past, present or future duties and obligations created by this Contract or otherwise required by applicable law.

A.4.4 Political Activity

None of the activities or performances rendered hereunder by the Contractor shall involve lobbying or political activity, including but not limited to, any activity to further the election or defeat of any candidate for public office, or any activity undertaken to influence the passage, defeat, or final contents of legislation.

A.4.5 Sectarian Activity

None of the activities or performances rendered hereunder by the Contractor shall involve any sectarian or religious activity.

A.4.6 Americans with Disabilities Act

Contractor shall provide reasonable accessibility for persons with disabilities in compliance with the Americans with Disabilities Act, where applicable.

A.4.7 Proprietary Right/Copyright

Contractor shall not assert rights against the OOG at common law or in equity or establish any claim to statutory copyright in any material or information developed in performance of the Contract. OOG shall have the right to use, copyright, reproduce, publish, or distribute any or all of such information and other materials without the necessity of obtaining any permission from Contractor and without expense or charge.

A.4.8 Ownership Rights in Work Product

- a. All work product developed under in the course of the services rendered pursuant to this Contract shall become the exclusive property of OOG and the State of Texas. To the extent that title to any such work product may not, by operation of law, vest in OOG, or such work product may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to OOG.
- b. The Contractor shall ensure duplication and duplication rights are secured to the State of Texas

from all contracts and subcontractors, prior to delivery of products to OOG. Contractor's failure to secure all required duplication and duplication rights to OOG prior to delivery of products shall be grounds for termination of the contract, for reason of default, in accordance with Section A.4.1(b).

- c. OOG shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give OOG and/or the State of Texas, as well as any person designated by OOG and/or the State of Texas, all assistance required to perfect the rights defined herein without any additional charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

A.4.9 Intellectual Property

- a. Intellectual property includes any discovery or invention for which patent rights may be acquired, any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and any other materials in which intellectual property rights may be obtained.
- b. OOG shall be the sole owner of intellectual property developed under this Contract. OOG hereby reserves the exclusive right to use, publish, or reproduce the intellectual property for sales or otherwise, and to authorize others to do so. Contractor shall take such steps as are necessary to perfect and to protect OOG's intellectual property rights and all products developed hereunder by the Contractor and its subcontractors.
- c. In performing work under this Contract, the Contractor shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third-party's intellectual property rights. In accordance with Section A.4.16 of this Contract, Contractor shall indemnify and hold OOG harmless for and against any claims for copyright infringement related to its work under this Contract.
- d. The Contractor shall include provisions adequate to effectuate the purposes of this Section in all subcontracts under this Contract in the course of which intellectual property may be produced or acquired. Such provisions shall make it clear that any intellectual property created under such subcontracts belongs solely to OOG.

A.4.10 Data, Publicity, Public Information

- a. The Contractor agrees to notify and obtain the written approval of OOG prior to releasing any information to the news media regarding the activities being conducted under this Contract.
- b. The OOG, the Texas Legislature, and any other State agency may, at the OOG's discretion, distribute any report prepared by the Contractor or post any report to an agency website or website of a standing committee of the legislature.
- c. Notwithstanding any provisions of this Contract to the contrary, Contractor understands OOG will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. OOG agrees to notify Contractor in writing within ten (10) business days from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with OOG in the production of documents responsive to the request. OOG will make a determination whether

to submit a Public Information Act request to the Attorney General. Contractor will notify OOG within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. The Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

- d. Contractor is required to make any information created or exchanged with the State 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. Unless otherwise agreed, the information provided shall be in .jpeg, .mov, mp4, .wmv, .avi, or Microsoft Office Word 2010 as appropriate for the file and content type.

A.4.11 Change of Name/Key Personnel:

- a. Contractor shall promptly notify OOG of any change of name in which it holds this contract. A contract amendment shall be required upon a change of name which shall specifically state that no other terms or conditions of the Contract are thereby changed.
- b. The Contractor agrees that the key personnel assigned to work under the resulting Contract, if any, shall remain available for the entirety of the Program throughout the term of the Contract as long as that individual is employed by the Contractor, unless the OOG agrees to a change in the key personnel.

A.4.12 Bankruptcy

Should the Contractor become insolvent, or if the proceedings in bankruptcy should be instituted by or against the Contractor, the remaining or unexpired portion of this Contract shall, at the election of OOG, be terminated.

A.4.13 Contractor Affirmations

Signing this bid with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the Contractor shall be removed from all bid lists. By agreeing to and signing this Contract, the Contractor hereby makes the following certifications and warranties required by statute:

- c. **Delinquent Child Support Obligations:** Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- d. **Prohibited Bids and Contracts:** Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and contracts), the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- e. **Previous Employment with the Agency:** The Contractor acknowledges and understands that Section 2252.901 of the Texas Government Code prohibits the Office of the Governor from using state appropriated funds to enter into any employment or consulting contract with any individual

who has been previously employed, as an employee, by the OOG within the past twelve (12) months. If the Contractor is an individual, the Contractor certifies that Section 2252.901 of the Texas Government Code does not prohibit the use of state appropriated funds for satisfying the payment obligations herein. Contractor further acknowledges and understands that Section 572.069 of the Texas Government Code prohibits state officers and employees who participated in the procurement of services under this Contract from accepting employment with the Contractor for a period of two years following the end of their State employment. Contractor further certifies that this Contract is compliant, and will remain in compliance during the Contract term, with the Texas Government Code Sections 669.003 prohibiting certain contracts with Executive Head of State Agency. If Section 669.003 applies, Contractor will provide the following information: Name of former executive; name of state agency; date of separation from state agency; position with bidder; and date of employment with bidder.

- f. **Buy Texas:** Under Section 2155.4441 of the Texas Government Code, the Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.
- g. **Gift to Public Servant:** The Contractor warrants that it has not given, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this Contract.
- h. **Corporate Franchise Tax:** The Contractor certifies that its Texas franchise tax payments are current, or that it is exempt from, or not subject to, such tax.
- i. **No Claims.** Contractor certifies that Contractor does not have any potential or existing claims against or unresolved audit exceptions with the State of Texas or any agency of the State of Texas.
- j. **Debt to State:** The Contractor acknowledges and agrees that, to the extent the Contractor owes any debt or delinquent taxes to the State of Texas, any payments the Contractor is owed under this Contract may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes the Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.
- k. **Antitrust:** Pursuant to 15 U.S.C. Section 1, et seq., and Chapter 15 of the Texas Business and Commerce Code, neither the Contractor nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- l. **No Compensation for Preparation of Solicitation:** Neither the Contractor, nor any person or entity which will participate financially in this Contract, has received compensation for participation in the preparation of the specifications, preparation, or production of RFP No. 301-6-0001.
- m. **Conflicts of Interest:** Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to the OOG under this Contract and any resulting contract, if any, and that Contractor's provision of the requested items under this Contract, if any, would not reasonably create an appearance of impropriety. Contractor has a continual and ongoing obligation to immediately notify OOG in writing, upon discovery of any actual or potential conflict.

- n. **Independent Contractor:** The Contractor agrees and acknowledges that during the existence of any resulting contract, if any, it acts in the capacity of an independent contractor and that the Contractor and its agents, if any, is not an employee of the OOG or the State of Texas.
- o. **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion:** OOG will adhere to the directions provided in U.S. Presidential Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing Contractors/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Contractor further certifies that it will not knowingly enter into any subcontract with an entity who is, or whose principals are, on the specially designated nationals list or debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Contractor will ensure that this section regarding debarment, suspension, ineligibility, and voluntary exclusion, and the specially designated nationals list without modification in any subcontracts or solicitations for subcontracts.
- p. **Hurricane Relief:** Texas law prohibits the OOG from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for any hurricane or other disaster, as defined by section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under section 2155.006 of the Texas Government Code, the Contractor certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld or rescinded if this certification is inaccurate or false.
- q. **Terminated Contracts:** By submitting a Proposal, the Contractor certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Contractor does have such a terminated contract, the Contractor shall identify the contract and provide an explanation for the termination.
- r. **Deceptive Trade Practices; Unfair Business Practices:** The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. The Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.
- s. **Immigration and Employment Verification:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Acts of 1986 and 1990 ("IRCA") regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services in the United States of

America under this RFP or resulting Contract, if any, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) enacted on September 30, 1996. The Contractor further certifies and ensures that it has determined (such as through the use the U.S. Department of Homeland Security’s E-Verify system), and will continue to verify for the term of the Contract, the lawful employment eligibility of all persons employed to perform duties within Texas during the term of the Contract. If this certification is falsely made, the Contract may be terminated at the discretion of the State and at no fault to the State.

- t. **Felony Criminal Convictions:** Contractor represents and warrants that Contractor and Contractor’s employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised OOG as to the facts and circumstances surrounding the conviction.
- u. **Resident Bidder:** By submitting a bid, Contractor certifies that if a Texas address is shown as the address of the Contractor, then Contractor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.
- v. **False Statements.** By submitting a bid, Contractor represents and warrants that it is not making any false statements, representations, certifications, affirmations, warranties or guarantees regarding the bid. If any of the statements, representations, certifications, affirmations, warranties or guarantees are false or if Contractor signs the Contract with a false statement or it is subsequently determined that Contractor has violated any of the statements, representations, certifications, affirmations, warranties or guarantees included in the Contract, Contractor shall be in default under this Contract and OOG may terminate or void this Contract for cause and pursue other remedies available to OOG under this Contract and applicable law.
- w. **Fraud, Waste and Abuse.** Contractor understands that OOG does not tolerate any type of fraud, waste, or misuse of funds received from OOG. OOG’s policy is to promote consistent, legal, and ethical organizational behavior, by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, OOG policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event of a formal allegation or a finding of fraud, waste, or misuse of funds received from OOG is made against Contractor, Contractor is required to immediately notify OOG of said finding. Contractor is also obliged to inform OOG of the status of any on-going investigations. Contractor is expected to report any possible fraudulent or dishonest acts, waste, or abuse to OOG’s Fraud Coordinator or Ethics Advisor at (512) 463-1788 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

A.4.14 Force Majeure

Neither Contractor nor OOG shall be liable to the other for any delay in, or failure of performance, of any requirement included in this RFP or any resulting contract, if any, caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, with ten (10) business days of the existence of such force majeure, or otherwise waive this right as a defense.

A.4.15 Civil Rights

The Contractor agrees that no person shall, on the grounds of race, color, religion, sex, National origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contractor shall comply with U.S. Presidential Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

A.4.16 Indemnification

(a) Acts or Omissions

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND OOG, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

(b) Infringements

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO CUSTOMER'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO CUSTOMER, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY CUSTOMER THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR CUSTOMER PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST CUSTOMER, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE CUSTOMER THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR

(II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT CUSTOMER'S USE IS NON-INFRINGEMENT.

(c) Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/ OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

CONTRACTOR FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

A.4.17 Liability for Damage to Government Property

The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to this RFP or resulting Contract, if any. The Contractor shall notify the OOG Contract Manager in writing of any such damage within one (1) calendar day.

A.4.18 Non-Waiver of Rights

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or successive breach.

A.4.19 No Waiver of Sovereign Immunity

The Parties expressly agree that no provision of this RFP or any resulting Contract, if any, nor the OOG's conduct related to the Contract, will constitute a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the OOG, the State of Texas, and their officials and staff. The OOG does not waive any such privileges, rights, defenses, or immunities by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

A.4.20 Interpretation/Severability

This Contract is intended as a full and complete expression of and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and all prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written, are superseded and replaced by this Contract. In case 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 provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Contract.

A.4.21 Compliance with Laws; Dealing with Public Servants

The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code section 36.02, which prohibits bribery; (ii) Texas Penal Code section 36.09, which prohibits the offering or conferring of benefits to public servants; and (iii) Texas Government Code section 2155.003, which prohibits the chief clerk or any other employee of the OOG from having an interest in, or in any manner being connected with, a contract or bid for a purchase of goods or services by an agency of the state, or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of any services contemplated by this RFP and provided as the result of any resulting

Contract. Except where otherwise expressly required by applicable laws and regulations, OOG shall not be responsible for monitoring Contractor's compliance. If Contractor performs any work knowing or having reason to know that it is contrary to laws or regulations, Contractor shall bear all claims, costs, losses, and damages caused by, arising out of, or resulting there from.

A.4.22 Drug Free Workplace

Contractor shall comply with and implement the applicable provisions of the Drug-Free Work Place Act of 1988 and any amendments that may hereafter be issued.

A.4.23 Insurance and Other Security

a. Contractor shall maintain insurance coverage limits not less than the following insurance and bonding coverage outlined below in connection with the Contract:

1. Commercial General Liability Insurance

Bodily Injury and Property Damage

Each occurrence limit: \$500,000

Aggregate limit: \$1,000,000

All coverage must be with companies licensed in the state of Texas, with an "A" rating from Best, and authorized to provide corresponding coverage. Contractor represents and warrants that all policies shall contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to the OOG. Contractor represents and warrants that it shall maintain the above coverage during the term of any contract awarded as the result of this RFP, and shall timely provide the OOG with an executed copy of the policies upon request.

Contractor also represents and warrants that all policies, to the extent possible, shall contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to OOG. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide OOG with an executed copy of the policies immediately upon request

2. Occupational Accident Insurance: Contractor must maintain workers' compensation insurance, or its equivalency.

b. Employees furnished by the Contractor shall not be considered employees of the OOG or the State of Texas and the Contractor shall be responsible for payments of all occupational accident claims, unemployment compensation claims, unemployment disability claims or claims under similar laws. The Contractor is not required to cover the employees of subcontractors. However, the Contractor must require its subcontractors to maintain the required coverage.

A.4.24 Assignment

Contractor shall not assign or transfer any interest in the Contract without the prior written consent of OOG.

A.4.25 Dispute Resolution

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the OOG and by Contractor to attempt to resolve any claim for breach of Contract made by the Contractor.

Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to the Director of the Economic Development and Tourism Division at the OOG or his designee. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Contractor and the OOG otherwise entitled to notice under the parties' Contract. Compliance by Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of Contract by OOG if the parties are unable to otherwise resolve their disputes.

Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by OOG nor any other conduct of any representative of OOG relating to the Contract shall be considered a waiver of sovereign immunity to suit.

A.4.26 Order of Precedence

In the event of conflicts or inconsistencies between this Contract, the Contractor's proposal, the RFP and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Executed Contract, Attachments to the Contract, the RFP and the Contractor's Proposal.

A.4.27 Public Disclosure

The Contractor understands that the OOG does not endorse any vendor, commodity good, or service. The Contractor, its employees, representatives, subcontractors or other agents may not issue any media release, advertisement, publication, or public pronouncement that pertains to this Contract or the services or project to which this Contract relates or that mentions the OOG without the prior written approval of the OOG.

A.4.29 Technology Access.

To the extent applicable, Contractor will comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to this Contract. Likewise, if applicable, Contractor shall provide Texas Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). A Contractor not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must

provide DIR with a report that addresses the same accessibility criteria in substantively the same format.

A.4.30 Vendor Performance.

Pursuant to Texas Government Code, Sections 2155.144, -.1442 and 34 TAC Section 20.108, state agencies are required to report vendor performance on any purchase of \$25,000 or more from contracts administered by the Texas Comptroller of Public Accounts or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exempt from Texas Comptroller of Public Accounts' procurement rules and procedures. The OOG may report vendor performance by means of the Vendor Performance Tracking System (VPTS), which can be accessed online at:

http://www.window.state.tx.us/procurement/prog/vendor_performance/

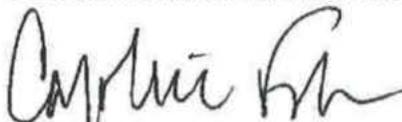
THIS CONTRACT CONSTITUTES THE ENTIRE LEGAL AND BINDING AGREEMENT BETWEEN THE PARTIES, WHO HAVE DULY AUTHORIZED, EXECUTED, AND DELIVERED THIS CONTRACT IN ACCORDANCE WITH ITS TERMS. THE UNDERSIGNED REPRESENTATIVES HAVE THE AUTHORITY TO EXECUTE AND AGREE TO THIS CONTRACT ON BEHALF OF THEIR RESPECTIVE REPRESENTED PARTY.

OFFICE OF THE GOVERNOR

TEXAS ARCHIVE OF THE MOVING IMAGE



Chief of Staff or Designee



Caroline Frick
Executive Director

Date: 10-8-15

Date: 10-1-2015