

## **TERMS AND CONDITIONS**

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

### **I. Amendment**

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prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract.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

### **II. Bankruptcy**

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

### **III. Compliance with Law**

The Subrecipient hereby represents and warrants that:

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

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

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

#### **V. Counterparts**

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

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

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

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

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

#### **VIII. Independent Subrecipient**

- A. Subrecipient shall perform the work required by this Contract as an "Independent Subrecipient." Although MWCOG reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, MWCOG cannot and will not control the means or manner of the Subrecipient's performance. The Subrecipient shall comply promptly with any requests by MWCOG relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Subrecipient is responsible for determining the appropriate means and manner of performing the work.
- B. Subrecipient represents and warrants that Subrecipient is not an employee of MWCOG, is not currently employed by the Federal Government, and is not an officer, employee or agent of MWCOG.
- C. Subrecipient shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Subrecipient under this Contract. Subrecipient is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Subrecipient under this Contract.
- D. Subrecipient agrees to immediately provide MWCOG notice of any claim made against Subrecipient by any third party. Subrecipient also agrees not to assign to any third party, without MWCOG's written consent, any obligation of MWCOG to indemnify Subrecipient for any actions under this Contract.

## IX. Insurance Requirements

- A. Subrecipient shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name MWCOG as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with MWCOG prior to the time any services are rendered. Subrecipient shall maintain coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form (Accord Form).
- B. Subrecipient shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with MWCOG to protect Subrecipient against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Subrecipient in connection with the carrying out of this Contract. Coverage limits shall be Bodily Injury: \$1,000,000 per occurrence, \$2,000,000 general aggregate Property Damage: \$500,000 per occurrence All such insurance shall name MWCOG and/or individual members, their employees, and agents as ADDITIONAL INSURED. Limits for equipment grants may be higher. Please see grant terms and conditions.
- C. Subrecipient shall, upon request, provide MWCOG with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required the governing jurisdiction's law in effect for each year of this Contract.
- D. Subrecipient shall obtain and maintain at all times during the prosecution of the work under this Agreement professional liability insurance. Limits of liability shall be \$1,000,000 per claim and \$2,000,000.00 aggregate.
- E. Umbrella excess liability insurance or excess liability insurance may be used to make up some shortages in coverage depending on circumstances. COG prefers coverage of at least \$1,000,000 each occurrence/ \$2,000,000 aggregate.
- F. All insurance policies shall have a minimum 30 days' notice of cancellation. Immediate written notice to MWCOG and members involved in the contract shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
- G. When insurance coverage is renewed, Subrecipient shall provide new certificates of insurance prior to expiration of current policies to all contracting agencies.

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

### A. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of federal law, the Subrecipient agrees that it will not discriminate against any employee or applicant for employment

because of race, color, creed, national origin, sex, age, or disability. In addition, the Subrecipient agrees to comply with applicable federal implementing regulations. The clauses of Appendix A and E of the U.S. DOT Standard Title VI Assurances (USDOT 1050.2A) are incorporated herein by reference.

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

1. Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Subrecipient agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.* (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of this PROJECT.

2. Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and other applicable law, the Subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age.

3. Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Subrecipient agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

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

- A. The Subrecipient agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Subrecipient under the terms of this Contract shall at any time during the performance of the services be made available to MWCOG upon request.
- B. If the Subrecipient obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to MWCOG and/or COG jurisdictions of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with MWCOG and/or COG member jurisdictions.

## XII. Payments

Payments to the Subrecipient pursuant to this Contract shall be made no later than 30 days after COG's receipt of a proper invoice from the Subrecipient.

**Electronic Payment** means the payment of money to a vendor by electronic means, including by means of a Purchase Card (P-card) or Automated Clearing House (ACH) funds transfer method.

COG has implemented a P-Card Program utilizing MASTERCARD networks. Purchases from this contract will be made utilizing COG's P-Card.

Subrecipients will receive payment from the P-Card in the same manner as other credit card purchases. The payments typically are transferred within 48 hours.

Accordingly, Subrecipients must presently have the ability to accept these P-Cards or take whatever steps necessary to implement their ability before the start of the contract term, or contract award by the COG. COG reserves the right to revise this program as necessary.

In rare cases, ACH transactions will be acceptable as a form of payment to our Subrecipients. Please keep in mind the turn-around time on ACH transactions can be as long as 30 days.

## XIII. Records

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

## XIV. Remedies

- A. **Corrections of errors, defect and omissions.** Subrecipient agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to MWCOG. The acceptance of the work set forth herein by MWCOG shall not relieve the Subrecipient of the responsibility of subsequent corrections of such errors.
- B. **Set Off.** MWCOG may deduct from and set-off against any amounts due and payable to the Subrecipient any back-charges, penalties, or damages sustained by MWCOG, their agents, employees of recipients of its services, by virtue of any breach of this Contract by the Subrecipient or by virtue of the failure or refusal of the Subrecipient to perform the services

or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Subrecipient of liability for additional costs resulting from a failure to satisfactorily perform the services.

- C. Cumulative. All rights and remedies of MWCOG/ COG member jurisdictions and Subrecipient shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the MWCOG by law.

#### **XV.Responsibility of Subrecipient**

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

#### **XVI.Severability/Waiver**

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

#### **XVII.Subcontracting or Assignment**

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

#### **XVIII.Survival**

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

#### **XIX.Termination**

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

#### **XX.Termination of Contract for Convenience**

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

#### **XXI.Termination of Multi-Year Contract**

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

#### **XXII.Time is of the essence**

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

#### **XXIII.Whole Contract**

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

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