

RAILROAD COMMISSION OF TEXAS
CONTRACT NO. 455-20-9037 for
INFORMATION TECHNOLOGY SERVICES:
GWPC'S RBDMS®

THIS AGREEMENT ("Contract") is made and entered into by the State of Texas, through the **RAILROAD COMMISSION OF TEXAS** ("RRC"), a state agency located at 1701 N. Congress Avenue, Austin, Texas 78701 and **GROUND WATER PROTECTION COUNCIL, INC.** ("Vendor"), located at 13308 N. MacArthur Boulevard, Oklahoma City, OK 73142 (individually "Party"; collectively "Parties").

WITNESSETH

WHEREAS, Texas Government Code Chapters 2155 and 2157 provide for RRC's authority to procure automated information systems goods and/or services and RRC intends to acquire certain automated information systems goods/and or services, namely Risk Based Data Management System® ("RBDMS®") applications and services; and

WHEREAS, in accordance with applicable provisions of Texas Government Code Chapters 2155, 2157 and 2261, RRC has selected Vendor to provide the desired RBDMS® applications and services referenced within the Request For Offer No. 455-19-9037 ("RFO No. 455-19-9037"), and Vendor has agreed to provide the desired RBDMS® applications and services referenced within RFO No. 455-19-9037, subject to the terms and conditions hereinafter set forth; and

WHEREAS, all terms and conditions of RFO No. 455-19-9037, including but not limited to insurance and specifications within the Statement of Work, constitute part of this Contract No. 455-20-9037.

NOW, THEREFORE, RRC and Vendor, for and in consideration of the mutual promises, obligations, and benefits hereof, contract as follows:

I. CONTRACT DOCUMENTS.

1.01. SERVICES REQUIRED. In accordance with the terms and conditions of the Contract, including all Contract Documents incorporated by reference, Vendor shall deliver throughout the term of the Contract including extension periods (if any), RBDMS® applications and services ("Services"), including all labor, qualified personnel, management, coordination, equipment, materials, insurance, and incidentals to fulfill all requirements and deliver all goods and/or services required under the Contract in accordance with applicable method protocols, industry/trade best practices, and all rules, regulations, and laws related thereto. Contract Documents include:

- a. This Contract No. 455-20-9037;
- b. Exhibit A, RFO No. 455-19-9037, including all associated attachments, appendices, exhibits, and addenda; and
- c. Exhibit B, Vendor's Offer, dated August 12, 2019, including Vendor's Best and Final Offer ("BAFO") dated September 9, 2019, which included negotiated terms and conditions (see item 3. Exceptions, within Vendor's BAFO) and revised pricing, accepted by RRC (collectively, "Vendor's Offer").

1.02. INCORPORATED BY REFERENCE. All elements listed in 1.01.a. through 1.01.c. are attached hereto and hereby incorporated by reference and constitute part of the Contract as if fully set forth herein.

1.03. ORDER OF PRECEDENCE. For purposes of interpretation of the Contract and in the event of conflict within the Contract Documents, this Contract No. 455-20-9037 shall take precedence over the other Contract Documents. Any inconsistency among the Contract Documents shall be resolved applying the order of priority as listed below:

- a. This Contract No. 455-20-9037; then
- b. Exhibit A, RFO No. 455-19-9037, including all associated attachments, appendices, exhibits, and addenda; then
- c. Exhibit B, Vendor's Offer.

II. TERM.

2.01. CONTRACT AWARD.

- a. This Contract shall be effective as of the date of the last Party's signature to the original Contract and shall continue through August 31, 2021 ("Original Term"), unless terminated earlier as provided in RFO No. 455-19-9037, Part III, and/or section 2.02. set forth below.

This Contract may be extended for up to two (2), one-year optional extension ("Optional Extension") terms, only through written amendment to the Contract, fully executed prior to expiration of the Contract term in effect prior to execution of the applicable amendment to the Contract.

- b. Notwithstanding the termination or expiration of this Contract, any provisions regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, limitation of distribution, and warranties shall survive the termination or expiration dates of this Contract.

2.02. TERMINATION.

- a. **Termination for Cause.** RRC may terminate this Contract immediately for cause by providing written notice to Vendor of such termination if Vendor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Vendor will be responsible for paying damages to RRC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or RRC resulting from Vendor's non-performance. Notwithstanding the foregoing, Vendor shall not be liable for damages that Vendor could not reasonably foresee on entry into this Contract. In the event of termination for cause, Vendor will not be eligible for consideration in the re-solicitation, if any, and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.
- b. **Termination for Convenience.** RRC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice ("Notice of Termination") to Vendor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by RRC under this subsection, Vendor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.02.c.
- c. **Implementation of Termination.** Vendor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by RRC to preserve the work in progress. In the event of termination by RRC, RRC shall pay Vendor for all work satisfactorily performed up to the effective date of termination.

2.03. NO LIABILITY UPON TERMINATION. If this Contract is terminated for any reason, RRC and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code Chapter 2260.

III. CONSIDERATION AND SERVICES.

3.01. CONTRACT LIMIT, FEES AND EXPENSES. The total amount of fees to be paid by RRC to Vendor under this Contract through the Contract Term (Original Term plus exercised Optional Extension terms, if any; collectively, "Contract Term") shall not exceed **NINE MILLION TWO HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$9,200,000.00)**.

3.02. SERVICES.

- a. Vendor shall provide the goods and services necessary and reasonably inferable to complete the work required by and described in RFO No. 455-19-9037.
- b. Vendor's services shall include all disciplines agreed upon between the Parties and all related usual and customary consultant and other services necessary and reasonably inferable to complete the work in accordance with RRC's specifications and the terms and conditions of this Contract.
- c. Additional goods and services are those services which shall be provided ONLY if authorized or confirmed in writing by RRC, and which are in addition to the goods and services contained within the scope and content of RRC's specifications and Vendor's Offer in response to RFO No. 455-19-9037. In the event additional goods and services are proposed by Vendor, Vendor shall not proceed therewith except only after Vendor's receipt of RRC's written acceptance of the additional services proposed.
- d. The Statement of Work (Attachment 1 to RFO No. 455-19-9037) describes the intended project scope and character. The Parties agree it is Vendor's responsibility to review and understand requirements of the Statement of Work and to provide deliverables, including information resources services, to achieve those objectives.
- e. Vendor agrees and acknowledges that RRC is entering into this Contract in reliance on Vendor's represented professional abilities with respect to performing the services, duties, and obligations under this Contract. Vendor, and Vendor's consultants and subcontractors (if any) shall perform all services pursuant to this contract diligently and shall endeavor to further the interest of RRC in accordance with RRC's requirements and procedures and the standards of care and performance as described herein. Vendor agrees to use its best efforts to perform the Services (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with industry best practices for vendors that provide services for projects that are similar in size, scope, and budget to that within this Contract, and (ii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to Vendor that will limit or prevent performance by Vendor of the services required under the Statement of Work and the Contract. Vendor hereby agrees to correct, at its own cost, any of its services, and the services of its consultants and subcontractors (if any) that do not meet this standard of care.
- f. Vendor's services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of Vendor's services by RRC shall relieve Vendor of any of its duties or release it from any liability, it being understood that RRC is, at all times, relying upon Vendor for its skill and knowledge in performing Vendor's services. RRC shall have the right to reject any of Vendor's goods/services in accordance with the terms and conditions of RFO No. 455-19-9037.
- g. Vendor agrees to furnish efficient business administration and superintendence and to use Vendor's best efforts to fulfill the Contract requirements in an expeditious and economical manner consistent with the interest of RRC and Vendor's professional skill and care.
- h. Vendor shall allocate adequate time, personnel and resources as necessary to deliver goods and/or perform services and work under the Contract. Changes of Vendor's key personnel identified in Vendor's Offer shall not be made without prior written approval of RRC. Vendor's day-to-day project team will be led by Vendor's Project Manager unless otherwise directed by RRC or prevented by factors beyond the control of Vendor. Vendor's Project Manager shall act on behalf of Vendor with

respect to all phases of Vendor's goods and/or services delivery and shall be available as required for the benefit of the project and RRC.

3.03. PAYMENTS TO VENDOR.

- a. Payments to Vendor will be made in accordance with the terms and conditions of the Contract, and within thirty (30) days from receipt of a complete, correct, and approved invoice or statement of payment in accordance with Texas Government Code Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by RRC. Vendor will be paid for completion of work accepted and approved by RRC.
- b. Vendor shall invoice RRC for work performed and accepted by RRC. Vendor shall submit invoices as specified in RFO No. 455-19-9037.

IV. FUNDING.

4.01. STATE FUNDING. It is understood that all obligations of RRC hereunder are subject to the availability of state funds, federal grant(s) and/or other federal funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In such event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

V. VENDOR PERSONNEL.

5.01. REQUIRED QUALIFICATIONS. At all times during the term of the Contract, Vendor shall have available, under direct employment and supervision and/or subcontract agreement fully incorporating the terms and conditions of the Contract Documents, the required qualified and properly licensed (as applicable) personnel to properly fulfill all the terms and conditions of the Contract.

VI. NOTICES.

6.01. LEGAL NOTICES.

- a. Any legal notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Vendor at the address set forth below:

For RRC:

	<u>Railroad Commission of Texas</u>
	<u>Administration Division – Contract Management</u>
	<u>P.O. Box 12967</u>
	<u>Austin, Texas 78711-2967</u>
Attention:	<u>Randall D. Collins, COO</u>
Phone:	<u>512-463-5982</u>
Fax:	<u>512-936-6402</u>
Email:	<u>Randall.Collins@rrc.texas.gov</u>

For Vendor:

Ground Water Protection Council, Inc.
13308 N MacArthur Blvd
Oklahoma City, OK 73142
Attention: Mike Paque
Phone: 405-516-4972
Fax: 405-516-4973
Email: [REDACTED]

- b. Legal notice given in any other manner shall be deemed effective only if, and when, received by the Party. Either Party may change its address for notice by written notice to the other Party as provided herein.

VII. MISCELLANEOUS PROVISIONS.

7.01. GOVERNING LAW AND VENUE. This Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law provisions. The venue of any suit brought under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the RRC. Vendor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.**

7.02. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract No. 455-19-9037 shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

7.03. PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Contract on behalf of each Party has full power and authority to enter into this Contract. Vendor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Vendor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Vendor.

7.04. SOVEREIGN IMMUNITY. The Parties agree and acknowledge that nothing contained in RFO No. 455-19-9037, Vendor's Offer, or this Contract will in any manner be construed as a waiver of sovereign immunity or official immunity by RRC, its employees, or the State of Texas. RRC and the State of Texas retain all legal defenses and immunities available to each. RRC does not waive any privileges, rights, defenses, remedies, or immunities, available to RRC as an agency of the State of Texas or otherwise available to RRC.

7.05. PROHIBITION ON CONTRACTING WITH COMPANIES BOYCOTTING ISRAEL. In accordance with Texas Government Code §2270.002, Vendor hereby represents and warrants that either (i) Vendor meets an exemption criterion under Texas Government Code §2270.002 and Vendor has stated within Vendor's Proposal the facts which provide for Vendor's exemption criterion under Texas Government Code §2270.002; or (ii) Vendor does not, and shall not for the duration of the Contract, boycott Israel as the term is defined by Texas Government Code §808.001(01).

7.06. PROHIBITION ON CONTRACTING WITH COMPANIES ENGAGED IN BUSINESS WITH FOREIGN TERRORIST ORGANIZATIONS. Vendor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code §2252.152.

