

Contract No. 19-039

A

CONTRACT

BETWEEN

THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

AND

ICF INCORPORATED, LLC

FOR

**EXPERT CONSULTANT SUPPORT FOR GREENHOUSE GAS INVENTORIES,
MITIGATION PLANNING AND IMPLEMENTATION SUPPORT, AND CLIMATE
ADAPTATION/RESILIENCY**

THIS AGREEMENT ("CONTRACT"), entered into this 15 day of October, 2018, between the Metropolitan Washington Council of Governments, located at 777 North Capitol Street, NE, Washington, DC 20002 ("COG") and ICF Incorporated, LLC, with its office located at 9300 Lee Highway, Fairfax, VA 22031; ("CONTRACTOR"), and

WHEREAS, COG and its member governments and other stakeholders in the Metropolitan Washington region are involved with efforts to mitigate emissions of greenhouse gases to help address the risk of climate change, and

WHEREAS, COG's Climate, Energy, and Environment Policy Committee (CEEPC) has adopted three-year Climate and Energy Action Plans outlining measures that can be taken in the region to carry out the recommendations of the 2008 COG Climate Change Report, including greenhouse gas inventory development, and climate, resiliency, and sustainability planning services, and

WHEREAS, COG support provided to member governments and other stakeholders in the region may involve capacity building and technical support to implement the measures in the current 2017-2020 Climate and Energy Action Plan (the PROJECT), and

WHEREAS, COG conducted a competitive procurement (RFP 18-013) to identify and secure consulting team(s) to assist in providing such capacity building and technical support services to members and other stakeholders for the PROJECT, and

WHEREAS, CONTRACTOR possesses the necessary qualifications and ability to carry out the PROJECT, and is desirous of carrying out the PROJECT as set forth herein, and

WHEREAS, CONTRACTOR has made the material statements and representations set forth within **Attachment B** (*Certification Regarding Debarment, Suspension and Other Responsibility Matters*), attached and incorporated herein;

NOW, THEREFORE, the Parties do mutually agree as follows:

SECTION 1. SCOPE OF SERVICES

All services under this CONTRACT shall be accomplished on a task order basis. Actual task orders with a specifically defined scope of work will be developed by COG when particular work or services are needed, and proposals may be submitted by CONTRACTOR for said task order work. There is no guarantee that CONTRACTOR will be awarded any task order or any particular work or services.

COG will develop a description of services that are to be the subject of a particular task order ("TASK ORDER") and will then notify CONTRACTOR of the need for such services ("TASK ORDER REQUEST"). COG will invite CONTRACTOR to develop a proposed work plan and cost estimate, including approach and timeline to perform the services. CONTRACTOR must develop and submit to COG a proposed work plan and cost estimate that meets the requirements outlined in the TASK ORDER REQUEST. If accepted and approved, COG will issue a purchase order ("PURCHASE ORDER") to proceed with the TASK ORDER upon acceptance of the submitted response. CONTRACTOR shall not commence the service under any TASK ORDER until a PURCHASE ORDER has been executed by the COG Contracting Officer and received by CONTRACTOR.

Eligible activities under task orders may include each of the elements outlined in the task descriptions below:

Task 1. Greenhouse Gas Inventories

CONTRACTOR shall provide the following services:

- a) Collection, review, and analysis of input data to be used in development of local and regional greenhouse gas inventories (e.g., government operations and community-wide).
- b) Collection, review, analysis, and use of emission factors and protocols
- c) Use of modeling and other tools to estimate emissions.
- d) Analysis of trends in emissions over time, including drivers of change, including analysis of reductions from local programs.
- e) Development of reports, presentations, education, and outreach materials that provide draft and final results of greenhouse gas inventories.
- f) Participation and leading of workshops, training, or other events with COG, COG members, and other stakeholders.

Task 2. Climate Mitigation and Sustainability Program Planning and Support

CONTRACTOR shall provide the following services:

- a) Identification of local and regional strategies, measures, programs, or projects ("actions") to reduce emissions of greenhouse gases.

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- b) Development of technical information on actions, including but not limited to approach, needs, deployment issues, feasibility, timing, legal considerations, market assessments, costs, ownership, procurement, deal structure, and finance options.
- c) Development of local and regional climate and sustainability action plans.
- d) Identification and development of partnerships to support regional and local program planning and implementation, including securing new resources and participating on proposal teams with COG.
- e) Development of reports, presentations, education, and outreach materials that provide draft and final results of strategies, measures, and climate/sustainability action plans.
- f) Participation and leading of workshops, training, or other events with COG, COG members, and other stakeholders.

Task 3. Adaptation and Resiliency Services

CONTRACTOR shall provide the following services:

- a) Identification, collection, compilation and use of information and tools to understand, predict, and characterize possible or probable climate risks, impacts, and vulnerabilities.
- b) Identification of options and strategies to respond to anticipated climate impacts and vulnerabilities.
- c) Development of technical information on options and strategies to support local planning and implementation.
- d) Development of reports, presentations, education, and outreach materials that provide information on impacts, vulnerabilities, and response options.
- e) Participation and leading of workshops, training, or other events with COG, COG members, and other stakeholders.

SECTION 2. COMPENSATION AND METHOD OF PAYMENT

- a. Payment to CONTRACTOR shall be made on a fixed-price basis in an amount not-to-exceed the amount included in any approved PURCHASE ORDER. Unless otherwise approved in writing, total cumulative PURCHASE ORDER amounts shall not exceed \$100,000 per annum (as defined by COG's fiscal year July 1 through June 30).
- b. CONTRACTOR may invoice on a monthly basis for tasks completed. The invoices shall show the CONTRACT and PURCHASE ORDER numbers and be accompanied by a brief progress report describing activities related to each task. The progress report shall also indicate the percentage of the total PURCHASE ORDER tasks that have been completed. Invoices shall be emailed to (payable@mwcog.org), with courtesy copies (cc) to COG Project Manager, Jeff King (jking@mwcog.org). Payment shall only be made for costs incurred during the Period of Performance of this CONTRACT. CONTRACTOR shall submit its final invoice to COG within 30 days of the termination date of the CONTRACT, as shown in Section 3.

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- c. It is COG's intention to pay CONTRACTOR within 30 days after the receipt of CONTRACTOR's invoice and the approval of the invoice by the COG Project Manager. CONTRACTOR shall submit the final invoice no later than 30 days following the termination of the CONTRACT as shown in Section 3.

It is understood that payment to CONTRACTOR by COG is dependent upon COG's receipt of funds from its sponsoring agencies.

SECTION 3. PERIOD OF PERFORMANCE

The period of performance shall be from the date shown above through June 30, 2020. COG may at its own discretion renew the contract for an additional two (2) fiscal years, one fiscal year at a time.

SECTION 4. RESPONSIBILITIES OF CONTRACTOR

- a. Performance of the work pursuant to Section 1, Scope of Services, in accordance with Attachment A, Standard Terms and Conditions, and Attachment B, Certifications, incorporated herein by reference.
- b. CONTRACTOR shall supervise and direct all PROJECT activities as specified in Section 1.
- c. Submission of any proposed CONTRACTOR subcontracts contracts to COG for review and concurrence.
- d. Any changes to this CONTRACT must be carried out in writing. Procedures for COG concurrence in changes and the execution of these changes are specified in Section 7, CHANGES.

This CONTRACT, including pricing, terms and conditions may be extended to the members of the Mid-Atlantic Purchasing Team ("MAPT") via the Cooperative Rider Clause agreement (Attachment C, incorporated herein by reference) between the Metropolitan Washington Council of Governments ("MWCOCG") and the Baltimore Metropolitan Council ("BMC") to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region ("region"), as well as all other public entities under the jurisdiction of the United States and its territories.

SECTION 5. RESPONSIBILITIES OF COG

- a. COG, as the funding recipient and coordinator for the PROJECT, shall coordinate all of CONTRACTOR'S activities with other activities related to this PROJECT;
- b. The COG Project Manager shall review CONTRACTOR's draft products in a timely manner as necessary to insure deliverable completion by CONTRACTOR in accordance with the Period of Performance, specified in SECTION 3 above;
- c. Issue task order request(s) for the PROJECT;
- d. Provide CONTRACTOR with the opportunity to review proposed task order request(s) and provide work plan and cost estimates in response to them;
- e. Review CONTRACTOR proposed work plan and cost estimates and issue purchase order requisition(s) to initiate approved task order activities under this PROJECT;
- f. Review any proposed subcontracts for consistency with the terms of this CONTRACT; and
- g. Inform CONTRACTOR of material grant requirements affecting its performance or compensation under this CONTRACT.

SECTION 6. ADMINISTRATION OF THE CONTRACT

For the purpose of this CONTRACT, the Executive Director of COG, or his designee, is the COG Contracting Officer, and is the only party authorized to make changes or amendments in this CONTRACT on COG's behalf. The COG Project Manager shall be Jeff King with the Department of Environmental Programs.

SECTION 7. CHANGES

- a. The Parties agree that any modification or change in any aspect of this CONTRACT must be accomplished in writing by both Parties before it is considered a contract requirement.
- b. The Parties may, from time to time, propose changes in the Statement of Work to be performed by CONTRACTOR. Such changes, including material scope of work changes, time schedule and report delivery changes, budget revisions that increase, decrease, or materially change the CONTRACT'S total compensation must be mutually agreed upon in writing and approved between COG and CONTRACTOR.

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SECTION 8. PRIORITY OF DOCUMENTS

The following documents are incorporated by reference into and made part of this CONTRACT. In the event of a conflict among the documents comprising this CONTRACT, the order of priority for the purposes of resolving conflicts is as stated below:

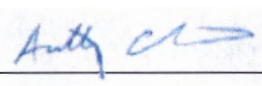
- a) The terms contained in this CONTRACT Document;
- b) The "Standard Terms and Conditions" in Attachment A;
- c) CONTRACTOR's Best and Final Offer submitted on October 1, 2018; and
- d) CONTRACTOR's Proposal dated July 12, 2018 submitted in response to RFP 18-013.

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

METROPOLITAN WASHINGTON
COUNCIL OF GOVERNMENTS

ICF INCORPORATED, LLC

By: 
EXECUTIVE DIRECTOR

By: 
Manager, Contracts
TITLE

10/15/18
DATE

10/12/2018
DATE

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

- A. **Energy Conservation.** 42 U.S.C. § 6321 *et seq.*
The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- B. **Clean Water Requirements.** 33 U.S.C. § 1251 *et seq.*
1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. The CONTRACTOR agrees to report each violation to COG and understands and agrees that COG will, in turn, report each violation, as required, to assure notification to appropriate federal agencies including the appropriate EPA Regional Office.
 2. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance.
- C. **Lobbying.** 31 U.S.C. § 1352 *et seq.*
(*To be submitted with each bid or offer exceeding \$100,000*)
1. The undersigned certifies, to the best of his or her knowledge and belief, that:
 2. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and federal contract, grant, loan, or cooperative agreement.
 3. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]. [Note: Language in paragraph (b) herein has been modified in accordance

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with Section 10 of the Lobbying Disclosure Act of 1995. (P.L. 104-65, to be codified at 2 U.S.C. § 1601 et seq.)]

4. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all CONTRACTOR s shall certify and disclose accordingly.
5. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

Date: 10/12/2018

The CONTRACTOR, ICF Incorporated, L.L.C., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, The CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq. apply to this certification and disclosure, if any.

 Signature of CONTRACTOR
Authorized Official

Authorized Official Name of CONTRACTOR

Authorized Official Title of CONTRACTOR

D. ~~Access to Records and Reports~~. 49 U.S.C. § 5325

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1. The CONTRACTOR agrees to provide COG, and if applicable the state or federal funding agency, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of The CONTRACTOR which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transactions.
2. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case The CONTRACTOR agrees to maintain same until COG, the applicable state or federal funding agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

E. Funding Agency Changes.

The CONTRACTOR shall at all times comply with all applicable state and federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the funding agreement between such agency and COG, as they may be amended or promulgated from time to time during the term of this Contract. CONTRACTOR failure to comply shall constitute a material breach of this Contract.

F. Clean Air. 42 U.S.C. § 7401 *et seq.*

1. The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.
2. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* The CONTRACTOR agrees to report each violation to COG and understands and agrees that COG will, in turn, report each violation as required to assure notification to the funding federal agency, if any, and the appropriate EPA regional office.

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3. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance.

G. Recycled Products. 42 U.S.C. § 6962

1. The Recycled Products requirements apply to all contracts for items designated by the EPA, when COG or The CONTRACTOR procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using federal funds.
2. The CONTRACTOR agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

H. No Government Obligation to Third Parties.

1. The CONTRACTOR acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities of COG, the CONTRACTOR, or any other person (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify The CONTRACTOR that will be subject to its provisions.

I. Program Fraud and False or Fraudulent Statements and Related Acts.
31 U.S.C. § 3801 *et seq.*

1. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and all appropriate federal agency regulations apply to its actions pertaining to this PROJECT. Upon execution of the underlying contract, The CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract of the federally assisted project for which this contract work is being performed. In addition to other penalties

that may be applicable, The CONTRACTOR further acknowledges that if it makes, or caused to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on The CONTRACTOR or to the extent the Federal Government deems appropriate.

2. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(N)(1) on the CONTRACTOR , to the extent the Federal Government deems appropriate.
3. The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify The CONTRACTOR who will be subject to the provisions.

J. **Termination.** 49 U.S.C. Part 18

Applicable to all contracts in excess of \$10,000

1. **Termination for Convenience.** COG, by written notice, may terminate this Contract, in whole or in part, at any time by written notice to The CONTRACTOR when it is in COG's best interest. If this Contract is terminated, COG shall be liable only for payment under the payment provisions of this Contract for services rendered before the effective date of termination.
2. **Termination for Default [Breach or Cause].** If The CONTRACTOR fails to perform in the manner called for in this Contract, or if The CONTRACTOR fails to comply with any other provisions of the Contract, COG may terminate this Contract for default. Termination shall be effected by serving a notice of termination on The CONTRACTOR setting forth the manner in which the Contract is in default. The CONTRACTOR will only be paid the contract price for services performed in accordance with the manner of performance set forth in the Contract. If it is later determined by COG that The CONTRACTOR had an excusable reason for not performing, such as strike, fire, or flood, events which are beyond the control of the CONTRACTOR , COG, after setting up a new delivery of performance schedule, may allow The CONTRACTOR to continue work, or treat the termination as a termination for convenience.

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3. COG in its sole discretion may, in the case of termination for breach or default, allow The CONTRACTOR ten (10) working days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If The CONTRACTOR fails to remedy to COG's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the ten (10) working days after receipt by The CONTRACTOR of written notice from COG setting forth the nature of said breach or default, COG shall have the right to terminate the Contract without further obligation to the CONTRACTOR . Any such termination for default shall not in any way operate to preclude COG from also pursuing all available remedies against The CONTRACTOR and its sureties for said breach or default.

4. In the event COG elects to waive its remedies for any breach by The CONTRACTOR of any covenant, term or condition of this Contract, such waiver by COG shall not limit COG's remedies for any succeeding breach of that or any other term, covenant, or condition of this Contract.

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

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of federal law, The CONTRACTOR 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 CONTRACTOR agrees to comply with applicable federal implementing regulations. The clauses of Appendix A and E of the U.S. DOT Standard Title VI Assurances (USDOT 1050.2A) are incorporated herein by reference.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:
 - a. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, The CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42

U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of this PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, The CONTRACTOR agrees to comply with apprenticeship. In addition, The CONTRACTOR agrees to comply with any implementing requirements the funding federal agency may issue.

- b. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and other applicable law, The CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, The CONTRACTOR agrees to comply with any implementing requirements the funding federal agency may issue.
- c. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, The CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, The CONTRACTOR agrees to comply with any implementing requirements the funding federal agency may issue.

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

L. **Breaches and Dispute Resolution.**

- 1. **Disputes.** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the COG Executive Director or his/her designee. This decision shall be final and conclusive, unless within ten (10) working days from the date of receipt of its copy, The CONTRACTOR mails or otherwise furnishes a written appeal to the Executive Director or his/her designee. In connection with any such appeal, The CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of

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the Executive Director or his/her designee shall be binding upon the CONTRACTOR , and The CONTRACTOR shall abide the decision.

2. **Performance During Dispute.** Unless otherwise directed by COG, The CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved.
3. **Claim for Damages.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
4. **Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between COG and The CONTRACTOR arising out of or relating to this agreement or its breach may be submitted by the parties for arbitration if the parties mutually agree, otherwise, such claims, counterclaims, disputes and other matters shall be decided by a court of competent jurisdiction within the District of Columbia.
5. **Rights and Remedies.** The duties and obligations imposed by the Contract and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by COG or The CONTRACTOR shall constitute a waiver or any right or duty afforded to them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

M. Patent and Rights in Data.

1. **Rights in Data.** The following requirements apply to each contract involving experimental, developmental or research work:
 - a. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; CDs or flash drives (thumbsticks/thumbdrives) containing data; and any other information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals,

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technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

b. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

i. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections M.2.a and M.2.b of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its federal license to any other party.

(1) Any subject data developed under that contract, whether or not a copyright has been obtained; and

(2) Any rights of copyright purchased by the Purchaser or The CONTRACTOR using federal assistance.

2. **Patent Rights.** The following requirements apply to each contract involving experimental, developmental, or research work:

a. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and The CONTRACTOR agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the federal funding agency is ultimately notified.

b. Unless the Federal Government later makes a contrary determination in writing, irrespective of The CONTRACTOR status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and The CONTRACTOR agree to take the necessary actions to provide, through the federal funding agency, those rights in that invention due the Federal Government as described in the U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms

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Under Government Grants, Contracts and Cooperative Agreements,"
37 C.F.R. Part 401.

- c. The CONTRACTOR also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

N. Interest of Members of Congress.

No member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising there from.

O. Interest of Employees of COG.

No employee of COG who exercises any functions or responsibilities in review or approval of the undertaking or carrying out the PROJECT during his or her tenure or one (1) year thereafter, shall have any personal interest, direct or indirect, apart from his or her official duties, in this Contract or the proceeds thereof.

P. Interest of the CONTRACTOR .

The CONTRACTOR covenants that it has presently no financial interest, shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The CONTRACTOR further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

Q. Allowable Costs.

Only those costs which are consistent with Title 2 Part 200 of the Code of Federal Regulations shall be reimbursed under this Contract.

R. Covenant Against Contingent Fees.

The CONTRACTOR warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of warranty shall give the Contracts Officer the right to terminate this Contract or, in his discretion, to deduct from the Contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by The CONTRACTOR upon contracts or sales secured or made through a bona fide established commercial or selling agency

maintained by The CONTRACTOR for the purpose of securing business.

S. Indemnification.

The CONTRACTOR , acting as an independent CONTRACTOR , shall hold COG harmless from and shall be solely responsible, where found liable, for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act of omission or negligence of its employees or agents in connection with the performance of this work.

T. Severability.

It is understood and agreed by the parties that if any of these provisions shall contravene, or be invalid under, the laws of the particular state, county or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement, but the Contract shall be construed as of not containing the particular provision or provisions held to be invalid in the said particular state, county or jurisdiction and the rights and obligations of the parties shall be construed and enforced accordingly.

U. Assignments.

This Contract shall not be assigned, sublet or transferred in whole or in part by the CONTRACTOR , except with the previous written consent of the COG Contracting Officer or his designee.

V. Entire Agreement.

This Contract sets forth the entire understanding of the parties and supersedes all previous agreements, whether oral or in writing, relating to the subject matter hereof. This Contract may only be altered, amended or modified in accordance with Changes Clause of this Contract.

W. Confidential or Personal Data.

1. COG respects the privacy or business interests involved in confidential or personal data. It is COG's policy to obtain confidential or personal data or store or allow storage of such data only (i) when necessary to fulfill COG's information-gathering and data collection responsibilities, or (ii) in conjunction with COG projects. COG intends to minimize risk of disclosure of such confidential or personal data.

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2. Whenever feasible and the requirements of a project allow, the names of survey participants or users of a website or other data collection method shall not be accepted, recorded, stored or retained.
3. When COG engages in a project, which involves the collection or storage of confidential or personal information by or through use of surveys, websites or by other data collection, the following conditions shall be met:
 - a. The survey, website or other collection method shall contain a set of conditions for use and a disclaimer of any COG liability for use, in language approved by COG in writing.
 - b. The party(ies) working with COG shall demonstrate adherence to a federal or applicable state standard for protecting confidential or personal information.
 - c. The confidential or personal information collected or stored by or through the survey, website or other data collection shall be kept confidential. All necessary steps shall be taken to protect the privacy of the users of the website or other data collection. Any confidential or personal information provided by users of the website or other data collection, including but not limited to their names and addresses, shall be protected.
 - d. COG shall retain control over and ownership of all surveys, web pages, control files and scripts, database schema, and database contents, in addition to all content which is published on or stored by the website or other data collection, unless COG specifically agrees in writing otherwise.
 - e. No release of any announcements intended for public dissemination concerning the collection or storage of such information by or through the survey, website or other data collection shall occur until COG has given prior written authorization, unless COG specifically agrees in writing otherwise.
 - f. In the event that information collected or stored by or through the survey, website or other data collection shall be stolen or handled incorrectly, the party(ies) working with COG on the PROJECT shall be responsible for any required notification to persons who have entered personal information in that system and all costs related thereto.

- g. The PROJECT documents shall provide that other parties working with COG on the survey, website or other data collection or storage shall indemnify COG with at least the following commitment:

The [CONTRACTOR or other party] shall indemnify and hold COG harmless from and shall be solely responsible, for the payment of any and all claims for loss, personal injury, death, property damage, infringement or misappropriation of any third party's intellectual property rights, violation of privacy, confidentiality or otherwise, arising out of any act of omission or negligence of its employees or agents in connection with the performance of the work under this [agreement or memorandum of understanding].

- h. At the end of the project or contract, any personal or confidential information shall be given to COG or destroyed and a certification of destruction provided to COG by The CONTRACTOR or other party.

X. COG's Policies and Procedures.

When federal law, or any grant conditions, certifications or assurances require COG to utilize competitive procurement procedures for selection of a CONTRACTOR, COG's policies and procedures shall govern every aspect of The CONTRACTOR selection process, e.g., the solicitation, evaluation, award, and post-award process (including, without limitation, any protest of an award, and the terms and conditions under which a contract may be approved, executed and administered). Any CONTRACTOR and potential CONTRACTOR will be provided with a copy of such policies and procedures, on request.

Y. COG's Information Technology Policy.

Contractors that must access COG's Information Technology systems or require a COG login account to perform their duties must adhere to COG's Information Technology Policies and Procedures. Such contractors will receive a copy of the policies and procedures prior to receiving access to COG's IT systems.

Z. COG's Facilities, Policies, and Procedures.

Contractors that must use any of COG's facilities or equipment must adhere to COG's Facilities, Policies and Procedures. Contractors that utilize any AV or IT equipment through the use of COG's facilities shall also comply with COG's IT Policy. Such contractors will receive a copy of all relevant procedures prior to

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receiving access to COG's IT systems.

AA. Additional Requirements.

In addition to the terms and conditions expressly referenced in this Contract, The CONTRACTOR acknowledges and agrees that the terms and conditions of any federal or state grant that provides funding for this Contract, in whole or in part, shall apply to and shall govern the parties' rights and obligations under this Contract and shall be deemed additional terms, conditions and requirements of this Contract.

BB. DBE Assurance.

The CONTRACTOR or _____ shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by The CONTRACTOR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the COG deems appropriate.

CC. Audits.

Per the Enhanced Mobility Circular, COG as the Designated Recipient for Enhanced Mobility funds will collect A-133 audit reports from The CONTRACTOR receiving more than \$750,000 in federal funds. At a minimum, The CONTRACTOR is required to bring to COGTPB's attention any audit findings relevant to its use of FTA funds. The CONTRACTOR is not subject to A-133 audit requirements and may require additional monitoring, in a format elected by COG, to ensure compliance.

DD. FFATA Reporting.

1. The Federal Funding Accountability and Transparency Act ("FFATA") requires prime recipients of federal grants and contracts to report sub-award and executive compensation data. COG is the prime recipient of federal awards for the purposes of this policy and is responsible for reporting sub-award data.
2. COG and first-tier sub-awardees are required to maintain current registration in the System for Awards Management ("SAM") as well as obtain a DUNS number. COG is responsible for filing the report in the FSRS system, not sub-awardees. However, sub-award recipients must provide the following information to COG before they will be eligible to receive the sub-award:

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- a. The entity's information;
- b. Description and/or title of the sub-award (including NAICS code or CFDA number);
- c. Date and amount of award;
- d. Location of the entity receiving the award and the primary location of performance under the award, including the city, state, congressional district, and country;
- e. Active and current SAM unique identifier;
- f. DUNS number;
- g. Names and total compensation of the five (5) highest paid officers/executives of the sub-recipient if all three criteria are met:

i. Federal awards make up 80% or more of the CONTRACTOR 's annual gross revenues; and

ii. the CONTRACTOR 's annual gross revenue from federal awards is \$25 million or more; and

iii. the CONTRACTOR 's officer names are not publicly available and the public does not have access to data on executive compensation of the entity through the Securities and Exchange Commission (SEC) as described in further detail in OMB Guidance on Sub-award and Executive Compensation Reporting (August 27, 2010).

(COG, as the prime recipient of the federal award, must also report its own executive compensation data by the end of the month following the award if the same criterion noted above is met.)

EE. Priority of Requirements.

In the event of a conflict between or among any of the terms, conditions and requirements applicable to this Contract, the conflict shall be resolved by giving weight in accordance with the following priorities, in the order as stated below:

1. Terms and conditions of any grant that provides funding for this Contract, in whole or in part;
2. Terms and conditions set forth or referenced within this Contract;
3. Terms and conditions and representations set forth or referenced within Attachments A and F to this Contract;

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4. Terms, conditions, specifications, and requirements set forth within any solicitation (e.g., RFP or IFB) pursuant to which this Contract was awarded;
5. Offers, representations, promises, terms and conditions set forth with the bid or proposal submitted in response to any solicitation (e.g., RFP or IFB) pursuant to which this Contract was awarded.

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**ATTACHMENT B
CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

The prospective vendor certifies to the best of its knowledge and belief that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any department or agency of the District of Columbia, State of Maryland or the Commonwealth of Virginia or any of the 24 jurisdictions comprising the membership of the Metropolitan Washington Council of Governments (COG);
- Have not within a three year period preceding this date been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated above of this certification; and
- Have not within a three-year period preceding this date had one or more public transactions (Federal, State or local) terminated for cause or default.

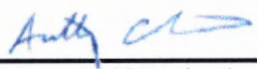
Vendor understands that a false statement on this certification may be grounds for rejection of any submitted proposal or quotation or termination of any award. In addition, under 18 U.S.C. § 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both if federal funds are being used to support the procurement.

ICF Incorporated, L.L.C.

Typed Name of Vendor

Anthony Chau, Manager, Contracts

Typed Name & Title of Authorized Representative


Signature of Authorized Representative

10/12/2018

Date

Attachment C

Cooperative Rider Clause

The Mid-Atlantic Purchasing Team (MAPT) is the agreement between the Metropolitan Washington Council of Governments ("MWCOG") and the Baltimore Metropolitan Council ("BMC") to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region ("region").

Format

A lead agency format is used to accomplish this work. The Lead Agency in this procurement has included this MAPT Cooperative Rider Clause in this solicitation indicating its willingness to allow other public entities to participate pursuant to the following Terms and Conditions:

A. Terms

1. Participating entities, through their use of the Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the participating entity.
2. Participating entities may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.

B. Other Conditions - Contract and Reporting

1. The contract resulting from this solicitation shall be governed by and "construed in accordance with the laws of the State/jurisdiction in which the participating entity officially is located;
2. To provide to MWCOG and/or BMC contract usage reporting information, including but not limited to quantity, unit pricing and total volume of sales by entity, as well reporting other participating entities added on the contract, on demand and without further approval of contract participants;
3. Contract obligations rest solely with the participating entities only;
4. Significant changes in total contract value may result in further negotiations of contract pricing with the lead agency and participating entities..

In pricing and other conditions, vendors are urged to consider the broad reach and appeal of MAPT with public and non-profit entities in this region.

A list of the participating members of the Mid-Atlantic Purchasing Team can be found at the following web links www.mwcog.org/purchasing-and-bids/cooperative-purchasing/member-links/ and <http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives>