

**CITY OF HOUSTON
REQUEST FOR PROPOSAL (RFP) FOR
INTERGRATED ENTERPRISE LEGAL
MANAGEMENT (ELM) SOFTWARE
SOLICITATION NO.: S67-T25606**

Date Issued: November 27, 2015

Pre-Proposal Conference: December 15, 2015 @ 10:00 AM
City Hall
900 Bagby Street
Conference Room 1 (Tunnel Level)
Houston, TX 77002

Pre-Proposal Questions Deadline: December 22, 2015 @ 2:00 PM, CST

Solicitation Due Date: January 21, 2016 @ 2:00 P.M., CST

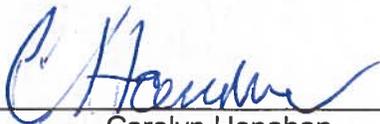
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Project Summary: Three (3) year contract, with two one-year renewal options for software purchase/license, installation (including consulting services), and software maintenance for integrated enterprise legal management (ELM) software.

Project Description: This RFP is for the provision of all software, labor, materials and supervision required for the purchase, licensing, installation, and maintenance of enterprise legal management (ELM) software.

NIGP Code: 92040

MWBE Goal: 24%



Carolyn Hanahan
Acting Chief Procurement Officer

November 18, 2015

Date

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PART I – GENERAL INFORMATION

A. General Information

The City of Houston Legal Department is seeking proposals from qualified Proposers for the purchase and implementation of an integrated Enterprise Legal Management (ELM) software platform. The “ELM System” shall address the needs of the Legal Department’s transactional and litigation-focused staff by providing tools or software solutions comprised of or integrated with the following software applications: document management, legal case management (i.e. practice management or matter management), records management, and time and financial management. The integration of these software application types into the ELM System may occur by any industry-standard and acceptable methods, such as add-ons, individually purchased components or modules, package bundles, and system integrations and interfaces.

The City will consider proposals from a single Proposer or multiple Proposers working as a team or partnership. The City prefers to purchase a commercial off-the-shelf (“COTS”) ELM System that requires little or no customization. To the extent the desired functionality is sold or available as separately purchased applications, bundles or packages, integrations, add-ons or modules (from the Proposer or third-party partners), the City reserves the right to purchase only certain applications, add-ons or modules or any combination thereof from one or more Proposers. The ease of integration between the various applications, add-ons, or modules; cohesiveness of the Project team and Project approach; and overall costs for the desired systems, add-ons, modules, or combination of the same will be a consideration in determining which solution offers the best value to the City.

Document Management Software (DMS)

The desired document management component of the ELM System should track document information, preferably with features geared towards or readily adaptable to legal departments and legal documents with no customization required. The City seeks legal document management software (DMS) with the following features and functionality:

- tracks document-specific information,
- indexes documents, allows full text search ability of file content and easy file retrieval,
- promotes information governance and infrastructure improvements (such as standardizing file naming conventions),
- manages documents we create/receive or scan into the system,
- provides document version control, facilitates document sharing and collaboration (e.g. check-in and check-out features),
- automates the creation and assembly of documents using templates, forms, or mail-merge features, and
- allows users to quickly view any document or email associated with a particular matter or claim.

Legal Case Management (also called Matter Management or Practice Management Software)

The ELM System should also provide case management or matter management component, preferably with features geared towards or readily adaptable to legal departments and legal documents with no customization required. The legal case management software will be structured as a type of relational database organized in such a way that a single record may be used in multiple places throughout the system. For example, a client address update will populate across all instances in the database where the address appears unless the user indicates otherwise.

The City seeks legal case management software with the following features and functionality:

- creates, stores, and tracks case-specific information (e.g. the date the matter is open and closed, matter disposition, matter status, and narratives or matter notes);
- captures all pertinent information relating to incoming work "assignments" received from client departments and outside parties (such as claims, lawsuits, public information requests, deed restriction complaints, subpoenas, etc.);
- offers contact management features (e.g. associates contact information for parties, opposing counsel, or the court with an individual case or matter); and
- manages time and costs related items, such as appointments, tasks, deadlines, billing, and expenses.

Records Management

The City seeks an integrated ELM System with the following records management features and functionality:

- document classification,
- archiving capability,
- application of retention periods, and
- document disposition or destruction.

Time and Financial Management

Aspects of time management and financial management often overlap or are interchangeable. The City is particularly interested in an ELM System that offers time management or financial management applications designed to track and manage time and productivity and ensure critical deadlines are met. The City seeks time and financial management software with the following features and functionality:

- features for rules-based calendaring or docketing,
- task tracking using "to do list" or task lists,
- creating and managing appointments and scheduling,
- automatic calendar synching,

- managing all deadlines and events related to a single item,
- ability to track billed time (an optional item for this RFP),
- ability to track expenses associated with a matter or claim,
- invoicing features and mechanisms to verify and ensure budget conformity.

B. Background

The Legal Department currently uses Aderant's Client Profiles software ("Legacy System") as a case management system. The Legal Department desires to replace its Legacy System, with a COTS ELM System. In addition to providing the software and accompanying licenses, the successful Proposer must provide services in connection with the ELM System, including installation, configuration, training services, conversion of historical data into the new system, and maintenance or support services appropriate to the type of deployment (e.g. on premise or software as a service/cloud based). Storage and server support will be managed and supported by Legal Department IT.

1. Departmental Overview and Employees

Comprised of approximately 104 attorneys and 82 paralegals and staff members across 10 Sections (i.e. practice areas), the Legal Department provides legal advice, litigates cases, negotiates and drafts contracts, deals with the acquisition or sale of City property, oversees City elections, handles redistricting and taxation matters, and addresses neighborhood protection issues. The ELM System must provide the tools necessary to support the unique needs of each Section. The Department's 10 Sections, along with each Section's primary focus, are described below.

Claims and Subrogation

Handles liability tort claims; property and workers' compensation subrogation claims; workers' compensation litigation; and general affirmative collection claims (alarm fees, hazardous material discharge claims, and paving and special assessment claims).

Contracts

Prepares, reviews and negotiates City contracts; provides opinions related to contract and competitive bidding matters; and advises City Departments on insurance requirements for contractors.

General Counsel

Drafts ordinances and opinions, interfaces with City Council Committees, drafts letters for submission to the Texas Attorney General, handles Sign Code issues and M/WBE matters and advises the Ethics Committee. Also handles traditional governmental matters such as elections, public information requests (i.e. open records requests), open meetings, ethics and conflicts of interest, redistricting, public finance, annexations, ad valorem taxation and utility regulation and franchising.

General Litigation

Defends the City and its officers and employees in litigation involving a plethora of claims against the City, such as claims for challenging City ordinances, various torts, copyright infringement, inverse condemnation, and construction law cases. This Section is also responsible for initiating litigation to recover money owed to the City in actions involving breach of contract, damage to City property, and hotel occupancy tax matters.

Labor, Employment & Civil Rights

Represents the City at Civil Service Commission hearings, pretermination proceedings and arbitrations; works with all City departments on any issues related to discipline, and employee related policies; responds to Equal Employment Opportunity Commission matters; provides advice and prepares ordinances related to personnel matters; represents the City in litigation arising from federal and state employment related claims such as Chapter 143, Title VII, the American Disabilities Act and defense of Section 1983 claims; reviews and/or recommends policies and procedures for implementing new employment related legislation.

Municipal Prosecution

Represents the State and City in most cases filed in the Houston Municipal Courts including traffic, non-traffic, all ordinance violations, property disposition hearings, and scire facias matters; conducts citizen intake regarding direct filing of non-traffic misdemeanors; advises, assists, and educates police and City inspectors regarding statutory and code enforcement; drafts search and arrest warrants; works directly with Chief Clerk and Presiding Judge to solve problems and establish policy for the Municipal Courts; responds to questions and problems from citizens; and performs numerous special assignments including drafting appellate briefs, complaint preparation, legislative analysis, bond forfeitures, and legal research.

Neighborhood Services

Interfaces directly with neighborhood associations and citizens to prosecute nuisances and violations that negatively affect the preservation and protection of neighborhoods and the general quality of life in the community. Responsible for Crime-based nuisance abatement, deed restriction enforcement, dangerous buildings abatement, Texas Alcoholic Beverage Commission protests, and the title work to support these activities.

Office of the Inspector General

The Office of the Inspector General, a section of the Office of the City Attorney, investigates allegations of employee misconduct. Employee misconduct, within the scope of the Mayor's Executive Order 1-39, is an act, intentionally committed by a City employee, relating directly or indirectly to the employee's employment with the City, and violating a state or federal law, a City Ordinance, an Executive Order, and Administrative Procedure, or a Mayor's Policy. The Inspector General and members of that office serve as confidential ombudsmen to assist citizens in filing of complaints of misconduct against police officers.

Real Estate

Provides services related to land sales and acquisitions, eminent domain proceedings, leases, abandonments, encroachments, rights of entry, abstract/title research and related

matters; and prepares grant and loan agreements for state and federal housing and community development programs. Handles legal matters related to planning and development issues, including land development regulations, historic preservation, tax increment reinvestment zones created by the City, and economic development agreements negotiated by the City. Represents the City in a variety of matters involving enforcement of and compliance with local, state and federal environmental laws.

Staff Administration

Responsible for records management, accounts payable, personnel functions, facility maintenance, law library, budget, financial and management analysis, and maintenance of the Legal Department's fixed asset management and IT systems; maintains the department's local area network (LAN); and utilizes the department's Legacy System to generate automated workflow reports.

2. Legacy System Environment

Due to the variety of legal services provided, the Legal Department's Sections use different features of the Legacy System. Currently, the Legal Department has an integrated records/claims database that was designed, developed and implemented in 2007. The Legacy System offers tools for managing appointments, calendaring, to-do lists, time sheets, document storage, journaling, user comments, card files, and in-box management. It offers search capabilities based on a person (by name or company name and other customary fields specific to each component of a person's contact information – phone, address, etc.), the matter (e.g. case or file numbers, by style or by person), dates, and file status (open or closed).

Data Volume and Migration/Conversion

The Legacy System also serves as a data repository. It contains approximately 25 years of data that the successful Proposer will be required to convert/migrate into the new ELM system. The data is largely comprised of the following file types: PDFs, MS Word, Corel Work Perfect, PST and email (.msg) files, audio or video files, and MS Excel. The total data to be migrated is approximately 2-4 Terabytes (TB). This data includes over 1.7 million flat files. There is also the possibility for migration of over 1.5 TB of video files (this video data is not included in the estimates above for data migration and flat files and the City has not yet determined whether this data will be migrated to the new ELM system or if newly created data of a similar nature would be stored in the ELM system).

The City expects the successful Proposer to ingest and convert the data from the Legacy System into the new ELM System. This legacy data will be provided to the Proposer in the form of a flat form data set. Specifically, the documents contained in the Legacy System have been mapped and are retrievable through a SQL query the City created. The information mapped/coded to case screens includes matter information, staff names, various pick lists, party names, "to do" lists, comments, incidents, reserves (funds), costs, liens, settlements, payments, scheduled events/appointments, special damages, fees, expenses, and time entries (if any). The mapped fields and corresponding query to retrieve the data is also available in an Excel workbook detailing column name, description of each field in the Legacy System, and the relation to the screen shown in the Legacy System. As part of the Project, the successful Proposer must ingest the documents and data from the Legacy System and associate them with the information provided by the City.

Section Specific Features and Functionality

The Legacy System and the new ELM System must provide features and functionality necessary for three central focus areas: claims and subrogation (insurance), litigation, and transactional as further depicted in the chart below.

| Focus Area | Corresponding Legal Dept. Section |
|------------------------------------|--|
| Claims and subrogation (insurance) | <ul style="list-style-type: none">• Claims and subrogation |
| Litigation | <ul style="list-style-type: none">• General litigation• Labor, Employment & Civil Rights• Municipal Prosecution• Real Estate (eminent domain)• Neighborhood Services |
| Transactional | <ul style="list-style-type: none">• Contracts• General Counsel• Neighborhood Services• Real Estate (leases and other contracts)• Office of Inspector General |

Given the nature of the practices areas, the Sections utilize different features and functionality. Below, we have identified some of the practice-area specific features provided by the Legacy System

All Sections - Legacy System Frequently Used Features and Functionality

- LD Number or Claims Number – this is the unique number assigned to each claim or matter. The number is composed of other codes, such as the department code and amendment number. For example, LD Number **0451580002003** includes the department code as the first 3 digits (“045”), the next 2 digits are the calendar year in which the file was opened (“15”), the next 5 digits represent the actual “file number” (“80002”) and the last 3 digits represent the number of times the claim or matter has been handled in a subsequent or new context (“003” - which indicates this is the third amendment to this contract).
- Client Codes – approximately 1,041 client codes across all Sections, as detailed further below.
- Law Type – approximately 30 law types in a drop down menu corresponding to the department Sections.
- Case Types – approximately 470 case types across all Sections (also in a drop down menu). Examples of frequently used case types include automobile accident, breaking & entering, condemnation case, dangerous building matter, contract, deed restriction complaint, election/redistricting, environmental matter, harassment/discrimination, labor dispute, landmark, land use, open records, real estate, and slip and fall.

- Case Subtypes – approximately 260 case subtypes across all Sections (also in a drop down menu). The Contracts and Real Estate sections use more than 50 subtypes specifying the type of contract (e.g. license agreement, lease, letter agreement, settlement agreement, concession agreement, construction agreement, legislation, and grants). The Neighborhoods Section has a variety of subtypes, such as descriptions relating to “Alcoholic Beverages – TABC” and “Demolition.” Likewise, the Real Estate and General Counsel sections rely on subtypes relating to the practice focus, such as “Special Minimum Lot Size” and “Sign Administration.”
- Document Type – more than 50 customized fields for document type, which includes appeals, contracts, correspondence, deed restrictions, discovery, emails, drafts, forms, historic districts, image, invoices, media, memos, permits, pleadings, real estate, resolutions, ordinances, “other”, orders, and street names.
- Dashboards View – When queried, the Legacy System displays the requested documents. This tabular display lists information such as version number, matter/case number, file names, to/from fields, “Re” line, and document type and subtype. Users can enter keywords associated with a document. Displayed lists can also be printed.

Claims Section - Frequently Used Legacy System Features

- Client Codes – approximately 931 client codes in the Legacy System are specific to the Claims Section. These client codes include a numerical value that reflects the department code, department division, department section, and other similar identifiers.
- Coverage Codes – between 5-10 coverage codes are used to indicate the type of insurance coverage at issue, such as subrogation, medical malpractice, automobile, and general liability.
- Cause Codes – approximately 30 cause codes are used to tag claims with information concerning the factors involved with the liability claim, such as premises defects, lane changes, failure to control speed, and property damage.

Litigation and Transactional Sections - Frequently Used Legacy System Features

- Client Codes – approximately 110 client codes in the Legacy System are used by the Litigation and Transactional Sections. The client codes primarily represent department and division names, such as the Finance Department, each City Council District, and the various divisions within large departments, such as Public Works and Engineering (PWE).

General Counsel - Frequently Used Legacy System Features

- TPIA Database used for TPIA Requests (open records requests) – General Counsel currently uses a Microsoft Access database to manage the City’s TPIA requests. It is expected that through document management, record management, reporting, and tracking functionality the new system could replace the current Microsoft Access database, or at a minimum provide seamless connectivity/integration between the Microsoft Access database and the ELM solution. The Microsoft Access TPIA Database contains the following 14 fields, which fields must be available (preferably as a COTS option) in the ELM system: (1) Name, (2) Control No., (3) Status, (4) LD No., (5) Date received by City, (6) Date received in Legal (7) Date AG Letter Due, (8) attorney

assigned, (9) paralegal assigned, (10) AG ID No., (11) Date AG Letter Sent, (11) Requestor Name, (12) Contact Department, (13) Contact Person, and (14) Comments (free text field that is also fully searchable).

Neighborhoods - Frequently Used Legacy System Features

- Deed Restrictions Database – Neighborhoods currently uses the Legacy System as database to manage matters handled by the Office of the City Attorney’s Deed Restriction Enforcement Team (DRET). The DRET acts as an enforcement authority. It takes people to civil court when they violate the certain deed restrictions. For more information, see the City’s website at <http://www.houstontx.gov/legal/deed.html>.
- The DRET uses the Legacy System to replicate its hard copy files. It is expected that through document management, record management, reporting, and tracking functionality the new ELM system will replicates DRET’s uses of the Legacy System. The new ELM system should offer the following fields, which must be available preferably as a COTS option or a standard customization available at no additional expense to the City:
 - Documents – This will likely be a common field for the entire Legal Department. However, the DRET will require the following subtypes (whether as a pick list option or some other method of subcategorizing): internal correspondence, external correspondence, deed restriction (the actual deed restricting document), summary, and evidence.
 - Notes/Comments – This will likely be a common field for the entire Legal Department
 - Subdivision – This field identifies the name of the neighborhood subdivision.
 - Council District – This will likely be a common field for the entire Legal Department.
 - Address – This field contains the property address.
 - Violation Type – The City has authority to enforce 5 types of restrictions. There could be multiple violation types associated with a single complaint. The system would need to contain a field that allowed multiple violation types to be added to the file.
 - Structure Types – This field identifies the type of structure at issue and would be populated with relevant descriptors, such as a boarding house, halfway house, assisted living facility, single-family residential use, residential use, etc.
 - Summary – This field contains the file summary.
 - Bibliographic Information – These fields will be common to the entire Legal Department. It includes information like the name, address, and telephone numbers for the complainant and alleged violator, as well as the assigned attorney.

Reports

Reports are created in the Legacy System by Crystal Reports. The Legal Department typically runs reports once a month (near the end of the month). We also run a variety of reports at the end or beginning of each fiscal year (fiscal year runs from July 1 to June 30). The reports can be configured to provide a significant amount of information including, Section and person to whom a file is assigned or transferred, date assigned, date closed, average number of days a file remains open, and requesting client department/division. The reports are also converted in graphs and charts to show the distribution of workload and client requests. Commonly used reports provide the following information:

Claims Focused Reporting

- Weekly Claims by Attorney based on Adjuster Dates and Supervisor Dates (2 separate reports) – queries beginning and ending dates and assigned staff to produce a report listing information from those fields as well as claim number, department number, claimant name, injury types (bodily, property, legal), notes (e.g. activities performed by the assigned personnel on each date), location and description of the alleged event, accident date, coverage and cause codes, claim status, and automatic calculation of payments and outstanding amounts.
- Claims listings for Particular Line Items – queries all status (open or closed), cause codes, assigned adjuster, departments, and coverage to produce a report listing claim numbers, department, accident date, location and description of the alleged event, coverage code, cause number (e.g. lawsuit number), claimant name, amounts of and payments for bodily injury, property damage, legal fees, subrogation and the net of such fees.
- Claims Summary Report – queries beginning and ending dates to produce a report for that time frame listing counts for opened, reopened, and closed claims, and calculating paid to date, incurred amounts, and averages for fields such as bodily injury, property damage, legal fees, subrogation, and grant totals.
- Claims Payment Listing – queries beginning and ending paid dates, coverage dates, funds transferred to and from departments, fund codes, and payees to produce a report listing information from some of those fields along with the claim number, claimant, file status, department codes, paid dates, check number, payee, case types, amounts and totals for each claim, and overall subtotals.
- Claims Summary: No Detail – queries 3 critical cause codes and for all status, coverages, causes, and departments in the selected period and calculates paid to date, incurred amounts, averages and totals for fields such as bodily injury, property damage, and legal fees.
- Managers File Report Primary or Subrogation (2 separate reports) – queries for either primary cases marked “yes” or “no” for a certain date range to produce a report listing the number of assignments received, closed, and on hand (e.g. pending) for each adjuster and the aggregate totals for all adjusters.

Litigation and Transactional Focused Reporting

- Lawsuit 1-Line Report – queries case status (open or closed) to produce a report listing file number, department, division, assigned attorney, area of law or case type, case style (e.g. City of Houston vs. ABC Corp.), date assigned, case status and age of the file (e.g. open for 14 days), total file count per attorney. Report frequently relied upon by the Litigation Section.
- Proposer Contractor 1-Line – queries beginning and ending dates, file status (open or closed) and assigned staff to produce a report listing information from those fields as well as file number, matter style (e.g. the parties to a contract), client department, ordinance date, contract number, assigned attorney, beginning and ending dates (e.g. date assigned), file status (open or closed), total matter count – Report frequently relied upon by the Transactional Section.
- General 1-Line Report – queries style, closed status, non-lawsuits, department and division, opposing attorney and law firm, court, assigned attorney, case type, legal cause and case numbers.
- TPIA Report – queries a variety of fields, such as requests received, opened, closed, status, etc., which reports, includes a display of each LD File number as well as other pertinent information. The system should also provide the ability to create and run reports for any one or more of the following fields: 1) Name, (2) Control No., (3) Status, (4) LD No., (5) Date received by City, (6) Date received in Legal (7) Date AG Letter Due, (8) attorney assigned, (9) paralegal assigned, (10) AG ID No., (11) Date AG Letter Sent, (11) Requestor Name, (12) Contact Department, (13) Contact Person, and (14) Comments (free text field that is also fully searchable).

Neighborhood Service Reporting

- Aging Report – queries that produce aging reports for 30, 60, 09, and 120 days.
- Council Report – queries that produce monthly reports by assigned attorney and City Council District or City Council Member¹.
- Deed Restrictions Report – queries that produce reports showing trends based on indicators such as the 5 violation types, structure types, and council districts.

Subject to confidentiality restrictions and appropriate safeguards, short-listed Proposers may be provided with replicas of the reports listed above, screen shots of the referenced fields or features, or the opportunity to view or demo the Legacy System.

3. Records Retention

The City's record retention requirements are set by state law (e.g. Local Government Code Chapter 205, Electronic Storage of Records, and Texas Administrative Code, Title 13, Chapter 7, Electronic Records Standards and Procedures), as well as City ordinances and policies. For more information about the City's record retention requirements, visit the Texas State Library and Archives Commission's (TSLAC) website, at <https://www.tsl.texas.gov/slr/recordspubs/localretention.html>. The City's Administrative Procedure, A.P. 8-5, governs certification of electronic records storage. A.P. 8-5 is available at <http://www.houstontx.gov/adminpolicies/8-5.pdf>. The Legal Department desires to maintain its records in an electronic system that complies with and can be certified under the TSLAC standards.

The Legal Department's Records Retention Schedule contains approximately 125 unique Records Retention ID (RRID) numbers that correspond to a category of records (i.e. record title). The records retention periods vary, with periods ranging from permanent, less than one year, and a designated timeframe after a triggering event (e.g. 4 years after a contract expires). The City will provide the successful Proposer with the Legal Department's Records Retention Schedule. For purposes of responding to this RFP, the following chart is a representative example of a Records Retention Control Schedule.

Example Records Retention Schedule

| RRID | Record Title | Retention Period | TSLAC Reference |
|-------------|------------------------|---|------------------------|
| RR00009548 | Affidavits of Heirship | Permanent | GR1000-27 |
| RR00008878 | Correspondence | 2 years | GR1000-26b |
| RR00009552 | Lease | 4 years after lease expires (EXP + 4 years) | GR1000-25 |
| RR00015322 | Word Processing Log | AV (administratively valuable) | GR1000-26c |

4. City's IT Infrastructure

The Legacy System runs on Windows Server 2012 R2, the database is MS SQL 2008, and is hosted on a HP DL380G6. The Legal Department users are likely to have one of the following HP products as their primary workstation: (1) HP DC5750/5850 MicroTower with 150GB Drive and 1GB to 2GB RAM or (2) HP 6305 MicroTower with a 500GB drive and 4GB RAM. The standard desktop operating system is mixture of Windows 7 Enterprise and Professional, both 32 and 64-bit versions. Most employees use Microsoft Office 2007 and 2010 and Microsoft Outlook 2007 and 2010, however, a significant portion of the employees also use Corel products, such as Word Perfect. In the near future, the City may consider various upgrades to its standard IT environment, such as upgrading to Windows 10, Microsoft 2013 or 2016, Microsoft 365, or other comparable products. The ELM System must be compatible with these future releases as well.

Legal Department employees also use mobile devices to efficiently perform various job responsibilities. The department's IT environment includes laptops such as HP Elite Book, Android iPhones and tablets (e.g. Samsung Galaxy S4, Samsung Galaxy S5, Samsung Galaxy Note, Samsung Galaxy Note Pro, and Samsung Galaxy Note Tab), and iOS mobile phones and tablets (e.g. iPhone 5 models, iPhone 6 models, iPad Air, iPad Air 2, and iPad Mini).

The ELM System and the necessary hardware must be "compatible" with the City's existing IT environment (or environments that are pending installation/go-live). The City has no intentions of setting up a special computing environment (Linux based) to support an ELM System. Compatibility includes the ability to integrate with or capable of being used together without special modification or adaptation.

C. Schedule

This is a multi-section effort led by the Strategic Procurement Division in conjunction with the City Legal Department. The City may hold one or more presentations for the benefit of the multi-sectional interest. Proposers shall be prepared to accommodate the schedule requirements throughout the procurement process so as not to unreasonably extend the length of the procurement process.

It is anticipated this will be a 30-45 day project from the contract award to the completion of a fully implemented ELM system (e.g. production) and all training deliverables (assuming a pilot or Beta was successfully completed and remained installed at the time of contract execution). The Agreement(s) shall become effective on or about **May 2016**, for a term of three (3) years. The City of Houston reserves the option of extending the Agreement(s) on an annual basis for up to two (2) additional one-year terms, or portions thereof on the same terms and conditions.

D. Solicitation Schedule

Listed below are the important dates for this Request for Proposal (RFP).

| <u>EVENT</u> | <u>DATE</u> |
|--|--------------------|
| Date of RFP Issued | November 27, 2015 |
| Pre-Proposal Conference | December 15, 2015 |
| Questions from Proposers Due to City | December 22, 2015 |
| Proposals Due from Proposers | January 21, 2016 |
| Pilot Test Period | As described below |
| Notification of Intent to Award (<i>Estimated</i>) | March 2016 |
| Council Agenda Date (<i>Estimated</i>) | April 2016 |
| Contract Start Date (<i>Estimated</i>) | May 2016 |

PART II – SCOPE OF WORK/TECHNICAL SPECIFICATIONS

A. Purpose

The purpose and objective of this project is to provide the Legal Department with an ELM System that will meet the following goals:

1. Serve as the central repository for documents within the Legal Department.
2. Enhance document management with additional security measures.
3. Migrate to a paperless, technology-oriented environment.
4. Satisfy the City's legal obligations to maintain and destroy data according to its content and applicable retention schedules.
5. Improve workflow and the operational and financial management of the Legal Department.
6. Reduce associated costs and realize savings from increased efficiencies in locating and reusing documents, and reducing supply and data storage costs.
7. Streamline the creation of reports and performance analytics.
8. Reduce email traffic and increase collaboration by providing for file sharing, version controls, and mobile access.
9. Increase productivity and improve client service by enabling personnel to quickly locate and access electronic work files and ensuring the transfer and leverage of knowledge capital.
10. Advance the citywide goal of being environmentally and socially responsible by consuming, printing, and storing less paper.
11. Save taxpayer dollars.

B. General Requirements

Upon award of the contract, the successful Proposer will configure, integrate, test and implement the new ELM System, train personnel, and provide ongoing access to support and maintenance, as further described below (the "Project"). The ELM System must be scalable, capable of handling at least 8 to 20 TBs of data, with the ability to scale to 4x, without issues. Proposers must complete and submit each appropriate appendixes for the proposed ELM System. Proposers must detail the proposed ELM System solution by: (a) completing the attached appendixes which detail the specific requirements for the desired ELM; and (b) responding to the narrative questions in the RFP. Questions and Answers must be in Word format, with the answers in a complete and concise manner, in the same order and numbering label used in the RFP.

The City strongly prefers an on premise implementation of the ELM, however, we may consider a cloud based (i.e. hosted) deployment. All responses to this RFP must clearly delineate whether the response refers to an on premise or cloud installation.

A. Implementation, Migration, Conversion, and Training

1. Project Management

Section C spans the entire Project throughout all the design, implementation, and deployment tasks. The City will be responsible for overall program management. The selected Proposer will comply with, participate in, and cooperate with all efforts identified for effective project management.

2. Project Management Plan

The City requires the successful Proposer to assign a dedicated project manager to the Project. The successful Proposer's project manager will serve as a liaison and single point of contact with the City's project manager and the respective Project team members. The Proposer's project manager will actively participate in and contribute to the following Project activities:

- Finalize Project business requirements.
- Create and maintain the Project plan and schedule.
- Report Project progress and status.
- Manage Project risks and issues.
- Manage the Proposer's Project team (including subcontractors, if any) and task execution.

a. Deliverables

- The selected Proposer shall provide detailed project plan, change management plan, training plan, organization change management plan, knowledge transfer plan, data migration plan, project organizational structure and major milestones based on deliverables for all phases of the implementation.
- The selected Proposer shall include methodologies, testing plan, techniques, tools, deliverables, meetings, and expectations of the City staff as part of the project management plan.
- The selected Proposer shall contribute to issue tracking logs to help mitigate risks and problems.
- The selected Proposer shall provide regular project status reports.
- The selected Proposer shall contribute to project change management and control documentation.

B. Change Management

The City of Houston will implement the change order management plan developed, as submitted by the Proposer, to ensure successful implementation of the ELM System and acceptance by all stakeholders, including end users, project governance committees, managers, business leaders and program implementation staff.

The selected Proposer will work with the City of Houston to identify the appropriate staff and/or position types.

C. Training, Knowledge Transfer and Organizational Change Management

The selected Proposer will provide training, knowledge transfer and organizational change management, as submitted by the Proposer, for all asset groups and all phases of the program. At a minimum, all training is expected to be delivered onsite at the Legal Department's offices before the system goes live. The Proposer's response should outline knowledge transfer processes, training delivery options, the requirements listed below, and any associated costs.

a. Deliverables

The selected Proposer shall provide the following training and documentation:

1. Train users with varying roles to use the ELM System.
2. Administrator Training
 - a. Provide sufficiently detailed onsite training to allow the Legal Department IT project team to participate in the configuration process, thus reducing overall project costs to the Legal Department. In particular, shortly after Project initiation or kick off, the selected Proposer must provide instruction on building custom reports, automating documents, building business rules, and administering other aspects of the software solution.
 - b. Assist and train system up to 6 City IT administrators to:
 - i. Create and maintain user access/security and maintain system codes.
 - ii. Create and maintain additional screen views, layouts, rules-based customization, etc.
 - iii. Customize all customizable or configurable aspects of the ELM System.
 - iv. Create custom reports.
3. User Training
 - a. Initial end-user training will likely be mandatory for all Legal Department users. Training classes should be offered to manageable class sizes and in logically organized groups (e.g. all paralegals or all members from a particular Section). Each Section has approximately 10 attorneys and 10 staff members. Explain how you propose to provide the desired end-user training.
 - b. Explain how the Proposer's training and knowledge transfer approach will ensure adequate knowledge transfer to prepare the City's IT staff to configure, customize, and maintain the system after its placed into production.
4. Train designated users on how to utilize any custom/ad hoc reporting tools or features so that reports and advanced features can be created or used as needed.
5. Provide all pre-requisite materials for the training classes.

6. Coordinate delivery of the training classes, such that the timing is agreeable to the City and Proposer within the Project timeline.
7. Provide all initial training in-person at Legal's offices.
8. Offer, at no additional costs, remote, on-demand, webinars, user conferences, newsletters and other formats of regular or periodic training opportunities for refresher or advanced training at a later date (post go-live).

D. System Solution Testing

The City and selected Proposer will refine and agree on the tasks listed below, as appropriate, to establish testing parameters and acceptance criteria that the City will use to validate whether the ELM System, as installed by the Proposer, meets the City's business requirements. The Proposer's response should address its proposal for completing the following tasks and include the Proposer's recommendations for testing and acceptance criteria and protocols. The response to this section must include information for an on premise solution; it may also include information regarding a hosted solution, clearly delineating between the on premise and hosted solutions.

- A. Provide a test environment that is separate from the production environment, using repurposed hardware from available inventory.
- B. Develop test methodology and test plans that produce results to detect the differences between the given input and the expected output in order to assess quality. The testing plan should include.
 1. Unit – a test to ensure that the unit implemented is producing expected output against given input.
 2. Functional – a test to ensure specified and required functionality operate correctly.
 3. System – a test to ensure the software in a different environment (e.g., Operating System, Hardware Platform) will still operate. System testing should be completed with full system implementation and environment.
 4. Performance Testing – assessment of the speed, functionality, stability, and effectiveness of the system and ensures the generation of results within a specified time. (i.e. Mercury Load Testing)
 5. Usability – evaluation of user-friendliness, ease of learning, proficiency of use, and approval of design schematic and/or dashboards.
 6. Acceptance – completed by the City to ensure the delivered product meets the requirements and works as expected.
 7. Corrections – provision of reports, documents, and verification and correction of defects, errors, or testing failures.
 8. Regression – Regression testing is the testing after modification of a system, component, or a group of related units to ensure the modification is working correctly and is not damaging the system(s) or producing unexpected or undesired results.
- C. Identify test and acceptance criteria. This should also address the steps associated with data conversion.
- D. Ensure system stabilization.

- E. Proposer to perform system testing and integration testing prior to system acceptance testing.
- F. City will perform system User Acceptance testing prior to system acceptance.

a. **Deliverables**

The selected Proposer shall provide:

- Documentation of 'as-is' processes based on the business process improvement and joint application design sessions
- Test plans and scripts based on the "to-be" business processes

E. Pre-Deployment Design, Analysis and Setup

The selected Proposer will prepare pre-deployment design, analysis and setup in preparation for the Project. The selected Proposer will be responsible for all requirements within this section, with the cooperative efforts of the City of Houston when necessary. In performing the following tasks, the Proposer will work closely with the City's non-technical project lead and members (e.g. lawyers and staff) and City IT personnel to ensure a smooth transition to operations. The Proposer's response should address its processes and methodology for deployment of the software, including the areas listed below, as well as any recommendation to the City to ensure a successful deployment. The response to this section must include information for an on premise solution; it may also include information regarding a hosted solution, clearly delineating between the on premise and hosted solutions.

- A. Document the deployment plan and identify tasks and task owners.
- B. Describe the methodology or processes that the selected Proposer will utilize to ensure all support documentation is up to date based on the City's configuration.
- C. Describe the approach to ensuring the Proposer's support procedures and personnel are in place and ready to assist the City with the Project's "go-live."
- D. Coordinate with the City Project Manager to communicate go-live status and go-live support activities.
- E. Develop and implement a plan for knowledge transfer, including providing written deliverables describing best practices and recommended practices related to the ELM System, and other related activities for the software modules installed.
- F. Describe any other categories of professional services that you will provide that have not been specifically addressed in this RFP.

1. System Architecture Design & System Installation

Identify major hardware and software sub-systems and components required for implementation, including:

- Develop hardware and software specifications for the ELM System and sub-systems;

- Install the ELM System, sub-systems and modules

a. Deliverables

- Technical memorandum defining the system architecture to be implemented, including architecture diagrams and process flow diagrams (business and technical process flows).
- Technical memorandum documenting all installation procedures.
- Documentation of integration points and interfaces, the data elements being shared and the related systems.
- Documentation of the hosted hardware landscape required by phase for complete implementation.

2. Implementation

The City desires to have the ELM System fully implemented and operational within 45-60 business days after the contract is executed ("Targeted Go-Live Date"). All tasks will be performed under the control and direction of City IT staff and representatives from the Legal Department.

a. Deliverables

Describe your implementation methodology and approach for the ELM System. At a minimum, the City requires the Proposer to perform the tasks listed below to implement the ELM System for the Project by the Targeted Go-Live Date. Your approach or methodology should describe how you will accomplish each of the tasks and requirements listed below.

- A. Identify proposed milestones and provide general implementation recommendations.
- B. Assist with integrating the ELM System with various departmental systems or data repositories, such as Microsoft Outlook (and Active Directory), Texas Public Information Act database (described herein), deed restrictions database (described herein), and support Outlook Database connections ("ODBC") for alternate database ("dB") connectivity and data import/export.
- C. Assist in configuring the software according to business requirements.
- D. Install the software, including hardware and software backup and recovery components.
- E. Identify user roles and permissions and perform configuration of users, groups, accounts, etc.
- F. Configure and implement security and reporting requirements.
- G. Provide consulting services and related assistance with data mapping, optimizing collection practices, establishing defensible and repeatable information governance processes and procedures (e.g. data classification and retention),

recommending best practices for information governance, and assisting with the creation of workflows, templates, and processes for each Section.

- H. State whether the City's Targeted Go Live Date is realistic or feasible. If you would recommend an alternative timeframe, state (a) the reasons why you recommend an alternative time frame (e.g. Targeted Go Live Date is particularly aggressive, extremely costly, etc.), (b) your proposed time frame, and (c) describe any other alternative options based on your proposed timeframe (e.g. describe the impact, if any, on the implementation methodology and approach, as well as the project costs, that would result from increasing or decreasing the Targeted Go Live Date).
- I. Address the data conversion requirements stated herein, including the data delivery to Proposer, data mapping report, initial data conversion testing, quality control for data conversion, data conversion review, and adjustments, etc.
- J. To the extent available, include a separate proposal with a detailed implementation project plan for the alternative option of an externally hosted implementation of your ELM System (e.g. cloud-hosted solution). This separate project plan should be clearly labeled as such and include all of the information requested in this RFP for the project plan for an on premise ELM System deployment, to the extent applicable.

3. Customization

The City strongly prefers an on premise COTS ELM System.

a. Deliverables

Responses to this section should address whether any customization is needed to satisfy the functional and technical requirements in this RFP, including optional requirements.

- A. If no customizations are required, include comments stating that no software customizations are required for the proposed software system solution to meet the any of the functional or technical requirements in this RFP, including any requirements that are listed as optional.
- B. To the extent the proposed solution requires customization or there are customizations that you would recommend for the City, the response should address the following areas:
 - 1. Software providers will be required to commit to taking ownership of the customizations and the services necessary to create, implement and support the customizations. Describe how you will satisfy this requirement.
 - 2. Each customization must be done in such a manner as to allow the City to upgrade at will and not force the City into a revision lock.
 - 3. All customizations must be supported by the software provider and not hinder any customer support provided by the software provider.

4. Provide a complete listing, including a brief description and explanation, of any customizations that are required to satisfy the City's technical requirements in this RFP or to compensate for functionality gaps in meeting the requirements defined in Appendix 1 ELM Requirements Table.
5. Identify any other implications arising from the customizations, including the impact, if any, on the project timeframe, total cost of ownership, integration with other software systems, etc.

4. Reports

Proposer will provide all reports required by the City prior to the system deployment. The ELM System must allow for custom/ad hoc reporting capabilities so that additional reports can be created as needed.

As part of the installation, Proposer is expected to complete the following tasks and provide the corresponding deliverables:

- A. Configure and implement reporting requirements as requested by the City.
- B. Configure and develop dashboards, as jointly defined by the City and Proposer, with the ability to drill down to the level requested by the City to the extent the ELM System offers this functionality.

a. Deliverables

- As part of your response to this RFP, provide a list of the standard out-of-the box reports for the ELM System. While an exhaustive list is not expected, the list should include reports relevant to the general software features described in this RFP (i.e. case or matter management, time tracking, workload and performance metrics, expenses, etc.), as well as reports that address any of the specific reporting functionality or features contained in the technical requirements chart.
- Include a brief description of each report or provide an exemplary report.

F. Convert/Migrate Data from Legacy System to new ELM System

The selected Proposer must convert and migrate the Legal Department's existing data from its Legacy System to the new ELM System. The selected Proposer will evaluate the integrity (completeness and condition) of existing data for each deployment group. Data conversion/migration shall not occur if the data is incomplete or in poor condition such that the conversion/migration will fail or otherwise result in a nonfunctional system. The selected Proposer will evaluate the data to identify gaps, errors, missing data, and any other anomalies that will result in the system failing to meet business requirements. The selected Proposer shall report the integrity of the data and recommend improvements required prior to migration including the level of effort required by the selected Proposer and the City of Houston. A data mapping exercise shall be conducted by the selected Proposer to validate work processes and identify problems.

The selected Proposer will implement recommendations to condition the data prior to migration. The selected proposer shall describe and quantify all assumptions made in determining the magnitude of effort required. The description shall be sufficient to

determine when the level of effort exceeds that included in the scope.

In providing responses regarding data conversion and migration, assume that data from the Legacy System will likely be provided to the Proposer in a flat form data set. The selected proposer will be required to ensure the converted and migrated data includes OCR text where available (to be performed by the Proposer). The ELM System must be capable of ingesting the Legal Department's current data, (i.e., case history, court referral history, charges, disposition and demographic information).

a. Deliverables

A memorandum that describes, in detail:

- the methods, tools, technology or process you will use to migrate/convert data from the Department's Legacy System to the new ELM System.
- any methods or tools for dealing with data not meeting the referential integrity or other requirements for conversion and migration into the ELM System.
- any methods or tools for ensuring that all data is migrated into and accounted for in the new ELM System.
- Requirements documentation
- Functional and Technical Specifications
- QA/QC documentation (reports showing comparison of record counts before and after)
- Knowledge transfer methods

G. Documentation

Proposer must supply comprehensive, high quality documentation and must provide a complete description of all system complements, e.g. software, databases, business rules, workflow, forms, etc.

a. Deliverables

- Description of how you will deliver appropriate documentation for the different types of users, e.g., system administrators and end users.
- Statement regarding how changes to the documentation will be maintained so that users will be kept current as the ELM System evolves.
- Description of how the ELM System relies on best business processes and what reengineering, process changes, or workflow modifications are likely to be imposed or are necessary to use the ELM System out-of-the box.
- Description of the types of business best practices that are built-in to the ELM System.

H. Software Maintenance and Support

The city will reserve the right to negotiate the implementation timeline with the selected proposer.

Proposer must provide technical support, preferably support that is available at least 12 hours per day (preferably from 8 AM to 8 PM CST), 6 days per week (Monday through Saturday) via a toll free number, as well as email support. The desired ongoing technical support refers to the support included as part of the software maintenance costs, under either the perpetual license or software as a service pricing model. This requirement does not apply to the professional services for installation of the software or consulting services, such as creation of workflows or views (although a separate warranty and warranty period will apply to the professional installation or consulting services).

a. Deliverables

At a minimum, the City requires the Proposer's response regarding software maintenance and support to address the following areas:

- A. Describe, in detail, the system support that is available (including the difference between various levels of support, if any).
- B. Describe release management and software update processes, roles and responsibilities.
- C. Describe, in detail, the Proposer's support model, explaining and documenting the method for reporting problems and requesting enhancements.
- D. Submit any support level agreements or other documentation regarding problem resolution (e.g. escalation process, ticketing system, error classifications, response times, etc.).
- E. Describe the process for implementing requested enhancements (e.g., adapting system to account for future modifications).
- F. Provide a description of your standard scheduled maintenance times and customer notification processes.
- G. State whether you offer, at no additional charge and as part of maintenance/support service, all new software releases, upgrades (both major and minor versions), service releases (patches), and updated system documentation.
- H. State whether bug fixes are available on-line.
- I. State whether Proposer will use commercially reasonable efforts to provide modifications or upgrades to the ELM System to retain compatibility with future Microsoft Office products (particularly Windows 10 and Office 2013/2016) and whether you will agree to such efforts in an executed contract with the City. State whether and how the ELM System supports Microsoft Windows updates set to automatically download/install updates and patches.
- J. Describe your policy regarding source code, including which, if any, source code is provided to the customer and whether any source code is held in escrow. In accordance with the applicable paragraph of this RFP requesting the provision of

Contract Documents, provide sample source code escrow agreements and other related documents.

I. Data Security and Compliance

The ELM System must address all data security, audit, compliance aspects of document searching, storage, classification, and retention. Many of the Legal Department users create or store documents or data containing sensitive and confidential information protected from disclosure by law, such as, but not limited to: financial information, personnel records, personally identifiable information, protected health information, attorney-client work product and privileged information.

As a result, the system must be in compliance with various laws and guidelines, to the extent applicable, such as Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH), applicable standards issued by the National Institute of Standards and Technology (NIST), and other similar state or local laws and standards. Additionally, the ELM System must have tight security controls and be in compliance with the City's IT and security policies (as amended from time to time), such as Administrative Procedure 8-2, Cybersecurity Program and 8-1, Use of City Information and City Information Technology Resources, available at http://www.houstontx.gov/policies/administrative_policies.html.

Consequently, user permissions and access to the ELM System and the information contained in or accessible via the system must be based on security clearances at the individual user level, various group levels, and a case/file matter level. The proposal should include the following information and any other information that may be helpful to the City in evaluating the ELM System's security and privacy features. The response to this section must include information for an on premise solution; it may also include information regarding a hosted solution, clearly delineating between the on premise and hosted solutions.

- A. Describe the ELM System's security features, including without limitation, user level permissions, group permissions, audit trail capabilities, measures that will exist within the application to prevent abuse or unfettered access to restricted documents, security-related reporting; etc.
- B. Describe the ELM System's security features that enable the creation of ethical walls, such as enhanced security or blocked access at the file path, matter or client code level, or document type level. For example, an attorney that has a conflict of interest should not be able to view, read, edit or access anything associated with the matter or claim for which a conflict exists. Likewise, the Office of Inspector General's (OIG) data must remain separate and inaccessible to all but a limited number of individuals on the OIG's staff, as determined on a case-by-case basis.
- C. Provide detailed documentation outlining security policies/procedure, best practices, and technologies that are implemented in the proposed ELM System, which offer increased security and mitigate risk.
- D. Provide written policies, procedures, and methods for ensuring system security.

- E. Explain how compliance is maintained with applicable rules and regulations (such as those described above).
- F. Describe how data is transmitted (outside the server/system) and stored, including but not limited to: means and methods of encryption, authentication, etc. This description should address emailing documents or links to documents stored in the ELM System. If a cloud-based solution is proposed, the response should also address the cloud-based security.
- G. Describe support provisions, if any, that relate to security concerns, risks, and liability coverage.
- H. Describe the insurance coverage that the Proposer carries to address security risks, such as professional liability, technology errors and commissions (“tech E&O”), crime insurance, cyber security insurance, etc.; state the amounts of coverage and whether Proposer is willing to add these coverages and amounts to an agreement (or purchase order addendum) with the City or include them within a statement of work, particularly tech E&O or cyber security insurance or similar insurance relating to the selected Proposer’s installation and consulting service with the following coverages and amounts:

| Coverage | Amount |
|----------------------------|--------------------------|
| Corporate Liability | \$3,000,000 Policy Limit |
| Event Management Liability | \$1,000,000 Policy Limit |
| Crisis Fund Liability | \$50,000 Policy Limit |

- I. Describe encryption, if any, available to be applied for all stored data.
- J. Provide a detailed description of the customer data the Proposer requires or requires access to in order to perform the tasks described in this RFP (e.g. implementation, installation, testing, etc.).
- K. Indicate whether Proposer allows its customers, like the City, to audit either the application or network infrastructure for security purposes. Provide types of notices that may be required to do non-intrusive vs. intrusive scans or other vulnerability assessments.
- L. Indicate audit policies, if any, which would enable the City to receive access to or request any security-related configuration files, developed application code, policies, or quality assurance and testing documents.
- M. Describe how you protect the ELM System from standard IP vulnerabilities, including denial-of-service attacks.
- N. Describe the backup and disaster recovery process for the ELM System.
 - 1. Include recommendations and best practices for backup and disaster recovery, particularly for an on premise solution.
 - 2. If you are offering a cloud-based solution, describe the backup and disaster recovery processes and procedures that you employ for hosted solutions. At a minimum, responses should address the following areas:
 - a. The amount of time it takes to recover the system after a shut down or failure (e.g. preferably within 4 hours or less);

- b. How close in time data can be recovered, e.g. if backups are done every 12 hours, then no more than 12 hours data could be lost;
- c. Data center redundancy; and
- d. Identify the locations of data centers. The City requires the Proposer to store and process all City data in the continental United States.

J. Key Personnel

The Proposer shall identify the key personnel that will be committed to the project. The City reserves the right to reject any key personnel proposed if it is determined in the City's best interest. Key personnel must have experience in implementing an integrated ELM System for law firms, corporate law departments, and/or legal divisions of government agencies for projects with similar size and scope as the City's scope of work. All key personnel must be committed to the Project at the appropriate time level. Proposer understands that the qualifications and experience of key personnel proposed will be factored into the evaluation process; therefore, key personnel must not be replaced without the approval of the City. Any approved substitutions must be with personnel of equal or better qualifications. In addition, any other commitments must not conflict with the level of commitment proposed for this project.

K. Pilot Test

1. Description of Pilot Test

Proposer must provide access to the proposed ELM System for a group of Legal Department employees to conduct a pilot test. Each Proposer must agree to and participate in a pilot test, solely at the Proposer's expense. The ELM System used for the pilot test must include all of the items offered by the Proposer in response to this RFP. The Proposer must provide a fully functional, production level software ELM System, not a demonstration version of the software nor a proof of concept.

The pilot testers will represent a cross section of 40-65 end-users from all of the Legal Department's sections, including (a) system administrators, (b) power users, (c) personnel responsible for creating matters, opening or closing files, and preparing reports, and (d) attorneys and paralegals responsible for managing cases or matters from various sections.

Proposers will be required to provide training documents and end-user training for the pilot testers for approximately one hour (unless the Proposer desires to offer more extended training to pilot testers) in a "train-the-trainer" format. The end-user training for pilot tests must be live, but it may be offered remotely, via a WebEx or video conference for approximately one hour (unless the Proposer desires to offer more extended training to pilot testers). End-user training should address all components/modules offered by the Proposer in response to this RFP. Proposers are permitted to offer additional training for the pilot testers, such as on-demand and online training.

Unless the City agrees to end the pilot test sooner, the pilot test must be offered and conducted for a minimum of 60 days ("Pilot Test Period"). The 60 day period is designed to accommodate the City users' varying scheduling demands and enable a broad spectrum of user participation. The Pilot Test Period begins at 8 AM on the day after the designated City representative notifies one or more City pilot testers, in writing (e.g. email), that the system is available for the tester(s) to log-in and begin the pilot. The Pilot Test Period does not

include dates on which pre-installation, configuration, or set-up services occur, whether provided by City IT personnel or the Proposer. For example, pre-pilot services would include IT personnel installing software on a tester's workstation or verifying that the software settings are correct for that particular workstation (e.g. Internet compatibility, Java downloads, network connections, etc.). Proposers are encouraged to verify that their proposed ELM System has been set up, configured, and is end-user ready prior to the beginning any Pilot Test Period.

Although pre-pilot services are not included in the pilot test period, Proposers should be mindful that the ease or difficulty of installation, customer service, project management, and other related matters may be considered by the pilot testers or evaluation committee as part of the applicable evaluation criteria. The City reserves the right to extend the Pilot Test Period or institute multiple rounds of testing periods to (a) evaluate additional functionality, applications, modules, or add-ons of the ELM System that were not the subject of the initial pilot test, (b) make up for lost time for the pilot test caused by no fault of the Proposer (e.g. City hardware failure, force majeure event, tester unexpectedly unavailable for 2 weeks, etc.); or (c) ensure that the ELM System provides the best value for the City.

PILOT -- GENERAL SYSTEM REQUIREMENTS

The City intends to conduct the pilot in the IT environment and under the conditions described below. Proposer is expected to complete the following installation tasks in connection with the pilot test:

Basic Hardware Requirements

- 1.1. Install the ELM System/software on one or two of the Legal Department's servers or other servers designated by the City that are presently on-hand, such as HP Proliant DL380p Gen8 devices, configured with 192GB RAM, a single Xeon 2640 processor, and two to three terabytes of disk storage.
- 1.2. Install and operate software/system under the standard COH LAN Gigabit Ethernet (LAN will be 1 GB or better).

Basic Operating-System Requirements

- 1.3. Provide software that is a full-version of the latest release (no limited function versions).
- 1.4. Ensure the software is compatible to operate on Microsoft Server 2012 R2 Standard, with the server instance located on the City of Houston domain.
- 1.5. Ensure the software is compatible with virtualization with preference to Microsoft Hyper-V as installed alongside other products hosted during the pilot period.
- 1.6. Install and deploy any network agent required for the purpose of collecting data from remote workstations, through Group Policy Object protocols, with standard Microsoft Install methodology.
- 1.7. Install and deploy an agent directly to a target networked workstation by file copy or a flash drive.

Basic Installation Process Requirement

City personnel must be present to witness and observe all phases and aspects of software installation provided by the Proposer, commonly referred to as starting from bare-iron through completion.

Pilot Test -- Data Sets

The pilot test will be conducted using a uniform data set, as further detailed below. The ELM System may be installed on workstations in different buildings or City locations to enable the City to test speed and connectivity across various sections in the Legal Department, including installation on mobile devices that will connect remotely or through VPN to the ELM System.

Structured Data Sets

The ELM System must directly connect, operate and demonstrate against the following structured data sets during the pilot period: ODBC connector functionality, Exchange E-mail, SharePoint, or SQL. The ELM System must be able to work with Windows 10 and Office 2013/2016, when released by Microsoft.

Un-Structured Data Sets

The average City workstations contains approximately 100 GB of unstructured data, consisting of electronically stored information with varying file types, formats, sizes, and extensions. The ELM System must directly connect, operate and demonstrate against a minimum of 100 GB of unstructured data, consisting of various files and file formats commonly used or stored by the Legal Department. Examples of commonly found files include: Word and Word Perfect documents, email files (i.e. .msg and .pst files), password protected files, TIFFs, pictures/images, audio files, EDB files, duplicate documents, XML Paper Specification/XPS documents, and zip (or RAR) files.

The ELM System must directly connect, operate and demonstrate against Windows 7 workstation targets located on the City's domain. The ELM System should be compatible with and usable on mobile devices, such as Android phones and tablets (e.g. Samsung Galaxy S4, Samsung Galaxy S5, Samsung Galaxy Note, Samsung Galaxy Note Pro, and Samsung Galaxy Note Tab), and iOS mobile phones and tablets (e.g. iPhone 5 models, iPhone 6 models, iPad Air, iPad Air 2, and iPad Mini).

Pilot Evaluation

During the pilot, the testers will evaluate the Proposer's and system's ability to meet the City's goals and business needs, such as feature and functionality verification, user-friendliness, system compatibility, and training effectiveness.

2. Price

Budgeting certainty for the initial purchase and the ability to accurately forecast budgets for future years is important to the City. Therefore, the City seeks a **fixed-price** pricing proposal for the implementation and consulting services component of the Project, with payment obligations triggered by the Proposer's completion of milestones and deliverables upon acceptance by the City. The City also seeks a pricing proposal for software and software maintenance/support in which the rates for future years (at least three), are fixed at a set amount or capped at a not-to-exceed dollar amount (with increases tied to an

objective criteria that can be verified by the City). Providers are strongly encouraged to submit proposals with fixed-prices that include travel costs, if any, in the fixed-fee amount.

Pricing must be fully comprehensive, complete, and list any available discounts. Pricing information supplied with the response must be valid for at least 180 days from response submission date. All one-time and recurring costs must be fully provided. If the Proposer is offering an on premise and cloud based solution, the proposer must include separate pricing proposals, clearly delineating all costs for each solution.

To the extent not included in the pricing models, any varying levels of pricing dependent on volume or other variables, should take into account information contained in this RFP regarding the Legal Department's existing environment as well as the Proposer's experience with projects of similar scope and size. Additionally, the pricing, particularly a fixed-price proposal, should state the Proposer's assumptions, the tasks for which the City is solely responsible, and the level of effort expected from the City's lead project manager (e.g. in terms of the amount of full time effort (FTE)).

PART III – MINIMUM PERSONNEL QUALIFICATIONS

- Provide a brief (1 page or less) background of your organization, including the year your organization first offered the product (or a substantially similar predecessor product) proposed in your response.
- Describe any short, medium or long term directions regarding major changes in your organization, the proposed ELM System (including any applicable modules/components, architecture, languages, platform, etc.), or new or improved features/functionality. The City is requesting only publicly available or non-confidential information in response to this items.
- Provide resumes (or similar document) for key personnel.
- Include at least three references preferably for projects involving other municipal or governmental entities where key personnel performed in a similar role.
- Identify any relevant certifications/licenses of proposed key personnel (including bar licenses and software certifications). Responses should also identify any personnel who have legal backgrounds or training and a brief description of that background/experience.
- Provide an organizational chart for the key personnel for the project.
- Include a table listing Proposer staff assignments and proposed labor hours for each staffer or task and indicate key deliverables/milestones and Proposer personnel that will be required complete each deliverable/milestone.
- Identify any strategic relationship, partnerships, or alliances with software publishers or companies or particular software programs, such as programs with which your software has been integrated. Responses should emphasize strategic partnerships with software used by the Legal Department or commonly used by law firms, including but not limited to Microsoft Office, Westlaw and other Thompson-Reuters products, Lexis, Google, Chrome, SharePoint, Proofpoint, SAP, e-Discovery software products, etc. Responses should also identify successful third party applet integration with the ELM System.
- List any relevant independent market analyst reports and rankings validating your ELM System within the relevant market (which may include case management or document

management generally or specific to the legal niche). Provide copies of or hyperlinks to the reports. Examples of independent analyst reports would include Gartner's Magic Quadrant, American Bar Association, etc.

PART IV – EVALUATION AND SELECTION PROCESS

The City will require a product demonstration or pilot test of each module or component of the ELM System that the City seeks to include in its initial purchase or other modules/components that the City deems critical to the (long-term or short-term) success of the Project. An evaluation committee will evaluate responsive proposals and pilot tests results for selected ELM Systems in accordance with the evaluation criteria listed below.

The evaluation committee may develop a short-list of Proposer(s), which will be based upon the initial review of each proposal received, the pilot test results, or both. The evaluation committee may invite all of the responsive Proposers or only the short-listed Proposers, if any, to participate in formal presentations, at the Proposer's expense. The shortlisted Proposer(s) may be scheduled for a structured oral presentation, demonstration and/or interview. Such presentations will be at no cost to the City of Houston. At the end of the pilot test, oral presentation, demonstration and/or interview, if any, the evaluation of the shortlisted Proposer(s) will be completed. However, the evaluation committee reserves the right to issue letter(s) of clarification or requests for supplemental information from any or all Proposer(s). The City further reserves the right to award a contract based on the initial proposal received. The oral presentations, demonstrations and/or interviews may be recorded and/or videotaped.

A. Interviews/Oral Presentations

The City reserves the right to request and require that each Proposer provide a final presentation of its proposal at a scheduled date and time. No Proposer is entitled to this opportunity, and no proposer will be entitled to attend presentations of any other Proposer. The purpose of the presentations is to inform the work of the evaluation committee. If necessary, Proposers may be required to make more than one presentation or demonstration.

The City may provide to Proposers samples of documents for the purpose of preparing a demonstration. The goal of such documents is to enable the City to get a better idea regarding how the proposed system will handle the City's requirements and enable the Proposer to prepare a more targeted presentation. The City also welcome opportunities to further streamline and improve the procurement and contracting process; therefore, Proposer may highlight potential improvements based on lessons learned from other systems implementations.

B. Selection Process

Upon review of all information provided by shortlisted proposers, the evaluation committee will make a recommendation for selection to City officials. The City may make investigations, as it deems necessary, to determine the capabilities of the Proposer(s) to implement the required ELM System. The City reserves the right to check references on any projects performed by the proposer whether provided by the proposer or known by the City.

Selected proposal will be submitted for approval by the appropriate City officials. The Proposer(s) shall furnish to the City such data as the City may request for this purpose.

The City intends to select a proposal that best meets the needs of the City and provides the overall best value. Upon approval of the selected Proposer, a contract will be executed by the appropriate City officials. The City may award a contract for one or more ELM Systems or to one or more Proposer(s) as a result of this RFP. The award of the contract(s) will be made to the Proposer(s) offering an ELM System or proposal most advantageous to City, considering the best value, costs, technical requirements, and other evaluation criteria in this RFP. The City reserves the right to reject any offer if the evidence submitted by or the investigation of the Proposer(s) fails to satisfy the City or the Proposer(s) is deemed unqualified to provide the services contemplated.

C. Best and Final Offer

City reserves the right to request a Best and Final Offer from finalist Proposer(s), if it deems such an approach is necessary. In general, the Best and Final Offer would consist of updated costs, as well as answers to specific questions that were identified during the evaluation of Proposals.

If City chooses to invoke this option, Proposals would be re-evaluated by incorporating the information requested in the Best and Final Offer document, including costs, and answers to specific questions presented in the document. The specific format for the Best and Final Offer would be determined during evaluation discussions. Turnaround time for responding to a Best and Final Offers document is usually brief (i.e., five (5) business days).

D. EVALUATION CRITERIA

1. Responsiveness of Proposal

Proposal shall be responsive to all material requirements that will enable the evaluation committee to evaluate proposals in accordance with the evaluation criteria so as to make a recommendation to City officials, including allowing the City to conduct the pilot test in substantially the same manner, format, and time period described in this RFP.

2. Technical Competence

- A. Response to technical requirements and matrices (e.g. features and functionality), and compatibility with the City's existing systems or systems currently pending updates/go-live, including without limitation the Electronic Records Storage requirements set by law and City policy, as well as other IT and data security requirements.
- B. Pilot Test Results: Input from the pilot testers who will test the ELM System and provide the evaluation committee with an assessment of quality of the pilot planning and implementation, feature verification, training effectiveness, and usability of the various components of each of the software ELM Systems.
- C. Support Methodology: Level of support provided by the Proposer, including support and service level commitments, and warranties, as well as knowledge transfer and

training such that the City can be self-sufficient in maintaining, customizing, and configuring the ELM System post go-live.

- D. Proposed Implementation and Data Migration/Conversion Plan: Quality and complexity of proposed Project or work plan as evidenced by:
 - 1. Proposer's understanding and approach to successfully manage and implement the Project in the time frame specified by the City;
 - 2. Quality of Proposer's proposed implementation plan;
 - 3. Ability to identify major hardware and software sub-systems and components required for implementation.
 - 4. Quality of Proposer's training plan.

- E. Qualifications and Experience of the Team: Qualifications and specialized experience of the Proposer (including M/WBE personnel), as evidenced by relevant experience in projects or similar scope for organizations of comparable size, including:
 - 1. References. The City may also solicit from current and past clients, other government agencies, or any available sources, relevant information concerning the firm(s) record of past performance.
 - 2. Ability to deliver (the size of the company, years of experience, number of successful implementations, capabilities of project resources, delivery track record, and financial strength).
 - 3. Key Positions, including M/WBE personnel.
 - 4. Financial stability of Proposer – the ability to successfully undertake the project and ensure performance over the duration of the contract, as evidenced by copies of its audited financial statements for the past two (2) years.

- F. Contract and Terms and Conditions Exceptions: Reasonableness and extent of exceptions taken to the terms and conditions in the RFP and the proposed contract, as well as the reasonableness of the contract terms submitted by Proposer.

- G. Proposed M/WBE Participation: Ability to meet the required 24% level of subcontracting participation, or a demonstrated Good Faith Efforts presented by the Proposer. (pass or fail)

5. Price Proposal

- A. Reasonableness of the price proposal and total cost of ownership over multiple years.
- B. Reasonableness of the consulting and implementation costs.
- C. Reasonableness of the maintenance price for future years.

PART V – SUBMISSION OF PROPOSAL

A. Instructions for Submission

- 1. Number of Copies. Please submit **ten (10) copies** of the Proposal, including one (1) printed original signed in BLUE ink, and additional **ten (10) electronic thumb drives** are

to be submitted in a sealed envelope bearing the assigned Solicitation Number, located on the first page of the RFP document to:

City Secretary's Office
City Hall
900 Bagby
Houston, Texas 77002

The City of Houston shall bear no responsibility for submitting responses on behalf of any Proposer. Proposer(s) may submit their Proposal to the Strategic Procurement Division any time prior to the stated deadline.

2. Time for submission. Proposals shall be submitted no later than the date and time indicated for submission in this RFP. Late submittals will not be considered and will be returned unopened.
3. Format. Proposal should be left-bound with information on both sides of the page when appropriate. Material should be organized following the order of the submission requirements separated by labeled tabs. Expensive paper and bindings are discouraged since no materials will be returned.
4. Complete submission. Proposers are advised to carefully review all the requirements and submit all documents and information as indicated in this RFP. Incomplete proposals may lead to a proposal being deemed non responsive. Non-responsive proposals will not be considered.
5. Packaging and Labeling. The outside wrapping/envelope shall clearly indicate the RFP Title and date and time for submission. It shall also indicate the name of the proposer. The Price Proposal shall be submitted in a separate sealed envelope. The envelope shall clearly identify the content as "**Price Proposal**". All other submission requirements shall be included with the Technical Proposal.
6. Timely delivery of Proposals. The Proposal, including the Technical Proposal, the Pricing Proposal and signed Contract, must be delivered by hand or sent to the City of Houston, Strategic Procurement Division through U.S. Mail or other available courier services to the address shown on the cover sheet of this RFP. Include the RFP number on any package delivered or sent to the City of Houston, Strategic Procurement Division and on any correspondence related to the Proposal. If using an express delivery service, the package must be delivered to the designated building. Packages delivered by express mail services to other locations might not be re-delivered in time to be considered.
7. Late Proposals. The proposer remains responsible for ensuring that its Proposal is received at the time, date, place, and office specified. The City assumes no responsibility for any Proposal not so received, regardless of whether the delay is caused by the U.S. Postal Service, the courier delivery service, or some other act or circumstance.

B. Submission Requirements

1. Cover letter. The cover letter shall be signed by an authorized representative of the Proposer. The letter should indicate the Proposer's commitment to provide the services proposed. Also, the cover letter shall identify the members of the team that comprise the Proposer. Indicate the organizational relationship of the team members.
2. Executive Summary. The executive summary should include a brief overview of the solution proposed, the overall strategy for implementation, the key personnel who will be responsible for seeing the project through completion, and a rationale for proposing the software for implementation at the City. The executive summary shall also include the timeline for implementation and highlight any other requirements that are noted in the detailed proposed plan. Attach a proposed organization chart for the project. Also, please describe the proposed strategy to keep the System current as technology evolves and improves. The executive summary must also include the timeframe required to implement the Project department-wide, the total costs of the proposed Project, and a statement regarding the Proposer's commitment to participating in the pilot test (as described in this RFP or by providing a description of the nature, scope, and duration of an alternative pilot test offered by the Proposer).
3. Architectural and System Design. Describe, in detail, any server hardware, appliances, software, or system requirements needed to implement the ELM System, including specifications for appliances, servers, workstations or other IT resources. Provide a description of required interfaces, system design, and technical requirements necessary for successfully implementing the Project, such as recommended amount of disk storage space, number of servers needed, firewall requirements, etc. This requirement may be satisfied by providing a detailed diagram, work-flow chart, blueprint, schematic, or other similar representations of the system design.
4. Pre-implementation documentation. Provide any standard pre-implementation checklists or other documentation describing items that should or must be considered/addressed/completed by a client (e.g. the City) prior to installation or deployment of the ELM System.
5. Proposed Plan of Action. Provide a detailed proposed plan of action describing the proposed system and indicating how all requirements will be met. Submit a matrix summarizing how each of the requirements will be met and indicating the resources that the City must commit to ascertain successful implementation.
 - a. Hosted or Licensed: Indicate if the solution will be hosted by the proposer or if it will be licensed to the City or if both options are available. Provide separate, clearly labeled responses for the Proposed Action Plan for each solution offered.
 - b. Schedule: In addition, the proposed plan of action shall include a detailed implementation schedule, including any critical path actions that may cause delay if the schedule is not met. Also, please indicate the ability to implement the system by modules and the flexibility of altering the order of implementation of each module.
 - c. Project Schedule and Workplan: Provide a detailed project schedule and workplan, with specific tasks, activities, timelines, high-level schedule, dependencies, and deliverables/milestones. Describe methodologies and processes that will be implemented to see that the project is successfully completed on time, including a description of the change order process.

Where appropriate, the Project schedule should include a detailed description of each task and the specific deliverable or work product that will result from completing the task. Deliverable or milestones may include system maps, templates for commonly used documents (i.e. routine correspondence, contracts and ordinances), reports, completion of user acceptance testing (UAT), documentation of system configuration specific to the Legal Department's IT environment, testing and training plans, and go-live events. The project schedule recommendations should address the following areas:

1. Pre-implementation steps and strategy
 2. Kick off meeting
 3. Strategy/operational plan, including the project management support to be provided by Proposer.
 4. System or architectural design (including target architecture and recommended hardware, software, and storage requirements)
 5. Installation and test plan (including product functionality, staging environment, functional testing, quality and assurance, production environment, and acceptance testing)
 6. A Gantt chart or other visual depiction showing beginning and end dates of all high level tasks and responsibilities for each party, including the City team (the actual project start date will be determined during contract negotiations)
 7. Testing and acceptance methodology
 8. Change management processes and procedures
 9. Plans for knowledge transfer
 10. Description of the number of customer resources necessary for ongoing maintenance of the system
 11. Final review and close out
 12. Post go-live support
6. Reports. Provide the sample reports and requested description of the sample reports described above in Part II, Section E(4), Reports.
7. Training. The proposed training plan shall be described in sufficient detail so as to provide samples of material and content of training. Indicate the number of hours recommended for different types of users. For the initial installation, the City intends to offer user training through in-person "train-the-trainer" sessions. Provide a detailed training plan and associated costs which should include the following items, if applicable:
1. Plans to develop an initial training program for each user group identified in the RFP, options for refresher training, and the manner in which each offered training session will be conducted (e.g. in-person, on-site initial training and remote).
 2. Curriculum description, which should identify training for each software module included in the RFP response, the type of class (e.g. on-site, web based, on-demand, etc.), the number of individuals allowed per class, class length, class audience (e.g. user categories or types, software types, or user characteristics,

such as beginners, advanced, etc.) and course description/objectives.

- a. Description of user training materials that will be provided.
- b. Training delivery schedule, for both the initial training (pre go-live training) and ongoing/refresher training opportunities.
- c. Costs associated with each course offering, such as fees per course or per person, hourly rates, or travel expenses, if any. Proposers are encouraged to offer a fixed price training proposal inclusive of travel expenses, if any.

8. Data Security and Compliance. Describe your protocol for data security and compliance as outlined on page 23, "Data Security and Compliance."

9. Software Overview. Please provide a brief (1-2 pages) background of the ELM System you are proposing. If Proposer is offering an on premise and cloud based solution, provide two separate background documents and responses to this item, clearly delineating between the two. In addition, for each solution (on premise or cloud based) describe the following:

1. Identify each module/component by name and provide a brief description of the module/component (1 page or less).
2. Identify and describe any practice or topic specific modules or components available in the software, with an emphasis on the practice areas by which the Legal Department is organized (e.g. contracts, insurance, labor and employment, legal opinions and general legal advice, litigation, real estate, legislation or statutory, administrative law, municipal taxes, etc.)

10. Maintenance. The proposed maintenance and warranty plan for the implementation/installation services, as well as the ELM System solution shall be described in this section. At a minimum, this section should address the following topics:

1. Indicate if the maintenance plan includes technical support and the extent of such support included in the price for maintenance.
2. Warranty period for the professional installation and consulting services (which is separate and distinct from software warranties and software support and maintenance).
3. The methods for contacting the Proposer's technical support and the hours of operation.
4. Steps/processes and time frame for correcting any defects identified by either party during the warranty period for the professional installation and consulting services.
5. Description of how software upgrades are handled (e.g. traditional software maintenance and support).
6. Description of how often patches or major upgrades are released and how they are installed on the City's systems or servers.
7. Estimation of the amount of City FTE (full time employee) staff time will be required for ongoing system management and computer operations for the proposed system.

8. Description of remote support available for the ELM System via VPN, telnet, WebEx or other methods of allowing the Proposer's staff to remotely troubleshoot, install upgrades, or resolve system problems (e.g. traditional software maintenance and support).
 9. Identification of the support warranty period for each software type (e.g. COTS, customized, etc.) and description of what is covered by the warranty
 10. Indicate if and how future enhancements of the software will be made available to the City.
 11. All of the topics/expectations stated on page 22 in section H, "Software Maintenance and Support" (to the extent not covered by the items in this subsection.
 12. If the proposer expects the City to enter into a standard maintenance agreement, it shall be included with the proposal (see Contract Documents submittal requirement below).
- 11. Technical Requirements Index.** Complete the ELM Requirements Table (Appendix 1), which lists the City's business requirements/specifications and desired features and functionality. For each requirement (line item), indicate if the requirement is supported directly by the proposed ELM System(s) or through a work around, and if supported, state the name of the software module/component and describe the modules features/functionality. If further information or clarification is required, enter that information in the Proposer Response column, including any (i) assumptions or variables that may impact the project price and cost, and (ii) any other value added services the Proposer can deliver to the City specifically via ELM System providers. The Appendix must be provided electronically in unlocked, fully editable Microsoft Word or Microsoft Excel format (in addition to any other hard copy delivery requirements).
- 12. Qualifications of the Proposer.** Include a brief description of the organization's track record, including history, number of employees, number of years in business, and a list of projects relevant to this RFP. It is the City's strong desire to select an ELM System that is a proven solution that has been implemented in a similar environment. Increased consideration will be given to those references that closely match the functionality being proposed for the Legal Department. We would also consider those references that pertain to public sector or corporate legal departments of a similar size to the Legal Department to be high value references.

Provide a list of references where a similar solution was implemented. Include the name of the contact person, name of the organization, dollar value of the project, address, telephone number and email address. Please provide at least 3 client references involving projects that are similar in size and complexity to this RFP. At least 1 reference should be for clients that have the software system solution fully implemented in-house at the client's site and 1 reference should be for clients that have the software solution hosted for them by the Proposer. The client references should be recent projects completed over the last 3 to 4 years. The order of importance would be those client references that: (a) match the software system solution proposed for this RFP, (b) describe a public sector implementation, and (c) describe a corporate legal department implementation.

13. Qualifications of Key Personnel. Provide chronological resumes of the key personnel that will be assigned to the project, including M/WBE personnel. Please provide at least three (3) references of projects where key personnel performed in a similar role as that proposed for this project. Please complete Form 2 for each reference and Form 3 to depict all key personnel and their availability.
14. M/WBE Participation. Proposer shall identify the M/WBE participation level and the role that each M/WBE firm will have in the project implementation. Since M/WBEs proposed are considered part of the team, the Proposer shall include all relevant information necessary to effectively perform the evaluation of the proposal as it relates to the submission requirements listed in this section.
15. Financial Stability. Provide the audited financial statements or Federal Tax Forms Filed to the Internal Revenue Service (IRS) for the past two fiscal years. At a minimum, include the letter of opinion, balance sheet, schedules, and related auditor's notes.
16. Contract Documents. All contract and related documents must be provided electronically in unlocked, fully editable Microsoft Word format (in addition to any other hard copy delivery requirements).
 - a. Exceptions to Standard Contract. Submit any exceptions to the standard contract by redlining the standard contract and include the rationale for taking the exception in redlined contract (using the Comments feature, as needed) and by summarizing the exception in the attached Contract Exception Chart (Appendix 2). Such exceptions will be considered when evaluating the Proposer's response to this RFP. If you are taking exception to the language (more than simply a deletion), include your proposed alternative language for the City's consideration.
 - b. Vendor's Software Contract Documents. Provide all contract documents (or sample contract documents) that Proposer would desire to be executed by the City, such as software license agreements, SaaS license agreement, source code escrow agreements, maintenance agreement, services agreement, order form, third party agreements, service level agreement, and statement of work.
 - c. Confidentiality Agreement, if required by Proposer prior to disclosure of information requested in this RFP. If a confidentiality agreement is required before Proposer will submit this information, submit the proposed confidentiality agreement, in unlocked, editable Word version, to the Solicitation Contact Person, as soon as possible. Proposer is expected to work expeditiously with the City's Legal Department to modify the proposed confidentiality agreement, as needed, and provide a mutually agreed upon agreement executed by the Proposer (which will then be executed by the City). If Proposer receives the executed confidentiality agreement prior to the submission deadline, Proposer must submit the requested information in the Proposer's submission to this RFP. If the confidentiality agreement is not executed by the City before the submission deadline, Proposer is permitted to and should supplement its response with the requested information within 2 business days of receipt of the executed confidentiality agreement.
17. Legal Actions. Provide a list of any pending or closed litigation relating to the software, professional services, or contract disputes with clients and include a brief description of the reason for legal action. The list should include any litigation filed or closed during the 3 years preceding the date of the RFP response.

18. Conflict of Interest. Provide information regarding any real or potential conflict of interest. Failure to address any potential conflict of interest upfront may be cause for rejection of the proposal.
19. Other. Submit any information the Proposer deems pertinent to demonstrating its qualifications to perform the services being requested such as memberships in any professional associations, documents, examples, and others. Include any other information that Proposer believes would be helpful for the City's evaluation of the proposed ELM System.
20. Forms and Certifications. Complete all forms and certifications attached, as appropriate.
21. Contract. Submit two (2) originals of the completed and signed Contract if no exceptions are noted. See Appendix B of the sample contract (Appendix 3 of the RFP), if applicable.
1. Each Contract submitted must bear an original signature and date.
 2. Include copy of license agreement(s) that Proposer would want to include in the contract.
22. Price Proposal. Please submit price proposal with the level detail requested below and in Appendix A, the Hourly Rate Table (page 46). In addition to the models described in Appendix 1, the pricing proposal should account for/specify the following information:
1. **On Premise and Cloud Solutions:** If both an on premise and cloud based solution are being offered, the respondent should include a separate response for each item below (e.g. a Cost Summary for the on premise solution and a separate Cost Summary for the cloud based solution).
 2. **Cost Summary:** Provide a brief narrative highlighting the key cost benefits to the City of the proposed ELM System. The Cost Summary should contain as little technical jargon as possible and should be oriented toward executive-level personnel. The Cost Summary should provide a concise summary of the overall costs for the software and professional services (including implementation and training) being offered to the City. The Cost Summary should clearly identify the total cost of ownership, including specific cost variations to the City, over a five (5) year period. The total cost of ownership should include all one-time costs (e.g., licenses, implementation, training, and documentation), all on-going annual costs for infrastructure and software support/maintenance services, and fixed prices or price increases, if any (delineated by year).
 3. **Implementation Costs:** Provide a fixed-price proposed cost for implementation of the ELM System. The proposed costs for the implementation and consulting services component of the Project (which is separate from the cost of software licenses, hosting the ELM System, training, and software maintenance/support) must be based on a **fixed-priced proposal with payments contingent upon the City's acceptance of milestones or deliverables, including the possibility of a retainage** until the system goes-live and satisfies all of the City's acceptance criteria (as mutually agreed upon by the parties in an acceptance and testing plan). The fixed-price proposal must detail all services included in the proposal and should address the following areas:
 - a. identify which integrations, if any, are included by name (e.g. integration into

Active Directory for Microsoft Exchange email, SharePoint, etc.) or by detailed description or level of complexity, which must be adequately defined or described in the response for the City to determine how each of its potential data sources would be classified.

- b. the percentage or dollar amount of retainage offered by Proposer.
 - c. milestones or deliverables upon which payment will be based. The City prefers for the first milestone or deliverable to be closely tied to the Project and not the mere execution of an agreement between the parties. Milestones or deliverables must be as detailed as possible. For example, a detailed deliverable regarding a report or plan should identify the topics, subject matter, or headings that would be covered by the report or plan. A deliverable that merely identifies the name of a report or plan may be considered vague or non-responsive. Vague milestones or deliverables may be deemed reflective of the Proposer's lack of competence or failure to understand the City's requirements set forth in this RFP.
 - d. the hourly rate, job title/category, and high level job description and minimum qualifications for each job title/category listed, if any services are charged outside of the fixed-price costs are billed on an hourly basis. State any other assumptions or conditions associated with the hourly rate (e.g. minimum hours, overtime, etc.).
4. **Data Migration Costs:** State the timing and cost to migrate/convert existing data from the Legacy System to the new ELM System.
5. **Software Costs:** The City understands that software is priced using a variety of models (e.g. perpetual licenses plus annual maintenance fees, software as a service (annual maintenance without a perpetual license, subscription fees, usage fees, monthly costs, data storage costs, etc.), and user associated costs (e.g. licensing for enterprises, individual users, concurrent seats, per-seat, per-server, per-device, per-site etc.). To the extent offered, provide separate pricing information for each pricing model and clearly identify which model is being proposed. The City expects Proposers to provide as many pricing options as possible with pricing as aggressive as possible because the City may not extend an opportunity to provide further discounts at a later date.
- a. State the software license costs, identifying the type of license (perpetual or annual) and basis of cost (enterprise, per user, concurrent, server by number environment, such as test environments etc.). Include all licensing costs, including licenses for all environments (test environment, production environment, etc.) and all tools/modules. With a staff of 104 attorneys and 82 paralegals/support staff, the City does not anticipate needing more than 200 licenses.
 - b. Proposer must include the costs for software support and maintenance in the cost proposal for each software module necessary to satisfy all of the requirements of this RFP, including separate pricing information for bundled software packages.
 - c. If applicable, describe any annual license certifications processes and procedures, true-up or true-down processes and procedures for auditing or reconciling licenses/seats purchases and subsequent changes/fluctuation in

those counts, as well as the time frame during which any such processes or procedures (e.g. annual true up, license verification, audit, etc.).

- d. Delineate separately the pricing for each stand-alone software modules/components or mobile apps. Include the version and release number for each module proposed. If applicable, identify where third party software is required and where separate individual contracts and licenses will be necessary.
 - e. List the software maintenance/support costs by year (years 1 – 5). The pricing proposal should identify which costs are firm or fixed and for how long, as well as any proposed uplifts or increases in future years and specify the basis for and method of calculating any proposed uplifts or increases. Include upgrade costs, if any, for the next 5 years.
 - f. The City reserves the right to purchase all modules up front or to buy individual modules as needed over time.
6. **Customizations:** Provide detailed cost and duration quotation for any customizations. Include any hours allowance for customizations (e.g. no cost for 10 hours per month for customizations or consulting services).
 7. **Optional Items:** Provide detailed cost information and descriptions of any services, software, training, or support, include those outside of or excluded from the fixed-fee price proposal. List any optional features separately and include an explanation of those features.
 8. **Training:** Provide training costs as defined in on page 15, section C., "Training, Knowledge Transfer and Organizational Change Management."
 9. **Travel:** Travel must be included in the fixed-price cost proposal. However, to enable the City to evaluate the proposal, specify the dollar amount of the fixed-price attributable to travel. For all other fee items (e.g. training or services excluded from the fixed-price proposal), provide a detailed explanation of the travel, subsistence, supply and materials costs required for this RFP. Travel and subsistence costs must only include expenses allowed under the City's travel policy and at the rates stated in the policy. The City's travel policy, A.P. 2-5, is available at <http://www.houstontx.gov/policies/ap-2-5>. If there are no travel, subsistence, supply or materials costs in your proposal, please include a statement stating so.
 10. **Hourly Rates:** To the extent an item is not included in the fixed cost price proposal or is offered by the Proposer as an optional service, use Appendix A to provide a detailed description of the associated services and the hourly rate of each staff person that would provide the service. For example, the City has requested a certain amount of data to be migrated, converted, and ingested into the ELM System. If the City desired to have additional data migrated, converted and ingested and this was billed at an hourly rate, describe the nature of the services and hourly rate by the technician.
 11. **Format:** All pricing and related documents must be provided electronically in unlocked, fully editable Microsoft Word or Microsoft Excel format (in addition to any other hard copy delivery requirements).

Part VI – SPECIAL CONDITIONS

A. No Contact Period

Neither Proposer(s) nor any person acting on Proposer(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, written requests for clarification during the period officially designated for such purpose by the City Representative, neither Proposers(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the solicitation.

B. Equal Opportunity Employment

The City of Houston Ordinance Section 15-17 establishes Equal Employment Opportunity Contract Compliance requirements for all City of Houston contracts involving the expenditure of Fifty Thousand Dollars (\$50,000) or more. Any contract for professional services that results from this RFP will provide that the failure to carry out the requirements set forth in the City of Houston Equal Employment Opportunity Program shall constitute a breach of contract and may result in termination of the agreement or contract. In addition, the City may take any such additional remedy as deemed appropriate.

C. Minority and Woman Business Enterprises (MWBE)

Proposer shall comply with the City's Minority and Women Business Enterprise ("M/WBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **24%** of the value of the professional services portion of the Agreement to M/WBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO"), and will comply with them.

D. Protests

A protest shall comply with and be resolved, according to the City of Houston Procurement Manual http://purchasing.houstontx.gov/docs/Procurement_Manual.pdf and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Attorney and the Solicitation contact person. A pre-award protest of the RFP shall be received five (5) days prior to the solicitation due date and a post-award protest shall be filed within five (5) days after City Council approval of the contract award.

1. A protest must be filed in accordance with the timing requirements set forth herein and must include:
 - a. the name, address, telephone number and email address of the protestor;
 - b. the number of the solicitation;
 - c. all information confirming that the protestor is an interested party;

- d. a written statement of the grounds for the protest and the law, ordinance, or policy alleged to have been violated. The statement should be accompanied by relevant supporting documentation and the relief requested.
- e. all information confirming the timeliness of the protest; and
- f. the signature of the protestor

Protests shall be submitted to:
Acting Chief Procurement Officer
City of Houston
901 Bagby, B300
Houston, TX 77002

2. The City recognizes three types of protests:

- a. Protests regarding solicitation (Pre-Bid Protest)
Any protest regarding a solicitation published by the City shall be filed no later than five (5) days before the opening of bids (if a competitive bid) or due date for submittals or proposals (if an RFP/RFQ), as appropriate. Any protest filed after the due date raising issues regarding the solicitation will not be considered.
- b. Protests regarding the evaluation of bids, qualifications, or proposals (Pre-Award Protest)
Any protest regarding the evaluation of bids, qualifications, or proposals by the City must be filed no later than ten (10) days after:
 - opening of bids (if a bid); or
 - due date (if RFQ/RFP); or
 - notification that the interested party's bid or proposal has been rejected.Any protest received after the deadline will not be considered.
- c. Protests regarding award of contract (Post-Award Protest)
Upon receipt of a timely and properly filed protest regarding the award of a contract, the City will not issue a notice to proceed or submit an order for goods until the protest has been resolved, provided such delay will not be detrimental to the interests of the City.

PART VII – INSTRUCTIONS TO PROPOSERS

A. Pre-Proposal Conference

A Pre-Proposal Conference will be held at the date, time, and location as indicated on the first page of the RFP document. Interested Proposer(s) should plan to attend. It will be assumed that potential Proposer(s) attending this meeting have reviewed the RFP in detail, and are prepared to bring up any substantive questions not already addressed by the City.

B. Additional Information and Specification Changes

Requests for additional information and questions should be addressed to the Finance Department, Strategic Procurement Division, Brenda Chagoya, telephone: (832) 393-8723, fax: 832.393.8759, or e-mail (preferred method to): brenda.chagoya@houstontx.gov no later than 2:00 PM, CST, December 22, 2015. The City of Houston shall provide written responses to all questions received in writing before the submittal deadline. Questions received from all Proposer(s) shall be answered and sent to all Proposer(s) who are listed as having obtained the RFP. Proposer(s) shall be notified in writing of any changes in the specifications contained in this RFP.

C. Letter(s) of Clarification

1. All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any Letter of Clarification(s) or interpretation that is not in writing shall not legally bind the City of Houston. Only information supplied by the City of Houston in writing or in this RFP should be used in preparing Proposal responses.
2. The City does not assume responsibility for the receipt of any Letters of Clarification sent to Proposer(s).

D. Examination of Documents and Requirements

1. Each Proposer shall carefully examine all RFP documents and thoroughly familiarize themselves with all requirements prior to submitting a Proposal to ensure that the Proposal meets the intent of this RFP.
2. Before submitting a Proposal, each Proposer shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and affecting the requirements of this RFP. Failure to make such investigations and examinations shall not relieve the Proposer from obligation to comply, in every detail, with all provisions and requirements of the RFP.

E. Exceptions to Terms and Conditions

1. All exceptions included with the Proposal shall be submitted in a clearly identified separate section of the Proposal in which the Proposer clearly cites the specific paragraphs within the RFP where the Exceptions occur. Any Exceptions not included in such a section shall be without force and effect in any resulting contract unless such Exception is specifically referenced by the City Purchasing Agent City Attorney, Director(s) or designee in a written statement. The Proposer's preprinted or standard terms will not be considered by the City as a part of any resulting contract.
2. All Exceptions that are contained in the Proposal may negatively affect the City's Proposal evaluation based on the evaluation criteria as stated in the RFP, or result in possible rejection of Proposal.

F. Post-Proposal Discussions with Proposer(s)

It is the City's intent to commence final negotiation with the Proposer(s) deemed most advantageous to the City. The City reserves the right to conduct post-Proposal discussions with any Proposer(s).

PART VIII – REQUIRED FORMS TO BE SUBMITTED WITH PROPOSAL

- A. Offer and Submittal, List of References and List of Proposed Subcontractors (Exhibit I)
- B. Signed M/WBE Forms: Attachment "A" Schedule of M/WBE Participation, Attachment "B", Notice of Intent, Attachment "C", Certified M/WBE Subcontract Terms, Attachment "D" Office of Business Opportunity and Contract Compliance M/WBE Utilization Report (Exhibit II)
- C. Fair Campaign Ordinance Form "A" (Exhibit III)
- D. Affidavit of Ownership or Control (Exhibit IV)
- E. Anti-Collusion Statement (Exhibit V)
- F. Conflict of Interest Questionnaire (Exhibit VI)

PART IX – REQUIRED FORMS TO BE SUBMITTED BY AWARDED VENDOR ONLY

Required forms shall be supplied to the vendor after award.

- A. Insurance Requirements and Sample Insurance Certificate (Exhibit VII)
- B. Drug Compliance Agreement Attachment "A", Drug Policy Compliance Declaration Attachment "B" and Contractor's Certification of No Safety Impact Positions Attachment "C" and "D" (Exhibit VIII)
- C. City Contractors' Pay or Play Acknowledgement Form and Pay or Play Certificate Agreement, Play or Pay Program Acknowledgment Form "1" (Exhibit IX)
- D. Hire Houston First Affidavit (Download Copy at <http://www.houstontx.gov/obo/hirehoustonfirst.html> and submit to Office of Business Opportunity, Houston Business Solutions Center via e-mail to houstonbsc@houstontx.gov or fax to 832-393-0650 or submit copy with proposal.
- E. Requested Information Outlined in the Scope of Work and Other Additional Relevant/Supporting Information or Alternate Proposals.

Appendix A – Hourly Rate Table for Optional Services

This table should only be used for services not included in the fixed price proposal or for any optional services.

Solely for the purpose of evaluating the Proposal, please indicate the estimated number of hours and pricing that will be assigned for each staff member to provide optional consultant or technical services. In the event of any additional services associated with this Project that are requested on a time-and-materials basis by the City and agreed by the selected Proposer, the rates charged shall not exceed those indicated below.

On the indicated lines, please provide your Payroll Rate and Billable Rate for each category. The Payroll Rate is defined as the actual hourly rate your company pays each employee or contractor. The Billable Rate is the rate your company charges the City for services.

| Staff Person Description Position/Title | Description of Services Provided | Est. No. of Hours Assigned/Required to complete the Service (if any) | Payroll Hourly Rate | Billable Rate |
|--|--|---|---------------------------|---------------|
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EXHIBIT I

- OFFER AND SUBMITTAL
- REFERENCES
- PROPOSED SUBCONTRACTORS

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OFFER AND SUBMITTAL

NOTE: PROPOSAL MUST BE SIGNED AND NOTARIZED BY AN AUTHORIZED REPRESENTATIVE(S) OF THE PROPOSER, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PERFORM THE CONTRACT IF AWARDED AND THE TOTAL FIXED PRICE CONTAINED THEREIN SHALL REMAIN FIRM FOR A PERIOD OF ONE-HUNDRED EIGHTY (180) DAYS.

"THE RESPONDENT WARRANTS THAT NO PERSON OR SELLING AGENCY HAS BEEN EMPLOYED OR RETAINED TO SOLICIT OR SECURE THIS CONTRACT UPON AN AGREEMENT OR UNDERSTANDING FOR A COMMISSION, PERCENTAGE, BROKERAGE, OR CONTINGENT FEE, EXCEPTING BONA FIDE EMPLOYEES. FOR BREACH OR VIOLATION OF THIS WARRANTY, THE CITY SHALL HAVE THE RIGHT TO ANNUL THIS AGREEMENT WITHOUT LIABILITY OR, AT ITS DISCRETION, TO DEDUCT FROM THE CONTRACT PRICES OR CONSIDERATION, OR OTHERWISE RECOVER THE FULL AMOUNT OF SUCH COMMISSION, PERCENTAGE, BROKERAGE OR CONTINGENT FEE."

Respectfully Submitted:

(Print or Type Name of Contractor – Full Company Name)

City of Houston Vendor No. (If already doing business with City):

Federal Identification Number:

By: _____
(Signature of Authorized Officer or Agent)

Printed Name: _____

Title: _____

Date: _____

Address of Contractor:

_____ Street Address or P.O. Box

_____ City – State – Zip Code

Telephone No. of Contractor: (_____) _____

Signature, Name and title of Affiant: _____

(Notary Public in and for)

_____ County, Texas

My Commission Expires: _____ day of _____
20_____

REFERENCES
LIST OF PREVIOUS CUSTOMERS

1. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Email: _____
System Description: _____

2. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Email: _____
System Description: _____

3. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Email: _____
System Description: _____

4. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Email: _____
System Description: _____

EXHIBIT II

ATTACHMENT "A" - SCHEDULE OF M/WBE PARTICIPATION

**ATTACHMENT "B" - OFFICE OF BUSINESS OPPORTUNITY AND CONTRACT COMPLIANCE
M/WBE UTILIZATION REPORT**

ATTACHMENT "C" - CERTIFIED M/WBE SUBCONTRACT TERMS

**ATTACHMENT "D" - OFFICE OF BUSINESS OPPORTUNITY AND CONTRACT COMPLIANCE
M/WBE UTILIZATION REPORT**

ATTACHMENT "A"
SCHEDULE OF M/WBE PARTICIPATION

DATE OF REPORT: _____

BID NO.: _____

FORMAL BID TITLE: _____

| NAME OF MINORITY/WOMEN SUBCONTRACTOR | OFFICE OF BUSINESS OPPORTUNITY CERTIFICATION NO. | STREET ADDRESS AND CITY, STATE, ZIP CODE | TELEPHONE NO. | SCOPE OF WORK | AGREED PRICE |
|--|--|---|------------------|------------------|-----------------|
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| | | | | | |
| TOTAL..... | | | | | \$ _____ |
| M/WBE PARTICIPATION AMOUNT..... | | | | | \$ _____ % |
| TOTAL BID AMOUNT..... | | | | | \$ _____ |

IF YOU HAVE USED YOUR BEST EFFORTS TO CARRY OUT THE CITY'S M/WBE POLICY BY SEEKING SUBCONTRACTS AND SUPPLY AGREEMENTS WITH MINORITY AND WOMEN BUSINESS ENTERPRISES, YET FAILED TO MEET THE STATED PERCENTAGE GOAL OF THIS BID DOCUMENT, LIST BELOW YOUR GOOD FAITH EFFORTS FOR COMPLIANCE (DEFINITION OF REQUIREMENTS CAN BE OBTAINED THROUGH THE OFFICE OF BUSINESS OPPORTUNITY AT (713) 837-9000).

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THE UNDERSIGNED WILL ENTER INTO A FORMAL AGREEMENT WITH THE MINORITY AND/OR WOMEN SUBCONTRACTORS AND SUPPLIERS LISTED IN THIS SCHEDULE CONDITIONED UPON AWARD OF A CONTRACT FROM THE CITY.

NOTE:
ALL FIRMS LISTED ABOVE MUST BE CERTIFIED (OR ELIGIBLE FOR CERTIFICATION) BY THE OFFICE OF BUSINESS OPPORTUNITY.
THIS SCHEDULE OF M/WBE PARTICIPATION SHOULD BE RETURNED, IN DUPLICATE, WITH THE BID FORM.

BIDDER COMPANY NAME

SIGNATURE OF AUTHORIZED OFFICER OR AGENT OF BIDDER

NAME (TYPE OR PRINT)

TITLE

ATTACHMENT "B"
OFFICE OF BUSINESS OPPORTUNITY AND
CONTRACT COMPLIANCE M/WBE UTILIZATION REPORT

NOTICE OF INTENT

THIS AGREEMENT IS SUBJECT TO MEDIATION AND CAN BE INITIATED BY THE COMPANIES SIGNED BELOW OR THE OFFICE OF BUSINESS OPPORTUNITY.

To: City of Houston
Administering Department

Date: _____

Project Name and Number _____

Bid Amount: _____ M/W/SBE Goal: _____

_____, agrees to enter into a contractual agreement with
Prime Contractor

_____, who will provide the following goods/services in connection
MWSBE Subcontractor

with the above-referenced contract:

_____ for an estimated amount of \$ _____ or _____ % of the total contract value.

_____ is currently certified with the City of Houston's Office of Business
(M/W/SBE Subcontractor) Opportunity to function in the aforementioned capacity.

_____ Intend to
Prime Contractor M/W/SBE Subcontractor

work on the above-named contract in accordance with the M/W/DBE Participation Section of the City of Houston Bid Provisions, contingent upon award of the contract to the aforementioned Prime Contractor.

Signed (Prime Contactor)

Signed (M/W/SBE Subcontractor)

Printed Signature

Printed Signature

Title Date

Title Date

ATTACHMENT "C"
CERTIFIED M/WBE SUBCONTRACT TERMS

CITY OF HOUSTON CERTIFIED MWSBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with M/WSBE subcontractors and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO MEDIATION"** and contain the following terms:

1. _____(M/WSBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director ("the Director").
2. _____(M/WSBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action or the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

These provisions apply to goal-oriented contracts. A goal-oriented contract means any contract for the supply of goods or non-professional services in excess of \$100,000.00 for which competitive proposals are required by law; not within the scope of the MBE/WBE/SBE program of the United States Environmental Protection Agency or the United States Department of Transportation; and which the City Chief Procurement Officer has determined to have significant MWSBE subcontracting potential in fields which there are an adequate number of known MBEs , WBE's, and or SBE's (if applicable) to compete for City contracts.

The MWSBE policy of the City of Houston will be discussed during the pre-proposal conference. For information, assistance, and/or to receive a copy of the City's Affirmative Action Policy and/or Ordinance, contact the Office of Business Opportunity Division at 832.393.0600, 611 Walker Street, 7th Floor, Houston, Texas 77002.

**ATTACHMENT "D"
OFFICE OF BUSINESS OPPORTUNITY AND
CONTRACT COMPLIANCE M/WBE UTILIZATION REPORT**

Report Period: _____

PROJECT NAME & NUMBER: _____ **AWARD DATE:** _____

PRIME CONTRACTOR: _____ **CONTRACT NO.:** _____

ADDRESS: _____ **CONTRACT AMOUNT:** _____

LIAISON/PHONE NO.: _____ **M/WBE GOAL:** _____

| M/WBE SUB/VENDOR NAME | DATE OF OBO CERTIFICATION | DATE OF SUBCONTRACT | SUBCONTRACT AMOUNT | % OF TOTAL CONTRACT | AMOUNT PAID TO DATE | % OF CONTRACT TO DATE |
|-----------------------|---------------------------|---------------------|--------------------|---------------------|---------------------|-----------------------|
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Use additional pages if needed. Submit by the 15th day of the following month.
 Provide support documentation on all revenues paid to end of the report period to:
 M/WBE's to reflect up/down variances on Contract amount.

Office of Business Opportunity
 ATTN: Carlecia Wright 713-837-9000
 611 Walker, 7th Floor
 Houston, Texas 77002

EXHIBIT III

FORM "A": FAIR CAMPAIGN - CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE

FAIR CAMPAIGN ORDINANCE

FAIR CAMPAIGN ORDINANCE

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office (including elected officers and officers-elect). All respondents to this invitation to bid must comply with Houston Code of Ordinances Chapter 18 as amended relating to the contribution and solicitation of funds for election campaigns. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Candidates for city office may neither solicit nor receive contributions except during a period commencing 270 calendar days prior to an election date for which a person is a candidate for such office and ending 90 calendar days after the election date, including run-off elections if such candidate is on the ballot.

Further, it shall be unlawful either for any person who submits a Bid or Proposal to contribute or offer any contribution to a candidate or for any candidate to solicit or accept any contribution from such person for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council.

For the purposes of this Ordinance, a **Contract** is defined as each Contract having a value in excess of \$30,000 that is let by the City for professional services, personal services, or other goods or services of any other nature whether the Contract is awarded on a negotiated basis, request for Proposal basis, competitive Proposal basis or formal sealed competitive Bids. The term **Contractor** includes proprietors of proprietorships, partners having an equity interest of 10% or more of partnerships, (including limited liability partnerships and companies), all officers and directors of corporations (including limited liability corporations), and all holders of 10% or more of the outstanding shares of corporations.

A STATEMENT DISCLOSING THE NAMES AND BUSINESS ADDRESSES EACH OF THOSE PERSONS WILL BE REQUIRED TO BE SUBMITTED WITH EACH BID OR PROPOSAL FOR A CITY CONTRACT.

Completion of the attached form entitled "**Contractor Submission List**" will satisfy this requirement. Failure to provide this information may be just cause for rejection of your Bid or Proposal.

List all officers of the corporation (if none state "none"):

Name _____
Officer Address

Name _____
Officer Address

Name _____
Officer Address

List all individuals owning 10% or more of outstanding shares of stock of the corporation (if none state "none"):

Name _____
Address

Name _____
Address

Name _____
Address

I certify that I am duly authorized to submit this list on behalf of the firm, that I am associated with the firm in the capacity noted below and that I have personal knowledge of the accuracy of the information provided herein.

Preparer

Printed Name

Title

Note: This list constitutes a **government record** as defined by § 37.01 of the Texas Penal Code.

8/23/01

EXHIBIT IV:
CONTRACTOR OWNERSHIP DISCLOSURE ORDINANCE FAIR CAMPAIGN ORDINANCE

City Council requires knowledge of the identities of the owners of entities seeking to Contract with the City in order to review their indebtedness to the City prior to entering Contracts. Therefore, all respondents to this Invitation to Bid must comply with Houston Code of Ordinances Chapter 15, as amended (Sections 15-122 through 15-126) relating to the disclosure of owners of entities bidding on, proposing for or receiving City contracts. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Contracting entity means a sole proprietorship, corporation, non-profit corporation, partnership, joint venture, limited liability company, or other entity that seeks to enter into a contract requiring approval by the Council but excluding governmental entities.

A contracting entity must submit at the time of its Bid or Proposal, an affidavit listing the full names and the business and residence addresses of all persons owning five percent or more of a contracting entity or, where a contracting entity is a non-profit corporation, the full names and the business and residence addresses of all officers of the non-profit corporation.

Completion of the "**Affidavit of Ownership or Control**," included herein, and submitted with the Official Bid or Proposal Form will satisfy this requirement. Failure to provide this information may be just cause for rejection of your Bid or Proposal.

**EXHIBIT IV:
AFFIDAVIT OF OWNERSHIP OR CONTROL**

ORIG. DEPT.: _____

FILE/I.D. NO.: _____

INSTRUCTION: ENTITIES USING AN ASSUMED NAME SHOULD DISCLOSE SUCH FACT TO AVOID REJECTION OF THE AFFIDAVIT. THE FOLLOWING FORMAT IS RECOMMENDED: CORPORATE/LEGAL NAME DBA ASSUMED NAME.

STATE OF _____ §

§

AFFIDAVIT OF OWNERSHIP OR CONTROL

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared

_____ [FULL NAME] (hereafter "Affiant"),

_____ [STATE TITLE/CAPACITY WITH CONTRACTING ENTITY] of

_____ [CONTRACTING ENTITY'S

CORPORATE/LEGAL NAME] ("Contracting Entity"), who being by me duly sworn on oath stated as follows:

1. Affiant is authorized to give this affidavit and has personal knowledge of the facts and matters herein stated.

2. Contracting Entity seeks to do business with the City in connection with _____ [DESCRIBE PROJECT OR MATTER] which is expected to be in an amount that exceeds \$50,000.

3. The following information is submitted in connection with the proposal, submission or bid of Contracting Entity in connection with the above described project or matter.

4. Contracting Entity is organized as a business entity as noted below (check box as applicable).

FOR PROFIT ENTITY:

NON-PROFIT ENTITY:

- SOLE PROPRIETORSHIP
- CORPORATION
- PARTNERSHIP
- LIMITED PARTNERSHIP
- JOINT VENTURE
- LIMITED LIABILITY COMPANY
- OTHER (Specify type in space below)

- NON-PROFIT CORPORATION
- UNINCORPORATED ASSOCIATION

5. The information shown below is true and correct for the Contracting Entity and all owners of 5% or more of the Contracting Entity and, where the Contracting Entity is a non-profit entity, the required information has been shown for each officer, i.e., president, vice-president, secretary, treasurer, etc. [NOTE: IN ALL CASES, USE FULL NAMES, LOCAL BUSINESS AND RESIDENCE ADDRESSES AND TELEPHONE NUMBERS. DO NOT USE POST OFFICE BOXES FOR ANY ADDRESS. INCLUSION OF E-MAIL ADDRESSES IS OPTIONAL, BUT RECOMMENDED. ATTACH ADDITIONAL SHEETS AS NEEDED.]

Contracting Entity

Name: _____

Business Address [NO./STREET] _____

[CITY/STATE/ZIP CODE] _____

Telephone Number (____) _____

Email Address [OPTIONAL] _____

Residence Address [NO./STREET] _____

[CITY/STATE/ZIP CODE] _____

Telephone Number (____) _____

Email Address [OPTIONAL] _____

5% Owner(s) or More (IF NONE, STATE "NONE.")

Name: _____

Business Address [NO./STREET] _____

[CITY/STATE/ZIP CODE] _____

Telephone Number (____) _____

Email Address [OPTIONAL] _____

Residence Address [NO./STREET] _____

[CITY/STATE/ZIP CODE] _____

Telephone Number (____) _____

Email Address [OPTIONAL] _____

6. Optional Information

Contracting Entity and/or _____ [NAME OF OWNER OR NON-PROFIT OFFICER] is actively protesting, challenging or appealing the accuracy and/or amount of taxes levied against _____ [CONTRACTING ENTITY, OWNER OR NON-PROFIT OFFICER] as follows:

Name of Debtor: _____
Tax Account Nos. _____
Case or File Nos. _____
Attorney/Agent Name _____
Attorney/Agent Phone No. (_____) _____
Tax Years _____

Status of Appeal [DESCRIBE] _____

Affiant certifies that he or she is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein, and that the information provided herein is true and correct to the best of Affiant's knowledge and belief.

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____.

(Seal)

Notary Public _____

NOTE:

This affidavit constitutes a **government record** as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in Section 37.10 of the Texas Penal Code. Attach additional pages if needed to supply the required names and addresses.

**EXHIBIT V
ANTI-COLLUSION STATEMENT**

Anti-Collusion Statement

The undersigned, as Proposer, certifies that the only person or parties interested in this Proposal as principals are those named herein; that the Proposer has not, either directly or indirectly entered into any Agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the award of this Contract.

Date

Proposer Signature

**EXHIBIT VI
CONFLICT OF INTEREST QUESTIONNAIRE**

CONFLICT OF INTEREST QUESTIONNAIRE:

Chapter 176.006 of the Local Government Code ("the code") requires a Vendor/Contractor to file a Conflict of Interest Questionnaire (CIQ) with the City.

NOTE: Vendors/Contractors or Agents should **not** complete the CIQ if a conflict, as described below, **does not exist. Only Vendors/Contractors or Agents that actually have a conflict, as described below, must file a CIQ.**

Who must file a CIQ?

A Vendor/Contractor or Agent of a Vendor/Contractor does not have to file a CIQ unless they intend to enter or is considering entering into a contract with the City or:

1. has an employment or other business relationship with the Local Government Officer/Family Member; or
2. has given the Local Government Officer/Family Member one or more gifts with the aggregate value exceeding \$250.00.

When must the Vendor/Contractor or Agent file a CIQ?

The completed CIQ must be filed with the City Chief Procurement Officer not later than the 7th business day after the date the Vendor/Contractor or Agent:

1. begins discussions or negotiations to enter into a contract with the City;
2. submits an application to the City in response to a request for proposals or bids, correspondence, or any other writing related to a potential contract with the City;
3. becomes aware of an employment or other business relations with the Local Government Officer/Family Member;
4. becomes aware that he/she has given one or more gifts to the Local Government Officer/Family Member that exceeds \$250.00; or
5. an event that would make the CIQ incomplete or inaccurate.

What is a business relationship?

Under Chapter 176, business relationship means a connection between two or more parties based on the commercial activity of one of the parties. The term does not include:

1. a transaction that is subject to a rate or fee regulation by a governmental entity;
2. a transaction conducted at a price and subject to terms available to the public; or
3. a purchase or lease of goods or services from a person who is chartered by a state or federal agency and is subject to regular examination and reporting to that agency.

The Conflict of Interest Questionnaire is available for downloading from the Texas Ethics Commission's website at <http://www.ethics.state.tx.us/forms/CIQ.pdf>.

The Original Conflict of Interest Questionnaire shall be filed with the Administration and Regulatory Affairs Department's Record Administration (Carolyn Hanahan, Acting City Chief Procurement Officer, 901 Bagby, Concourse Level, Houston, Texas 77002). Vendors and Contractors required to file shall include a copy of the form as part of the BID/Proposal package. **Any questions about filling out this form should be directed to your attorney.**

**EXHIBIT VI
CONFLICT OF INTEREST QUESTIONNAIRE**

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.
 This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).
 By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.
 A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

Adopted 06/29/2007

Contract and Contract Exception Chart

This Contract Exception Chart MUST be included with the proposal response or the proposal will not be considered. Below, is an example Exception Chart, which is included for illustrative purposes only.

| ITEM No. | CONTRACT SECTION | CONTRACT LANGUAGE* | REVISED LANGUAGE IN RED-LINE FORMAT† | EXPLANATION |
|----------|------------------|--|--|---|
| 1 | Monthly Invoices | Contractor shall submit weekly invoices to the City for Products and Services in accordance with the requirements specified in this Section. | Contractor shall submit monthly invoices to the City for Products and Services in accordance with the requirements specified in this Section. | Proposer's system is set up to bill on a monthly basis. |
| 2 | Contract Term | This Agreement is effective on the Countersignature Date and remains in effect for 2 years unless sooner terminated under this Agreement ("Initial Term"). | This Agreement is effective on the Countersignature Date and remains in effect for 3 years unless sooner terminated under this Agreement ("Initial Term"). | Proposer's proposal will require 3 years to complete |

Unless a Proposer agrees with and can fulfill all of the conditions and requirements in a contract clause, Proposer must state the exceptions to the clause in this chart and suggest proposed modifications to the specific contract language with which the Proposer disagrees or for which Proposer is unable to satisfy the condition or requirement, including an explanation of the revision (if any). If Proposer does not list an item as a contract exception on this chart, the City reserves the right to hold the Proposer accountable to perform in strict compliance with the proposed contract, if awarded to Proposer.

Explanation Box: Proposer should include an explanation to accompany the exception (e.g. the revised language), unless the revision is self-explanatory. Explanations may address a variety of matters, including, but not limited to:

- Distinguishing attributes or benefits associated with the response;
- Rationale for Proposer's revisions;
- Limitations, special conditions or deviations requested by Proposer;
- Additional descriptive information;
- Suggestions for services or features in addition to those requested by City of Houston; and
- Any matter that Proposer believes would be helpful to the City in reviewing the exception.

* Note that this language is merely illustrative and does not necessarily represent any actual language in the RFP or Terms and Conditions related to the RFP. Proposer shall include the exact language from the RFP or the Terms and Conditions in this column.

† The examples of redlined language are merely illustrative and do not indicate language that the City would or would not accept or be willing to agree to.

**AGREEMENT FOR AN INTEGRATED ENTERPRISE
LEGAL MANAGEMENT SYSTEM**

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS AGREEMENT FOR AN INTEGRATED ENTERPRISE LEGAL MANAGEMENT SYSTEM (“Agreement”) is made on the date countersigned by the City Controller (“Effective Date”), by and between the **CITY OF HOUSTON, TEXAS** (the “City”), a Texas Home Rule City of the State of Texas principally situated in Harris County, and _____ (the “Contractor”), a _____ doing business in Texas.

The Parties agree as follows:

I. PARTIES

1.1. ADDRESS

1.1.1. The initial addresses of the Parties, which one Party may change by giving written notice of its changed address to the other Party, are as follows:

| | |
|--|---|
| City <hr/> City Attorney City of Houston PO Box 368 Houston, TX 77001 | Contractor <hr/> <hr/> <hr/> <hr/> |
| With Copy To <hr/> <hr/> <hr/> <hr/> | With Copy To <hr/> <hr/> <hr/> <hr/> |

1.2. TABLE OF CONTENTS

1.2.1. This Agreement consists of the following sections and exhibits:

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1.3. PARTS INCORPORATED

1.3.1. The above described exhibits are incorporated into this Agreement.

1.4. CONTROLLING PARTS

1.4.1. If a conflict among the sections and exhibits arises, the sections control over the exhibits.

[SIGNATURE PAGE FOLLOWS]

SAMPLE – SUBJECT TO CHANGE

1.5. SIGNATURES

1.5.1. The Parties have executed this Agreement in multiple copies, each of which is an original.

CONTRACTOR:

CITY:

CITY OF HOUSTON, TEXAS

By: _____
NAME:
POSITION:

By: _____
Mayor

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

ATTEST/SEAL:

NAME:

City Secretary

Tax Identification No.: _____

APPROVED:

Chief Procurement Officer

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

("Effective Date")

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II. DEFINITIONS

- 2.1. In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:
- 2.1.1. “*Accept*” or “*Acceptance*” means the act of the Director by which the City assumes for itself, approval of specific services, as partial or complete performance of the Agreement.
 - 2.1.2. “*Agreement*” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
 - 2.1.3. “*Business Day(s)*” mean(s) any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday or City Holiday.
 - 2.1.4. “*City*” is defined in the preamble of this Agreement and includes its successors and assigns.
 - 2.1.5. “*City Attorney*” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
 - 2.1.6. “*City Data*” means all Documents and/or Information: (i) that the City discloses, supplies, or provides to Contractor under, pursuant to, or in connection with this Agreement, (ii) that Contractor obtains, receives, or collects under, pursuant to, or in connection with this Agreement, and/or (iii) collected, received, entered, stored, archived, retained, maintained, processed, or transmitted in, into, or by the Software. “*City Data*” does not include the Software, the Object Code, or the Source Code.
 - 2.1.7. “*City Holiday*” means any official City of Houston holiday as determined each year by the City Council.
 - 2.1.8. “*City Personnel*” means all City employees, but not elected officials.
 - 2.1.9. “*Confidential Information*” means all non-public Documents or Information of a Party to this Agreement, including without limitation any such Documents or Information that is identified as or would be reasonably understood to be confidential, proprietary, and/or sensitive.
 - 2.1.10. “*Contractor*” is defined in the preamble of this Agreement and includes its successors and assigns.
 - 2.1.11. “*Contractor Data*” means all Documents and/or Information that Contractor discloses, supplies, or provides to the City under, pursuant to, or in connection

SAMPLE – SUBJECT TO CHANGE

with this Agreement. “Contractor Data” includes the Software, the Object Code, and the Source Code.

- 2.1.12. “*Day(s)*” whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays. In the case of plural ‘days’, those days will be consecutive.
- 2.1.13. “*Deliverable(s)*” mean(s) any services, products, goods, software, case management databases and applications, documents, or other tangible item provided by Contractor to the City in connection with this Agreement.
- 2.1.14. “*Director*” means the City Attorney, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.15. “*Disclosing Party*” means a Party who discloses, supplies, or provides Confidential Information to another Party or whose Confidential Information is otherwise in the possession, custody, or control of another Party.
- 2.1.16. “*Documents*” means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.
- 2.1.16.1. The word “documents” includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).
- 2.1.17. “*Documentation*” means the written and/or electronic end-user or technical documentation pertaining to the Software and/or Equipment that is either directly or indirectly: (i) provided to the City by Contractor, or (ii) otherwise published or posted online by Contractor.

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- 2.1.18. “*Effective Date*” means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.
- 2.1.19. “*Equipment*” or “*equipment*” mean(s) any and all hardware, equipment, material, goods, products, or other tangible items that Contractor provides or furnishes to City under, pursuant to, or in connection with this Agreement.
- 2.1.20. “*Information*” means all information, data, facts, or knowledge of any kind or description whether in tangible or intangible form.
- 2.1.21. “*Include*” and “*including*”, and words of similar import, shall be deemed to be followed by the words “without limitation”.
- 2.1.22. “*Materials*” means any component and/or part (hardware or software).
- 2.1.23. “*Notice to Proceed*” means a written communication from the Director to Contractor instructing Contractor to begin performance under this Agreement.
- 2.1.24. “*Object Code*” means the programming code for the Software, in a form not readily readable or perceivable by humans, that is suitable for execution by a computer without the intervening steps of interpretation or compilation.
- 2.1.25. “*Party*” or “*Parties*” means City and Contractor who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
- 2.1.26. “*Proprietary Rights*” mean any copyrights, trademarks, trade secrets, patents, or any other intellectual or proprietary rights.
- 2.1.27. “*Receiving Party*” means a Party who obtains, receives, or collects Confidential Information of another Party or who otherwise has possession, custody, or control of Confidential Information of another Party.
- 2.1.28. “*Services*” means all services required by or reasonably inferable from the Agreement and **Exhibit A** including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Contractor to fulfilling Contractor’s obligations.
- 2.1.29. “*Software*” or “*software*” mean(s) any and all computer software programs that Contractor provides or furnishes to City under, pursuant to, or in connection with this Agreement.

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- 2.1.30. “*Source Code*” means the programming code for the Software, in a human-readable form, that is not suitable for execution by a computer without the intervening steps of interpretation or compilation.
- 2.1.31. “*Term*” means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.
- 2.1.32. “*Work Products*” means all Documents or Information that the City and/or Contractor creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. “*Work Products*” does not mean or include the Software, the Source Code, or Object Code.
- 2.1.33. “*Writing*” or “*written*” shall mean a written communication from one Party to the other, including an electronic communication or e-mail.
- 2.2. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- 2.3. The word “*shall*” is always mandatory and not merely permissive.

III. DUTIES OF CONTRACTOR

3.1. SCOPE OF SERVICES

- 3.1.1. In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the Services and furnish the Deliverables described in **Exhibit A**.

3.2. COORDINATE PERFORMANCE

- 3.2.1. Contractor shall coordinate its performance with the Director. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

3.3. REPORTS

- 3.3.1. Contractor shall submit all reports and progress updates required by the Director and as may be required in **Exhibit A**.

3.4. SCHEDULE OF PERFORMANCE

- 3.4.1. Time of Performance

SAMPLE – SUBJECT TO CHANGE

3.4.1.1. The Director shall provide Contractor a written Notice to Proceed specifying a date to begin performance. [CITY WILL ESTABLISH THE START AND EXPIRATION DATES AT THE TIME OF FORMAL AWARD AND RELEASE OF THIS AGREEMENT.]

3.4.2. Time Extensions

3.4.2.1. If Contractor requests an extension of time to complete its performance, then the Director may, in his discretion, extend the time so long as the extension does not exceed _____. The extension must be in writing, but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

3.5. PROMPT PAYMENT OF SUBCONTRACTORS

3.5.1. In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

3.6. CONTRACTOR'S PERSONNEL

3.6.1. In selecting Contractor for this Agreement, the City relied on the qualifications and experience of those persons identified by Contractor by name as performing the Services ("Key Personnel") as listed in **Exhibit ____**. Contractor must not reassign or replace Key Personnel without the Director's prior written approval. Upon the Director's approval, the Director shall update **Exhibit ____**, which does not require amendment to this Agreement, to reflect the new Key Personnel.

3.6.2. Contractor shall replace any of its personnel, including Key Personnel, or subcontractors whose performance, work, or work product is deemed unsatisfactory at the Director's discretion.

3.7. RELEASE

3.7.1. **CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

SAMPLE – SUBJECT TO CHANGE

3.8. INDEMNIFICATION

3.8.1. CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.8.1.1. CONTRACTOR’S AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.8.1.1.-3.8.1.3., “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.8.1.2. THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

3.8.1.3. THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

3.8.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR’S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE OR THE STATUTORY MAXIMUM, WHICHEVER IS GREATER. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S SOLE NEGLIGENCE.

3.9. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

3.9.1. CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY’S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS

SAMPLE – SUBJECT TO CHANGE

AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

3.9.2. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

3.9.3. WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

3.10. SUBCONTRACTOR'S INDEMNITY

3.10.1. CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

3.11. INDEMNIFICATION PROCEDURES

3.11.1. *Notice of Claims.*

3.11.1.1. If the City or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 10 days. The notice must include the following:

3.11.1.1.1. a description of the indemnification event in reasonable detail, and

3.11.1.1.2. the basis on which indemnification may be due, and

3.11.1.1.3. the anticipated amount of the indemnified loss.

3.11.1.2. This notice does not stop or prevent the City from later asserting a

SAMPLE – SUBJECT TO CHANGE

different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay. If Contractor does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that City is prejudiced, suffers loss or incurs expenses because of the delay.

3.11.2. *Defense of Claims.*

3.11.2.1. *Assumption of Defense.* Contractor may assume the defense of the claim at its own expense. If Contractor assumes the defense of the claim, Contractor shall then control the defense and any negotiations to settle the claim. Contractor shall notify the City of any and all offers to settle the claim.

3.11.2.2. *Continued Participation.* If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, or (iii) would not result in the City’s full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.12. INSURANCE

3.12.1. *Risks and Limits of Liability.* With no intent to limit Contractor's liability or the indemnification provisions set forth herein, the Contractor shall provide and maintain certain insurance in full force and effect at all times during the Term of this Agreement. Such insurance is described as follows:

| <u>Coverage</u> | <u>Limit of Liability</u> |
|--|--|
| Workers’ Compensation | Statutory for Workers’ Compensation |
| Employer’s Liability | Bodily Injury by Accident \$100,000 (each accident) Bodily Injury by Disease \$100,000 (policy limit) Bodily Injury by Disease \$100,000 (each employee) |
| Commercial General Liability: Including Contractual Liability, Bodily and Personal Injury, Property Damage, Products and Completed Operations Coverage (for two years following completion of the Services under this | Combined single limit of \$500,000 (each occurrence), aggregate of \$1,000,000; |

SAMPLE – SUBJECT TO CHANGE

| | |
|---|---|
| Agreement) | |
| Automobile Liability (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Ownership and Hired Auto Coverage) | \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos |
| Professional Liability Coverage which shall include but not be limited to prior act coverage as specified below, coverage for Contractor's negligence in failing to perform professional services, and coverage for the disclosure of personal information; and which policy shall not exclude Claims relating to failure to maintain confidentiality, failure to maintain network security, or failure to maintain privacy and/or data security. | \$1,000,000 per occurrence; \$1,000,000 aggregate |
| Excess | \$1,000,000 |
| Corporate Liability | \$3,000,000 Policy Limit |
| Event Management Liability | \$1,000,000 Policy Limit |
| Crisis Fund Liability | \$50,000 Policy Limit |
| Aggregate Limits are per 12-month policy period unless otherwise indicated. | |

3.12.2. *Insurance Coverage.* Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.12.3. *Professional Liability.* If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of its performance under this Agreement, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for all Services covered by this Agreement with a duration of two years after substantial

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completion.

- 3.12.4. *Technology E&O.* In addition to other insurance coverage, Contractor shall maintain insurance against errors and omissions, covering costs or expenses in the event of data loss due to transmission failures or diversion by any party either accidentally or intentionally. Insurance certificate available upon request.
- 3.12.5. *Form of insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.
- 3.12.6. *Required Coverage.* The City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.
- 3.12.7. *Deductibles.* Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents or employees.
- 3.12.8. *Liability for Premium.* Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- 3.12.9. *Cancellation.* **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance

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under this Agreement and begin procedures to terminate for default.

3.12.10. *Subrogation.* Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees and each policy, except Professional Liability, must contain an endorsement waiving such claim.

3.12.11. *Proof of Insurance.*

3.12.11.1. Contractor shall continuously and without interruption maintain in force the required insurance coverage specified in **Section 3.12**, inclusive of all sections therein. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

3.12.12. *Other Insurance.* If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

3.12.13. *Right to Review and Adjust Coverage Limits.* The Director reserves the right at reasonable intervals during the Term of this Agreement to cause the insurance requirements of this Agreement to be reviewed by an independent insurance consultant experienced in insurance for public airports in Texas, taking into consideration changes in statutory law, court decisions, or the claims history of Contractor, and, based on the written recommendations of such consultant, and in consultation with Contractor, to reasonably adjust or add insurance coverages and limits required herein, but not more often than every 24 months.

3.12.14. *No Waiver.* The City shall never waive nor be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

3.13. PROFESSIONAL STANDARDS

3.13.1. Contractor's performance shall conform to the professional standards prevailing in the United States with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

3.13.2. Contractor shall, at no cost to the City, provide the City with the necessary services as software to modify, upgrade, or enhance the Software to conform to and ensure the Software is compatible and operational with Microsoft Office products, including without limitation, future releases of Windows 10 and Office 2013/2016.

3.14. WARRANTIES

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3.14.1. *Generally*

3.14.1.1. Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas, for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

3.14.1.2. With respect to any parts and goods it furnishes, Contractor warrants:

3.14.1.2.1. that all items are free of defects in title, design, material, and workmanship;

3.14.1.2.2. that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed;

3.14.1.2.3. that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new); and

3.14.1.2.4. that no item or its use infringes any patent, copyright, or proprietary right.

3.14.2. *Manufacturer's Specifications* [APPLICABLE IF PROVIDES PRODUCTS, HARDWARE, AND/OR EQUIPMENT]

3.14.2.1. Contractor warrants that all products are free of defects in material and workmanship and that they will perform in accordance with manufacturer's specifications for a period of four years after the City's Acceptance.

3.14.3. *Manufacturer's Warranties* [APPLICABLE IF PROVIDES PRODUCTS, HARDWARE, AND/OR EQUIPMENT]

3.14.3.1. Contractor hereby assigns to the City all manufacturer's warranties on all deliverables furnished by Contractor under this Agreement and will deliver all related documentation to the Director within five Business Days after the Effective Date.

3.15. SPARE PARTS [APPLICABLE IF PROVIDES PRODUCTS, HARDWARE, AND/OR EQUIPMENT]

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- 3.15.1. Contractor shall provide a list of spare parts required for the continuous operation of the all products, hardware, and/or equipment furnished by Contractor under this Agreement. The list must include estimated delivery times. Spare parts must be provided in accordance with the manufacturer's specifications and must be priced, including discounts, if any, FOB delivery address for products, hardware, and/or equipment as specified in writing by the Director. The price must include provisions for suitable packing for shipment and storage. Contractor shall submit the spare parts lists at least 30 days before shipment of any products, hardware, and/or equipment under this Agreement.
- 3.15.2. Contractor shall maintain a fully-stocked inventory of all spare parts required for any products, hardware, and/or equipment furnished by Contractor under this Agreement. Contractor shall constantly replenish the inventory as parts are used for maintenance services.
- 3.15.3. If Contractor uses all practicable means to comply with **Subsection 3.15.2** above, but is unable to complete any maintenance services because of a lack of spare parts, the Director may, on Contractor's written request, allow a longer period of time for the completion of the maintenance services.

3.16. LIABILITY FOR LOSS OR CORRUPTION OF DATA [APPLICABLE IF CONTRACTOR HOSTS DATA]

- 3.16.1. If as a result of Contractor's negligence, any City database is lost or corrupted, Contractor shall restore the database to the most recent available uncorrupted state. Contractor's obligation is conditioned on the following requirements:
 - 3.16.1.1. The City makes back-up copies of the database on a daily or other periodic basis in the ordinary course of the City's business;
 - 3.16.1.2. The City notifies Contractor of a lost or corrupted database within 24 hours after it becomes aware of it.
- 3.16.2. A lost or corrupted database means a database that is inaccessible by the Software, and not merely one that contains inaccurate data due to Software defects or other reasons.

3.17. ESCROW [NOT APPLICABLE FOR SOFTWARE AS A SERVICE]

- 3.17.1. Contractor shall, within 20 days after written request by the Director, unless the Director extends the time for doing so, enter into an agreement (the "Escrow Agreement") with a reputable source code escrow agent (the "Escrow Agent"), under which Contractor shall deposit the Source Code subject to terms and conditions mutually agreeable to Contractor and the City, including without limitation the following:

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- 3.17.1.1. Contractor shall pay all charges associated with the Escrow Agent and Escrow Agreement.
- 3.17.1.2. The Escrow Agreement shall designate the City as a beneficiary.
- 3.17.1.3. The Escrow Agreement shall provide that access to the Source Code of the Software shall be provided to the City if:
 - 3.17.1.3.1. Contractor becomes insolvent or is named debtor in a bankruptcy proceeding;
 - 3.17.1.3.2. Contractor makes an assignment for the benefit of creditors,
 - 3.17.1.3.3. a receiver or trustee in bankruptcy or similar authority is appointed to take charge of Contractor's assets,
 - 3.17.1.3.4. Contractor suspends its business or has wound up or been liquidated, voluntarily or otherwise;
 - 3.17.1.3.5. Contractor fails to maintain or provide support for the Software in accordance with the terms for maintenance and support of the Software under any agreement between the City and Contractor; and/or
 - 3.17.1.3.6. Contractor materially modifies the Software in a manner that materially adversely impacts the City's beneficial use of the Software and Contractor fails to address or resolve such material adverse change in the Software, to the Director's satisfaction, within at least 30 days after written request by the Director.
- 3.17.1.4. The City's rights to use Source Code provided under the Escrow Agreement shall be conditional upon the following:
 - 3.17.1.4.1. the City acquires no ownership rights in the Source Code by reason of the release of Source Code and shall only have a license to use such Source Code for maintenance and support of the Software for internal use of the Software by the City and otherwise in accordance with the provisions of this Agreement; and
 - 3.17.1.4.2. the City shall keep the Source Code confidential and protect it from disclosure to third parties under the terms of this Agreement, and shall only permit access to the Source Code to persons who have a need to know such information for the above purposes.

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3.17.1.5. Contractor shall deliver the Source Code of the Software to the Escrow Agent with 10 days after execution of the Escrow Agreement. In the event that Contractor materially modifies such Source Code, Contractor shall promptly notify the City the modification and shall promptly provide the Escrow Agent with revised copies of the Source Code of the Software. The Source Code delivered to Escrow Agent shall be the equivalent of the Object Code of the Software.

3.17.2. The selection of the Escrow Agent and the final terms and conditions of the Escrow Agreement shall be subject to approval of the City. If the Director so determines, in his sole discretion, the Escrow Agreement shall be a three-party agreement between and among the Escrow Agent, Contractor, and the City.

3.18. USE AND OWNERSHIP OF DATA AND WORK PRODUCTS

3.18.1. The City may use and shall be permitted to use all City Data, Contractor Data, and Work Products.

3.18.2. Contractor warrants that it owns the copyright to Contractor Data.

3.18.3. Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to all Work Products and all Proprietary Rights therein.

3.18.4. Contractor shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by the Director, Contractor shall place a conspicuous notation on any Work Products indicating that the City owns the Work Products and the Proprietary Rights therein.

3.18.5. Contractor's assignment of its interest in the Work Products and the Proprietary Rights therein to the City does not constitute a mere license or franchise to the City.

3.18.6. Contractor shall execute all documents required by the Director to further evidence Contractor's assignment and the City's ownership of the Work Products and the Proprietary Rights therein. Contractor shall cooperate with City in registering, creating, and enforcing the City's ownership of the Work Products and the Proprietary Rights therein.

3.18.7. All Work Products are "works made for hire."

3.18.8. Contractor shall deliver to the Director all or any part of the original City Data, Contractor Data, Work Products, and/or all other files and materials that Contractor produces or gathers during its performance under this Agreement, in the format and on the media specified by Director, within five Business Days after written request from Director or after this Agreement terminates or otherwise expires.

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- 3.18.9. Contractor may retain copies of the Work Products for its archives. Contractor shall not otherwise use, sell, license, or market the Work Products.
- 3.18.10. Notwithstanding anything to the contrary, the City is, will be, and shall remain at all times the sole owner of all City Documents and all Work Products. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in all City Documents and all Work Products. Contractor shall not possess or assert any lien or other right against any City Documents or Work Products.

3.19. ACCEPTANCE AND REJECTION

- 3.19.1. Contractor shall not be entitled to payment and the City shall have no duty to pay Contractor unless the Director has Accepted the Services and other Deliverables as set forth in **Exhibit A**.
- 3.19.2. Contractor shall provide written notice to the Director upon completion and/or delivery of the Services and other Deliverables as set forth in **Exhibit A**. The Director shall Accept in writing such Services and other Deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Contractor stating the reason(s) why any Services and other Deliverables have been rejected and not Accepted.
- 3.19.3. Notwithstanding anything to the contrary in **Exhibit A** or elsewhere, the Director may, in his sole discretion, approve in writing a partial Acceptance of the Services and other Deliverables set forth in **Exhibit A**.
- 3.19.4. If the Director rejects any Services or other Deliverables, Contractor shall have 10 Business Days after the Director sends written notice of rejection to correct or otherwise replace such Services or other Deliverables as necessary to conform to this Agreement, at no additional cost to the City. Contractor shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either Accept or reject (as provided under this Section) and Contractor shall continue to make any necessary correction(s) or replacement(s) (as provided under this Section) until the Director Accepts in writing all previously rejected Services or other Deliverables.
- 3.19.5. Notwithstanding anything to the contrary herein or elsewhere, if the Director does not Accept any Services or other Deliverables after one or more attempted correction(s) or replacement(s) of such Services or other Deliverables by Contractor, the Director may, in his sole discretion, issue a final rejection notice to Contractor for all Services and other Deliverables (whether or not previously Accepted), the City shall return all Equipment and Software to Contractor at no cost to the City, the City shall have no obligation to pay any amount whatsoever

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under this Agreement, Contractor shall immediately refund any and all amounts paid by City under this Agreement, and this Agreement shall immediately terminate.

3.19.6. The City reserves all other available rights and remedies at law or in equity, including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commercial Code.

3.20. DATA SECURITY [APPLICABLE IF CONTRACTOR HOSTS DATA]

3.20.1. Contractor shall maintain and enforce data, safety, and physical security procedures with respect to its access and maintenance of the City's Data that: (i) are at least equal to industry standards for such types of locations where Contractor hosts, maintains, manages, processes, and stores any of the City's Data, and (ii) provides reasonably appropriate technical and organizational safeguards against accidental, unauthorized, or unlawful access, alteration, destruction, disclosure, loss, misuse, modification, or theft of the City's Data and all other data owned by the City and accessible by Contractor under this Agreement.

3.20.2. Contractor shall host, maintain, manage, process, and store all of the City's Data only in the continental United States and in a physically and logically secure environment that protects it from accidental, unauthorized, or unlawful access, alteration, destruction, disclosure, loss, misuse, modification, or theft. Contractor shall maintain an adequate level of data, safety, and physical security controls to ensure compliance with the requirements of this Agreement and other applicable laws or regulations relating to data privacy, security, and/or protection.

3.20.3. Contractor shall implement and maintain disaster recovery and avoidance procedures to ensure that the Services under this Agreement are not interrupted during any disaster and that the City's Data is not lost or destroyed during any disaster. Contractor shall provide the City with a copy of its current disaster recovery and business continuity plan(s) and all updates thereto during the Term of this Agreement. All requirements of this Agreement, including those relating to security, personnel due diligence and training, backup, and testing shall apply to Contractor's disaster recovery site.

3.20.4. For any of the City's Data that Contractor hosts, maintains, manages, processes, or stores, Contractor shall: (i) perform and execute nightly database or systems backups to a backup server; (ii) perform and execute incremental database transaction log file backups every 30 minutes to a backup server; (iii) perform and execute weekly backups of all hosted City's Data and the default path to a backup server; (iv) replicate the City's database(s) and default path(s) to an off-site or secondary location (i.e., other than the primary data center), and (v) save the last 14 nightly database backups on a secure transfer server (i.e., at any given time, the last 14 nightly database backups will be on the secure transfer server) from which City may and shall have the right to retrieve the database backups at any time.

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- 3.20.5. Contractor shall immediately notify the Director and City Attorney of any breach of security known to Contractor that may affect the City's Data and cooperate with the Director and City Attorney to address the breach.
- 3.20.6. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors who provide services in connection with this Agreement which written agreements shall bind them to the terms of this **Section 3.20**, Data Security.

3.21. CONFIDENTIALITY

- 3.21.1. Except as otherwise provided in this Agreement, each Receiving Party shall:
 - 3.21.1.1. Hold all Confidential Information of a Disclosing Party in strict confidence;
 - 3.21.1.2. Protect all Confidential Information of a Disclosing Party with at least the same degree of care and in accordance with the security regulations by which it protects its own Confidential Information;
 - 3.21.1.3. Not use, reproduce, or copy any Confidential Information of a Disclosing Party except as necessary for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
 - 3.21.1.4. Not disclose any Confidential Information of a Disclosing Party to any person or entity except the Receiving Party's agents, contractors, employees, and representatives with a need to know for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
 - 3.21.1.5. Not remove any Confidential Information of a Disclosing Party from the continental United States;
 - 3.21.1.6. Return or destroy all Confidential Information of a Disclosing Party and any copies of such Confidential Information upon request of the Disclosing Party and, in any event, when no longer needed or permitted for use under, pursuant to, or in connection with this Agreement; and
 - 3.21.1.7. Advise its agents, contractors, employees, and representatives of their obligations with respect to the Confidential Information of a Disclosing Party.

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3.21.2. No Receiving Party shall have any obligation under this Section (Confidentiality) as to any Confidential Information of a Disclosing Party that:

3.21.2.1. Was previously known to it free and clear of any obligation to keep it confidential;

3.21.2.2. Except as otherwise provided under this Agreement, is disclosed to third parties by the Disclosing Party without restriction;

3.21.2.3. Is or becomes publicly available by other than unauthorized disclosure;

3.21.2.4. Is independently developed by it; or

3.21.2.5. Is disclosed in response to requests made under the Texas Public Information Act or a court order. However, the Receiving Party ordered to disclose the Confidential Information shall: (i) give the Disclosing Party of the Confidential Information prompt written notice of all such requests, and (ii) cooperate with the Disclosing Party's efforts to obtain a protective order protecting the Confidential Information from disclosure.

3.21.3. No Receiving Party shall be liable for the inadvertent or accidental disclosure of Confidential Information of a Disclosing Party, if the disclosure occurs despite the exercise of a reasonable degree of care, which is at least as great as the care the Receiving Party normally takes to protect its own Confidential Information of a similar nature.

3.21.4. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors that bind them to the terms of this Section (Confidentiality).

3.22. LICENSES AND PERMITS

3.22.1. Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

3.23. COMPLIANCE WITH LAWS

3.23.1. Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

3.24. COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

3.24.1. Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

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3.25. MWBE COMPLIANCE

- 3.25.1. It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide percentage goals for contracting with MWBEs, are incorporated into this Agreement.
- 3.25.2. Contractor shall make good faith efforts to award subcontracts in at least _____% of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing:
- 3.25.2.1. subcontracts and supply agreements with Minority Business Enterprises,
 - 3.25.2.2. subcontracts and supply agreements with Women's Business Enterprises, and
 - 3.25.2.3. specific efforts to identify and award subcontracts and supply agreements to MWBEs.
- 3.25.3. Contractor shall submit periodic reports of its efforts under this section to the City Office of Business Opportunity Director in the form and at the times he or she prescribes.
- 3.25.4. Contractor shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with or among MWBE subcontractors to mediation in Houston, Texas, if directed to do so by the City Office of Business Opportunity Director.

3.26. DRUG ABUSE DETECTION AND DETERRENCE

- 3.26.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 3.26.2. Before the City signs this Agreement, Contractor shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):
- 3.26.2.1. a copy of its drug-free workplace policy,

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- 3.26.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit C**, together with a written designation of all safety impact positions and,
 - 3.26.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit D**.
- 3.26.3. If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than 6 months), a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit E**. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 3.26.4. Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 3.26.5. Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

3.27. CONTRACTOR'S PERFORMANCE

- 3.27.1. Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

3.28. PAY OR PLAY

- 3.28.1. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

IV. DUTIES OF CITY

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4.1. PAYMENT TERMS

1.1.1. The City shall pay and Contractor shall accept fees set forth in **Exhibit B** as full compensation for all Services rendered and Deliverables furnished by Contractor under this Agreement. The fees must be paid from allocated funds as provided in **Section 4.5.**, inclusive of all sections therein.

1.2. EXPENSES AND REIMBURSEMENT

4.2.1. The City will not be responsible for any travel and expenses incurred by the Contractor or any subcontractors related to onsite installation, on-site training and education activities, onsite engineering and integration services, or any other activities related to this Agreement.

4.3. TAXES

4.3.1. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

4.4. METHOD OF PAYMENT

4.4.1. The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director showing the Services and Deliverables provided and the corresponding unit or hourly rates, if any. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.4.2. If the Director disputes an invoice Contractor submits for any reason, including lack of supporting documentation (as may be required by the Director in his sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

4.5. LIMIT OF APPROPRIATION

4.5.1. The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

4.5.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$ _____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their

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discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

4.5.2.1. The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

| |
|--|
| <p>NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS</p> <p>By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.</p> <p style="text-align: center;">\$ _____</p> |
|--|

4.5.2.2. The Original Allocation plus all supplemental allocations are the “Allocated Funds”. Funds are not allocated unless and until the funds have been (i) approved by the City Attorney and (ii) certified by the City Controller as required by Article II, Section 19a of the City Charter, notwithstanding any delegation of authority by City Council. This Agreement is not an allocation of funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for Services it provides. If Allocated Funds are exhausted, Contractor’s only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.6. CHANGES

4.6.1. At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work. Any Change to the scope of activities identified in **Exhibit A** shall be mutually agreed to prior to the issuance of a Change Order.

4.6.2. The Director will issue the Change Order in substantially the following form:

SAMPLE – SUBJECT TO CHANGE

| <u>CHANGE ORDER</u> | |
|---|--|
| TO: | [Name of Contractor] |
| FROM: | City of Houston, Texas (the "City") |
| DATE: | [Date of Notice] |
| SUBJECT: | Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement] |
| Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following: | |
| [Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.] | |
| Signed: | |
| [Signature of Director] | |

4.6.3. The Director may issue more than one Change Order, subject to the following limitations:

4.6.3.1. Council expressly authorizes the Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.

4.6.3.2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

4.6.3.3. The Total of all Change Orders issued under this Section may not increase the Original Agreement amount by more than 25%.

4.6.4. Whenever a Change Order is issued and executed by both Parties, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

SAMPLE – SUBJECT TO CHANGE

4.6.5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

4.6.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

4.7. ACCESS TO DATA

4.7.1. The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents (including electronically stored information) in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

4.7.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

4.7.3. For any raw data created, assembled, used, maintained, collected, or stored by the Contractor for or on behalf of the City, Contractor shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

4.8. NO QUANTITY GUARANTEE

4.8.1. This Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Agreement. The City may procure and execute contracts with other consulting firms for the same, similar, or additional services as those set forth in this Agreement or any Scope of Services or Change Order.

4.8.2. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Contractor through this Agreement or any Scope of Services or Change Order; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement or any Scope of Services or Change Order.

V. TERM AND TERMINATION

5.1. TERM

5.1.1. This Agreement is effective on the date of the Effective Date and expires years thereafter, unless sooner terminated in accordance with the terms and conditions of this Agreement.

SAMPLE – SUBJECT TO CHANGE

5.2. RENEWALS

5.2.1. If the Director, at his sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the initial term, this Agreement is renewed for _____ successive _____-year terms upon the same terms and conditions.

5.3. TERMINATION FOR CONVENIENCE BY THE CITY

5.3.1. The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

5.3.2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit a final invoice marked "FINAL" showing in detail the Services performed under this Agreement up to the termination date.

5.3.3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.4. TERMINATION FOR CAUSE BY THE CITY

5.4.1. If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

5.4.1.1. Contractor fails to perform any of its material duties under this Agreement;

5.4.1.2. Contractor becomes insolvent;

5.4.1.3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

SAMPLE – SUBJECT TO CHANGE

5.4.1.4.a receiver or trustee is appointed for Contractor.

5.4.2. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date and pay Contractor for all Services performed, if any, through such date.

5.4.3. To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.5. REMOVAL OF CONTRACTOR-OWNED EQUIPMENT AND MATERIALS

5.5.1. Upon expiration or termination of this Agreement, Contractor is permitted 10 days within which to remove Contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The Director reserves the right to deny any extension of time.

VI. MISCELLANEOUS

6.1. INDEPENDENT CONTRACTOR

6.1.1. Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

6.2. FORCE MAJEURE

6.2.1. Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes

SAMPLE – SUBJECT TO CHANGE

performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to any reimbursement of expenses or any other payment whatsoever.

6.2.2. This relief is not applicable unless the affected Party does the following:

6.2.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

6.2.2.2. provides the other Party with prompt written notice of the cause and its anticipated effect.

6.2.3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

6.2.4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

6.2.5. If the Force Majeure continues for more than five days from the date performance is affected, the Director may terminate this Agreement by giving seven days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

6.2.6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

6.3. SEVERABILITY

6.3.1. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

6.4. ENTIRE AGREEMENT

6.4.1. This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

6.5. WRITTEN AMENDMENT

SAMPLE – SUBJECT TO CHANGE

6.5.1. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.6. APPLICABLE LAWS

6.6.1. This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

6.6.2. Venue for any litigation relating to this Agreement is Harris County, Texas.

6.7. NOTICES

6.7.1. All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in **Section 1.1.** of this Agreement or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

6.8. CAPTIONS

6.8.1. Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.9. NON-WAIVER

6.9.1. If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

6.9.2. An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

6.10. INSPECTIONS AND AUDITS

SAMPLE – SUBJECT TO CHANGE

6.10.1. City representatives may perform, or have performed, (i) audits of Contractor's books and records, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.11. ENFORCEMENT

6.11.1. The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.12. AMBIGUITIES

6.12.1. If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

SAMPLE – SUBJECT TO CHANGE

6.13. SURVIVAL

6.13.1. Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

6.14. PUBLICITY

6.14.1. Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

6.15. RISK OF LOSS

6.15.1. Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each product passes from Contractor to the City upon Acceptance by the City.

6.16. PARTIES IN INTEREST

6.16.1. This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

6.17. SUCCESSORS AND ASSIGNS

6.17.1. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in **Section 6.18**. This Agreement does not create any personal liability on the part of any officer or agent of the City.

6.18. BUSINESS STRUCTURE AND ASSIGNMENTS

6.18.1. Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

6.18.2. Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent which consent shall not be unreasonably withheld.

6.19. DISPUTE RESOLUTION

6.19.1. For purposes of this Section “Project Administrator” means the person the Director designates to monitor the progress of all Parties’ performance under this Agreement.

6.19.2. Except as may otherwise be provided by law, a dispute that (i) does not involve a question of law; (ii) arises during the performance of this Agreement; and (iii) is not resolved between the Project Administrator and Contractor must be handled as described below:

6.19.2.1. The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.

6.19.2.2. If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within seven Business Days following receipt of the Project Administrator’s original decision. The Director shall provide Contractor with a written response to the appeal within 14 Business Days following its receipt. The decision of the Director is final.

6.20. REMEDIES CUMULATIVE

6.20.1. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

6.21. CONTRACTOR DEBT

6.21.1. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN

SAMPLE – SUBJECT TO CHANGE
FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF
THIS AGREEMENT.

SAMPLE – SUBJECT TO CHANGE

EXHIBIT A

SCOPE OF SERVICES

SAMPLE – SUBJECT TO CHANGE

EXHIBIT B

FEES

SAMPLE – SUBJECT TO CHANGE

SAMPLE – SUBJECT TO CHANGE
EXHIBIT C
DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with City of Houston; and that by making this Contract, I affirm that Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with City and may result in non-award or termination of the contract by City of Houston.

Date

Contractor Name

Signature

Title

SAMPLE – SUBJECT TO CHANGE
EXHIBIT D
CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, _____, _____, (Contractor)
(Name) (Title)

as an owner or officer of _____ have authority to bind
(Name of Company)

Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in Section 5.18 of Executive Order No. 1-31, that will be involved

in performing _____ Contractor
(Project)

agrees and covenants that it shall immediately notify City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

Title)

SAMPLE – SUBJECT TO CHANGE
EXHIBIT E
DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of

 (Name) (Print/Type) (Title)

_____ have personal knowledge and full

 (Contractor - Name of Company)
 authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20 _____.

_____ (Initials) A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ (Initials) Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ (Initials) Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

_____ (Initials) Appropriate safety impact positions have been designated for employee positions performing on City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

_____ (Initials) From _____ (Start date) to _____ (End date) the following test has occurred

| | <i>RANDOM</i> | <i>REASONABLE SUSPICION</i> | <i>POST ACCIDENT</i> | <i>TOTAL</i> |
|----------------------------|---------------|---------------------------------|--------------------------|--------------|
| Number Employees Tested | | | | |
| Number Employees Positive | | | | |
| Percent Employees Positive | | | | |

_____ (Initials) Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ (Initials) I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

 (Date)

 (Typed or Printed Name)

 (Signature)

 (Title)