







Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Section 19 a., b., and c. shall continue after the termination of this Contract with respect to such Deliverables.

**20. Right to Use Specific City Marks.** Contractor understands and acknowledges that the City owns all rights to the name, logos, and symbols of City ("City Marks"). All rights to the City Marks will at all times remain the property of the City. Subject to these Terms and Conditions, the City may grant to Contractor a nonexclusive right to use those specific City Marks that are directly required to complete Contractor's obligations in the Agreement, and which are approved for use in accordance with this Section.

All use of the City Marks will be in a manner that (i) complies with applicable laws, City Rules; (ii) is consistent with Contractor's use of other City Marks under similar situations; and (iii) will not tarnish the City Marks. Any use of City Marks by Contractor **MUST** be approved as follows: Requests for approval will be in writing, accompanied by the material requested to be approved, will be transmitted by e-mail, express mail, overnight carrier, or regular mail, and will be addressed as follows:

Administrative Assistant  
City of Creedmoor  
5008 Hartung Lane  
Creedmoor, Texas 78610  
Or [social@cityofcreedmoortx.gov](mailto:social@cityofcreedmoortx.gov)

City will notify Contractor via e-mail or facsimile of City's approval or disapproval of Contractor's request to utilize City Marks in accordance with this Section. Reasonable effort will be made to timely notify Contractor of approval or disapproval. Contractor should make every effort to submit all uses for approval as early as practicable.

**21. Insurance.** Contractor acknowledges that City, as a municipality in the State of Texas, maintains and operates programs of self-insurance. City will maintain during the term of this Agreement a self-insurance program and, upon written request, will provide to Contractor a written description of such self-insurance program.

**22. Contractor Insurance.** In the event Contractor, its employees, agents or subcontractors enter premises occupied by or under the control of City in the performance of the Agreement, Contractor agrees that it will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth in the Agreement, and will maintain worker's

compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing the Agreement on premises occupied by or under the control of City. Contractor may receive copies of specific requirements for coverage by contacting Risk Management at 512-393-8060.

**23. Gratuities.** The City may terminate this contract if the City's Ethics Review Commission finds, after notice and hearing, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City to secure favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of the contract

**24. Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this Section.

**25. Subcontracting (HUB).** When applicable, Contractor will use good faith efforts to subcontract work performed under the Agreement in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") as submitted by Contractor. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under the Agreement, in whole or in part.

**26. Limitations.** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF CITY (A TEXAS MUNICIPALITY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; INDEMNITIES; AND

CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON CITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS AND THE ORDINANCES OF THE CITY OF CREEDMOOR, TEXAS.

**27. INDEMNITY.** THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD-PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

**28. Termination for Convenience.** The City through the City Manager or the City Manager's designee may terminate the Agreement at any time upon thirty (30) calendar days' notice in writing to Contractor. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Contractor shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The City agrees to compensate the Contractor for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

**29. Termination Due to Loss of Funding.** If City funds are utilized to fund any part of this Agreement, the Contractor understands that those City funds for the payment for work performed by the Contractor under this Agreement have been provided through the City's budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The City cannot guarantee the availability of funds and enters into this Agreement only to the extent such funds are made available. The Contractor acknowledges and agrees that it will have no recourse against the City for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this

Agreement was executed. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

**30. Venue.** The venue for any ligation arising from this Agreement will be Travis County, Texas.

**31. Dispute Resolution.**

- a. If a dispute arises out of or relates to the Agreement or these Terms and Conditions, or a breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- b. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**32. Prohibition on Contracts with Companies Boycotting Israel.** Pursuant to Chapter 2270 and 808, *Texas Government Code*, Contractor certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this

certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

**33. 2252 Compliance.** Section 2252 of the *Texas Government Code* restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Contractor hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

**34. MS4:** In accordance with San Marcos Ordinance No. 2016-12, all contractors and subcontractors will adhere to the established methods for controlling and minimizing the release of pollutants into the municipal separate storm sewer systems (MS4) of City of San Marcos in order to comply with local, state, and federal regulations. All contractors and subcontractors will comply with specific good housekeeping and stormwater pollution prevention measures established for the facility or site covered under this contract.

**35. Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. Nothing in the foregoing shall be deemed to relieve Contractor or its Affiliates of its obligation to pay fees owed under this Agreement.

**36. Texas Public Information Act.** Contractor understands and acknowledges that the City is a governmental entity in Texas and is subject to requests for public information under the Texas Public Information Act. Any action taken by the City to meet its legal requirements under the Texas Public Information Act or related City Ordinance will not be considered a breach of this Agreement.

**37. Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

**38. Governing Law.** The Agreement will be governed by and construed under the laws of the State of Texas. Any controversy, claim or dispute arising out of or relating to this Agreement will be brought in a state court of competent jurisdiction in Hays County or, if in federal

court, in the Federal Western District of Texas, Austin Division for trial.

**39. Terms and Conditions Controlling.** In the event there is a conflict between the Agreement and these Terms and Conditions, these Terms and Conditions will control.

**40. Notices.** All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Notices shall be sent to the following addresses:

City Administrator  
5008 Hartung Lane  
Creedmoor, Texas 78610

**41. Order of Precedence.** In the event of inconsistency between provisions of this contract, the inconsistency will be resolved by giving precedence in the following descending order:

- a. Change Orders / Amendments
- b. Addenda
- c. Supplemental/Special conditions
- d. Bid/Quote/Proposal form
- e. Scope of Work / Specifications
- f. Standard Terms and Conditions
- g. Other provisions, whether incorporated by reference or otherwise, including any documents provided by the Contractor.

**42. If Contractor is receiving State of Texas funds under the Agreement.** Texas Family Code Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**43. Non-Discrimination.** The Contractor understands and certifies that it is an Equal Opportunity Employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability or economic condition and prohibits retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.

**44. Prohibition on contracts with companies that do business with Iran, Sudan, or a foreign terrorist organization.** Section 2252 of the Texas Government Code restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. By signing below as an authorized signer,

the Bidder certifies that it does not do business with Iran, Sudan, or a foreign terrorist organization. Failure to maintain the requirements under this provision will be considered a material breach.

**45. Prohibition on contracts with certain foreign-owned companies.** Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a “designated country”, or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.

**46. Prohibition on contracts with companies that discriminate against firearm and ammunition industries.** Section 2274 of the Texas Government Code (SB19) restricts the City from contracting with companies that discriminate against firearm and ammunition industries. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against the same during the term of this contract. *(Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.)* Failure to maintain the requirements under this provision will be considered a material breach.

**47. Prohibition on contracts with companies boycotting Certain Energy Companies.** Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. *(Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.)* Failure to maintain the requirements under this provision will be considered a material breach.

**COSM QUICK REFERENCE TO CONTRACT INSURANCE REQUIREMENTS**

<b>QUICK REF.</b>	<b>TYPE OF WORK</b>	<b>TYPE OF INSURANCE REQUIRED</b>	<b>AMOUNT OF INSURANCE REQUIRED</b>	<b>SPECIAL COVERAGES OR OTHER REQUIREMENTS</b>
AL	Operation of motor vehicle where operation constitutes a large portion of the project, or where operated in close proximity to a large number of persons	Business Auto Liability to include coverage for all owned autos, hired autos, non-owned autos	\$1,000,000 per occurrence	
AL	Installation, dismantling, or delivery where motor vehicle use is a major part of the project	Business Auto Liability to include coverage for all owned autos, hired autos, non-owned autos	\$1,000,000 per occurrence	
AL	Transporting valuable City property for repair, rebuild, modification or other purposes	Business Auto Liability to include coverage for all owned autos, hired autos, non-owned autos  -plus-  Property damage coverage protecting property while in transit and contractor's possession	\$1,000,000 per occurrence  Actual cash value of property being transported	
CGL	Coverage for injury to or destruction of tangible property of others	Comprehensive General Liability	\$1,000,000 per occurrence  \$1,000,000 aggregate	Additional Insured
PL	Contract for professional services upon whose advice others have reason to rely (such as auditors, architects, engineers, or consultants)	Professional Liability or Errors and Omissions	\$1,000,000 per occurrence	Coverage for profession involved (i.e., medical malpractice, security guard liability)
GKL	Contract for wrecker service or auto storage facilities	Garage Keeper's Liability	Value of autos held	Additional Insured
HKL	Coverage for lease of hanger facilities	Hanger Keeper's Liability	Value of one aircraft /  Value of all aircraft	Additional Insured
LIQL	Liquor is served with charge to the general public; liquor is served as a means of generating revenue for a fund-raising event; liquor is served by another party contracted for any of these reasons. Liquor includes beer and wine.	Liquor Liability	\$1,000,000 per occurrence	Additional Insured
POLL	Contract involves asbestos removal, lead paint cleanup, PCBs, and similar materials	Pollution Legal Liability	\$1,000,000 per occurrence /  \$2,000,000 annual aggregate	Additional Insured
CC/FB	Contract or handles or has access to City or public funds	Commercial Crime Coverage or Fidelity Bond, Employee Dishonesty	Coverage for value of funds or properties handled during period from contractor control until delivered to City	City to be listed as a joint obligee
BR	Contract is for new construction of a structure or building	All Builder's Risk Insurance. Should provide transit and off-premises coverage if the builder makes the City responsible for material	Value of completed improvements	City to be listed as Loss Payee