

STATE OF TEXAS
COUNTY OF WALLER

**AGREEMENT BY AND BETWEEN THE COUNTY OF WALLER, TEXAS
AND VISIONALITY FOR TECHNOLOGY-BASED RECORDING AND
CONFERENCING PRODUCTS AND RELATED SERVICES**

This Agreement for Technology-Based Recording and Conferencing Products and Related Services (“Agreement”) is entered into on the date of the last signature affixed hereto (“Effective Date”) by and between Waller County, Texas (“County”), a political subdivision of the State of Texas, and Designs That Compute d/b/a Visionality (“Contractor”), a Texas incorporated business, (collectively “Parties”).

WHEREAS, the County desires to purchase, and Contractor desires to sell certain goods and services; and

WHEREAS, Contractor has a contract with the State of Texas Department of Information Resources (“DIR”), contract number DIR-CPO-5092 dated September 16, 2022 between the State of Texas, acting by and through the Department of Information Resources and Designs That Compute, Inc. d/b/a/ Visionality; and

WHEREAS, the County is a Customer under contract DIR-CPO-5092, and wishes to procure products and services under contract DIR-CPO-5092; and

WHEREAS, the County and Contractor desire to enter into this Agreement to clarify and make explicit the rights, duties, and responsibilities between the Parties;

NOW, THEREFORE, the Parties agree that the foregoing is true and correct, and further agree as follows:

1. Additional Terms and Conditions. The terms and conditions in this Agreement apply to this Agreement, and are in addition to Contract DIR-CPO-5092 entered into between Designs that Compute, Inc. and the State of Texas by and through the DIR. This Agreement is not intended to conflict with or diminish the terms or conditions of DIR contract DIR-CPO-5092

2. Description of Work. The goods and services to be provided (“Services”) are contained in the Contractor’s Quote (“Quote”) attached hereto as Exhibit A.

3. Contract Documents. The following documents constitute the “Contract Documents”:

- A. This Agreement;
- B. DIR Contract DIR-CPO-5092 together with all of its attachments and appendices;
and
- C. Quote, attached hereto as Exhibit A and incorporated herein for all purposes.

All of the documents referred to in this Section 3 are incorporated by reference and made a part of this Agreement for all purposes as though each were written word for word in this Agreement.

Contractor and County further agree that should any dispute or questions arise respecting the true construction or meaning of any of these documents, the true meaning shall be decided by the County and such decision shall be binding and conclusive upon Contractor.

4. Term and Termination. The Agreement shall commence on the Effective Date, and continue in full force and effect until termination in accordance with its provisions. Texas law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Anticipated orders or other obligations that may arise past the end of the current Waller County fiscal year shall be subject to budget approval. Any contract that extends beyond the current Waller County fiscal year is contingent upon the appropriation of funds from the relevant budget and fiscal year. If for any reason funds are not appropriated to continue the lease or contract, said lease or contract shall become null and void on the last day of the current appropriation of funds. All expenses occurring after the date of termination shall be the responsibility of Contractor.

The County reserves the right to terminate the contract immediately if the Contractor fails to (1) meet delivery or completion schedules, or (2) otherwise perform in accordance with the Contract Documents.

The County reserves the right to immediately terminate the Agreement if Contractor becomes insolvent or commits acts of bankruptcy.

The County may terminate this Agreement for cause or convenience by providing 30 days written notice to the Contractor. The notice must state the reasons for such termination. Prior written notice must be delivered in person or sent by registered or certified mail, return receipt requested, proper postage paid, and properly addressed to the other party at the address identified herein. The Agreement will continue in force during the 30 day notice period. The County shall compensate Contractor in accordance with the terms of this Contract for Agreement work properly performed prior to the date of termination specified in the notice, provided that the County inspects and accepts the work performed by Contractor. Contractor shall not be entitled to lost or anticipated profits should the County choose to exercise its option to terminate.

5. Permits; Compliance with Laws and Regulations. Contractor shall possess or obtain any applicable permits required by municipal ordinance, county ordinance, or state or federal law for the performance of the Services prior to commencing the Services. Contractor shall perform its obligations pursuant to this Agreement in accordance with all federal, state, and local statutes, ordinances, laws, regulations, and executive, administrative, and judicial orders applicable to the Services to be performed pursuant to this Agreement.

6. Independent Contractor. Contractor's status shall be that of an independent contractor and not an agent, servant, employee, or representative of the County in the performance of the Services. Contractor shall exercise independent judgment in performing duties under this Agreement, and in cooperation with the County. Contractor is solely responsible for setting working hours, scheduling or prioritizing the work flow, and determining how the work is to be performed. No term or provision of this Agreement or act of the Contractor in the performance of this Agreement shall be construed as making Contractor the agent, servant, or employee of the County.

7. INDEMNITY. CONTRACTOR, ITS OFFICERS, DIRECTORS, PARTNERS,

CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES, AND/OR TRUSTEES (COLLECTIVELY REFERRED TO AS “CONTRACTOR” FOR PURPOSES OF THIS SECTION), AGREE TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COUNTY AND ITS OFFICERS, OFFICIALS, DEPARTMENT HEADS, REPRESENTATIVES, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO AS “COUNTY” FOR PURPOSES OF THIS SECTION) FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INJURIES – INCLUDING DEATH – LIABILITIES, AND EXPENSES (INCLUDING ATTORNEY’S FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OUT OF OR RESULTING FROM THE OPERATION OR PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT. THE COUNTY WILL NOT ACCEPT LIABILITY FOR INJURIES THAT ARE THE RESULT OF THE NEGLIGENCE, MALFEASANCE, ACTION, OR OMISSION OF CONTRACTOR. CONTRACTOR AGREES TO ACCEPT LIABILITY FOR INJURIES TO ITSELF OR OTHERS CAUSED BY ITS OWN NEGLIGENCE, MALFEASANCE, ACTION, OR OMISSION. THIS INDEMNIFICATION PROVISION IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT BE LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST COUNTY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS CONTRACT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS, AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR’S OR EMPLOYEE’S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS’ COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT, OR OTHERWISE.

COUNTY SHALL HAVE THE RIGHT TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION TO DEFEND AND INDEMNIFY COUNTY HEREUNDER, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY COUNTY IN WRITING. COUNTY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, COUNTY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY COUNTY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR’S OBLIGATION TO DEFEND COUNTY OR AS A WAIVER OF CONTRACTOR’S OBLIGATION TO INDEMNIFY COUNTY PURSUANT TO THIS CONTRACT. IF CONTRACTOR FAILS TO RETAIN COUNTY APPROVED DEFENSE COUNSEL WITHIN TEN (10) BUSINESS DAYS OF COUNTY’S WRITTEN NOTICE THAT COUNTY IS INVOKING ITS RIGHT TO

INDEMNIFICATION UNDER THIS CONTRACT, COUNTY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL REASONABLE ATTORNEY FEES AND COSTS INCURRED BY COUNTY. CONTRACTOR AND COUNTY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

8. Jurisdiction and Venue. This Agreement is made and shall be construed according to the laws of the State of Texas, without regard to its conflict of laws provisions. Venue of any court actions brought between the County and Contractor directly or indirectly by reason of this contract shall be in Waller County, Texas. This contract is made and is to be performed in Waller County, Texas.

9. Assignment. Contractor shall not sell, assign, transfer, or convey this Contract, in whole or in part, without the prior written consent of the County. As an express condition of consent to any assignment, Contractor shall remain liable for completion of the Contract work in the event of default by the successor contractor or assignee.

10. Right of Review and Audit. County may review any and all of the Services performed by Contractor under this Contract. County is granted the right to audit, at County's election, all of Contractor's records and billings relating to the performance of this Agreement as may be reasonably necessary for County to confirm its payment obligations under this Agreement. Contractor agrees to retain such records for a minimum of three (3) years following completion of this Agreement. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Agreement shall be subject to County's rights as may be disclosed by an audit under this section.

11. No Waiver. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. The County's failure to require strict performance of any provision of this Agreement does not waive or diminish the County's right thereafter to demand strict compliance with that or any other provision. The County's waiver or failure to exercise in any respect any right provided for in this agreement shall not be deemed a waiver of any further right under this agreement. The County and its employees, officers, and officials do not waive, modify, or alter to any extent any of their defenses, immunities, or remedies.

12. Legal Construction. If any provision of this agreement is invalid, illegal, or unenforceable under any applicable statute, court decision, or rule of law, it is to that extent to be deemed omitted. In such event, there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal, or enforceable. The remainder of the agreement shall be valid and enforceable to the maximum extent possible.

13. Entire Agreement. This Agreement, together with all Exhibits incorporated herein, embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement. The Agreement may not be modified, altered, or amended except by written instrument duly executed by both parties.

14. Titles Not Restrictive. The titles assigned to the various sections and paragraphs of this

Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any part of this Contract.

15. Tax Exempt. The County is a tax-exempt organization. If Contractor makes purchase under this Agreement that will be billed to the County, the County will not reimburse Contractor of taxes from which it is exempt. The County can provide tax exempt paperwork upon request.

16. Other Expenses. Except as otherwise expressly set forth in this Agreement and the Contract Documents, each of the parties will bear its own expenses in connection with the performance contemplated by this Agreement and the Contract Documents.

17. No Arbitration. The County does not agree to arbitration.

18. Waiver of Subrogation. Contractor and Contractor's insurance carrier waive any and all rights whatsoever with regard to subrogation against Waller County as an indirect party to any suit arising out of personal or property damages resulting from Contractor's, its employees', or subcontractors' performance under this Agreement.

19. No Third-Party Beneficiaries. This Agreement does not inure to the benefit of any third party, except permitted successor or assigns.

20. Amendments. All amendments and additions to this Agreement or its Exhibits and Contract Documents must be approved by Contractor and the Waller County Commissioners Court.

21. Authority to Sign. Signatories to this Agreement represent and warrant that they have the authority to bind the respective parties.

22. Confidentiality. The County is bound by the Public Information Act and other laws concerning government records. Contractor shall clearly and noticeably mark all confidential information and documents it provides to the County pursuant to this Agreement. The County will make good faith efforts to promptly notify Contractor if any such information is requested in a public information request, subpoena, or other method so Contractor may argue against the release of such information.

23. Notices. Notices delivered hereunder shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested. Mailed notices shall be deemed communicated as of three (3) days after mailing. Any notice or certification to be provided pursuant to this Agreement shall be delivered to the following persons, unless a substitute representative is designated in writing:

To the County:

To Contractor:

Attn: County Judge
425 FM 1488, Suite 106
Hempstead, Texas 77445

COUNTY

CONTRACTOR

Carbett “Trey” J. Duhon III
County Judge

Date: _____

Date: _____