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08-1223

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

1. PARTIES

A. Address

**THIS AGREEMENT FOR AN AUTOMATED MOBILE PAVEMENT CONDITION RATING AND MANUAL ASSET TAGGING SYSTEM AND DATA COLLECTION VEHICLE ("Agreement")** is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS ("City")**, a municipal corporation, and **IDEA INTEGRATION CORP. ("Contractor")**, a Florida corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

Director, Public Works and Engineering Dept.  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

Contractor

Idea Integration Corp.  
3200 Southwest Freeway, Suite 2900  
Houston, TX 77027  
Phone: (800) 685 - 5561  
Fax: (713) 830 - 6565

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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**EXHIBITS**

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- D. MWBE Subcontract Terms
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- F. Drug Policy Compliance Declaration
- G. Certification of No Safety Impact Positions

**C. Parts Incorporated**

The above described exhibits are incorporated into this Agreement.

**D. Controlling Parts**

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

E. Signatures

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

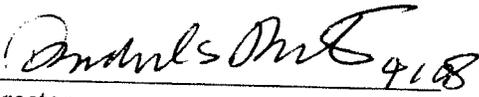
**IDEA INTEGRATION CORP.**

By:   
Name: CARLS MCCOIN  
Title: BUS. DEV. DIRECTOR

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED:

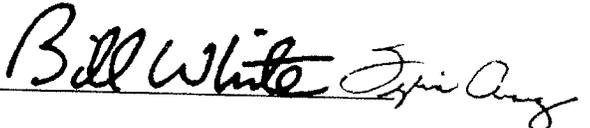
  
Director, \_\_\_\_\_  


APPROVED AS TO FORM:

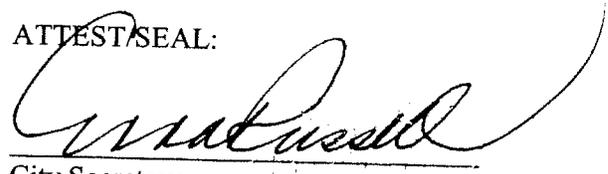
  
Assistant City Attorney  
L.D. No. 0630800048001

**CITY OF HOUSTON, TEXAS**

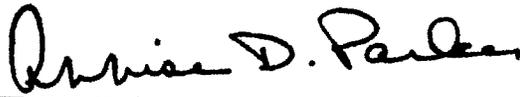
Signed by:

By:   
Mayor

ATTEST/SEAL:

  
City Secretary

COUNTERSIGNED BY:

  
City Controller 

DATE COUNTERSIGNED:

4-10-08

## II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

“Acceptance” means approving the System for use by City after testing the System to ascertain that the System works according to Contractor’s Documentation and the requirements of this Agreement as set out in Section IV(E) of this Agreement.

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

“Data Collection Vehicle” means the 3/4 ton capacity van (see Section 5 of Exhibit “A”) with the System hardware housed in it being provided by Contractor under this Agreement.

"Director" means the City Purchasing Agent or the Director of the City’s Public Works and Engineering Department Director, or Designee.

"Documents" mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

“Documentation” means the training materials provided by Contractor detailing the System’s design, operations and instructions for using the System to obtain the desired results from the

software operating system and hardware on which it is used. Documentation also includes product manuals from subcontractors and third-party vendors provided to City by Contractor.

“Include” and “including”, and words of similar import, shall be deemed to be followed by the words “without limitation”.

"Installation Site(s)" means the City's office of Row Maintenance located at 611 Walker, Houston, Texas 77002.

“Mobile Pavement Condition Rating System” or “System” means the electronic database to be housed in a vehicle proposed by Contractor in response to City's RFP T22581 to store data gathered by the City's Row Maintenance Branch of the Public Works and Engineering Department to assess and manage the condition of street pavements under the jurisdiction of the City of Houston.

"Notice to Proceed" means a written communication from the Director to Contractor instructing Contractor to begin performance.

“Parties” mean all the entities set out in the Preamble who are bound by this Agreement.

“Project” means the custom-modification, integration and implementation of the Mobile Pavement Condition Rating System by integrating video, pavement condition rating hardware, and asset tagging hardware and software.

“System Software” means integrating software developed by Contractor for City's use and ownership under this Agreement to enable City to run the System provided under this Agreement.

“Third Party Hardware” means hardware purchased by Contractor for the System, title to which Contractor shall transfer to City under this Agreement.

“Third Party Software” means software licenses obtained for the System by Contractor and title to which Contractor transfers to City under this Agreement.

### III. DUTIES OF CONTRACTOR

#### A. Scope of Services

- (1) In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "A".
- (2) Upon Acceptance of the System as set out in Section IV (E) of this Agreement, Contractor shall transfer to City title to the System Software developed for the City by Contractor under this Agreement. Along with the transfer of title, Contractor shall also provide the Director with one complete copy of the most current version of the source code and applicable Documentation for all modules of the System Software that were installed, modified, tested and Accepted and one complete copy of the Job Control Language for all modules of the System Software.
- (3) Contractor shall transfer to City, 10 licenses for ArcGIS Engine (9.3 version) software program, purchased for the System under this Agreement.
- (4) Contractor shall provide City with at least one complete copy of the most current version of the executable code and applicable Documentation for all modules of the installed, modified, tested and Accepted System Software developed for the City System under this Agreement.

#### B. Coordinate Performance

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

C. Time Extensions

If Contractor requests an extension of time to complete its performance, then the Director may, in his or her sole discretion, extend the time. 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).

D. Payment of Subcontractors

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. Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

E. RELEASE

**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.**

**F. INDEMNIFICATION**

**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:**

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- (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.**

**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 \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

**G. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, 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.

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.

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.

**H. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY**

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.

**I. INDEMNIFICATION - PROCEDURES**

(1) Notice of Claims. 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:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

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

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) 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, (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.

J. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall 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 edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:  
\$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:  
Statutory amount
- (3) Professional Liability  
\$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance  
\$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.  
Aggregate Limits are per 12-month policy period  
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the

premiums from amounts due to Contractor under this Agreement.

- K. Warranties
1. Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.
  2. System Software Warranty. Contractor warrants that the System Software it provides under this Agreement will be free of any defects in workmanship or materials for a period of one year starting from the date of Acceptance.
  3. Third Party Software Warranty. Contractor shall provide the City with warranties, if any, provided by the licensor of the Third Party Software licensed to City under this Agreement.
  4. Third Party Hardware Warranty. Contractor shall provide the City with the warranties, if any, provided by the manufacturer of all Third Party Hardware purchased for the City under this Agreement. Contractor shall assist the City in any warranty claims against such manufacturers related to the hardware provided pursuant to such warranty terms during the term of this Agreement and the manufacturer's warranty period. Contractor shall also assist the City in coordinating with manufacturer's technical support to ensure that any replacement parts required for the repair of the hardware are obtained from the manufacturer during manufacturer's warranty period and the term of this Agreement.
  5. Vehicle Warranty. The City's fleet maintenance staff will coordinate with manufacturer to enforce warranty claims during the warranty period, if any, and

handle all repairs and maintenance services for the Data Collection Vehicle in which the System is located.

L. Confidentiality - Protection of City's Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

M. Use of Work Products - City may use all documents

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

(3) Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

N. Use of Work Products - Assignment of Copyright (Custom Software Development)

Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, Documents, and other work products, and the System, and any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets, and

any other proprietary rights therein (collectively "Proprietary Rights:") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement (collectively "Works"). The system includes computer programs, source code, object code, enhancements and modifications, files, input and output materials, media on which these computer programs, files, and documentation are located (including tapes, disks, and other storage media), and all related material and documentation.

The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Contractor shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.

Contractor shall execute all documents required by the Director to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Contractor's assistance is requested and rendered under this Section, the City shall reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds.

The Works and all rights are being sold in their entirety to the City and do not constitute a mere license or franchise to the City. On termination of this Agreement, and without regard to whether the Works are completed, Contractor shall deliver all Works to the City.

All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."

Contractor shall obtain written agreements from its agents, employees, contractors, and

subcontractors performing work under this Agreement which bind them to the terms in this Section.

O. Licenses and Permits

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.

P. Compliance with Laws

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

Q. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

R. Drug Abuse Detection and Deterrence

(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.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

(a) a copy of its drug-free workplace policy,

- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "G."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 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 "F." 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 6-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) 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.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

S. Minority and Women Business Enterprises

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.

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 12% 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

- (1) subcontracts and supply agreements with Minority Business Enterprises,
- (2) subcontracts and supply agreements with Women's Business Enterprises, and
- (3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Affirmative Action Director in the form and at the times he or she prescribes.

Contractor shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding arbitration in Houston, Texas, if directed to do so by the Affirmative Action Director. All agreements must contain the terms set out in Exhibit "D." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

T. Pay or Play Policy

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 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 THE CITY

- A. Payment Terms
1. Upon delivery to the Director and transfer of title to City of each Iteration One System Deliverable listed in Exhibit "B," the City shall pay and Contractor shall accept the actual cost of that Deliverable.
  2. Upon training City end-users in the use of the System as set out in Exhibit "A" of the Agreement and upon Director's approval of the training provided, City shall pay Contractor \$ 13, 988.00 as set out in Exhibit "B."
  3. Upon Acceptance of the System at the end of Iteration One as set out in Section IV, E below and upon delivery of the System Software source codes to the Director as set out in Section III, A(2) of the Agreement, the City shall pay and Contractor shall accept \$220,920.00 for the total cost of providing Iteration One professional services listed in Exhibit "B" to integrate various components of the System.
  4. Upon Acceptance by the Director of each System Deliverable set out in Exhibit "B-1," City shall pay and Contractor shall accept the amount listed for each such Deliverable in Exhibit "B-1."
  5. One year from the date of Acceptance of the System with Iteration Two Deliverables as detailed in Exhibit "B-1" and IV, E below and effective the day following the date when one year of Contractor's free technical support expires, City shall pay Contractor \$22,500.00 for one year's technical support as set out in Section 8 of Exhibit "A."
  6. Subject to the allocation of funds as detailed in Section IV(F) below and effective the day following the completion of one year of technical support as set out in (5) above,

City shall pay Contractor \$22,500.00 for the second year of paid technical support as set out in Section 8 of Exhibit "A."

7. Subject to the allocation of funds as detailed in Section IV(F) below and effective the day following the completion of one year of technical support as set out in (6) above, City shall pay Contractor \$22,500.00 for the third year of paid technical support as set out in Section 8 of Exhibit "A."

The City is paying Contractor the annual maintenance fee in advance at the beginning of each year to lock in the rate for that year. The City may audit all payments made to Contractor at a later date. Contractor shall refund any overpayments uncovered in the audit. If this Agreement is terminated before the end of a period for which payment has been made in advance, Contractor shall refund a percentage of the City's advance payment equal to the percentage of the prepaid period remaining after termination. This refund must be made within 30 days of the termination of this Agreement.

B. Taxes

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.

C. Method of Payment

City shall pay Contractor on the basis of invoices submitted to the Director for approval, showing the Deliverable and the number of hours of professional services provided. The City shall

make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, 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.

E. Acceptance of the System

Beginning promptly after completion of System installation, the City shall operate the System for a 30-day Trial Period, with Contractor providing Support Services as set out in Exhibit "A"(8).

If during the Trial Period, the tests the City conducts indicate that the System is not performing in accordance with Contractor's Documentation or the requirements of this Agreement, Contractor will have 30 days to correct the problem(s), at which time the City will have an additional 15 days to retest the corrections.

The City shall notify Contractor of any non-conformity between the System and the Documentation and provide documentation of the non-conformity to Contractor as soon as practicable after discovery.

The City shall accept the System when: (i) the System and related Documentation have been completely delivered and installed, and (ii) the System has, by the end of the 30-day Trial Period, successfully operated in accordance with Contractor's Documentation and the requirements of this Agreement. The City shall reject the System if at the end of the 30-day Trial Period (plus any time

the City provides to Contractor to correct defects), the System has not performed in accordance with Contractor's Documentation and Contractor is unable to correct the deficiency.

If the City rejects the System, it will be returned to Contractor at no cost to the City and the City will not pay for the use of the System or any other applicable goods or services under this Agreement. Contractor shall return to the City all sums paid to it under this Agreement within 30 days of rejection of the System. The City reserves all other available rights at law or in equity.

F. Limit of Appropriation

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

(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 the sum of \$ 1,235,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their 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:

(3) 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.

**"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"**

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.

\$ \_\_\_\_\_

(4) The Original Allocation plus all supplemental allocations are the Allocated 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.

G. Access to Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

## V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for three years

unless sooner terminated under this Agreement (the "Initial Term").

B. Renewals

Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director or the City chooses not to renew this Agreement, the Director shall notify Contractor of non-renewal at least 30 days before the expiration of the then-current term.

At the end of the second successive one-year term, if the Director extends this Agreement to permit Contractor to complete its performance, then, the Director may in his or her sole discretion extend the time so long as such extension does not exceed 90 days. The 90-day extension of time does not require an amendment of the Agreement and Contractor is not entitled to damages for delay(s) regardless of the cause of such delay(s).

C. Termination for Convenience by City

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.

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. Contractor shall refund prorata advance technical support and maintenance fees paid for the period remaining after the termination of this Agreement in the manner set out in Section IV, A(7) and C above.

TERMINATION OF THIS AGREEMENT IS CONTRACTOR'S ONLY REMEDY FOR

THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

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:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If 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, at no further obligation of the City.

## VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

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, strikes, 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 performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:

(a) uses due diligence to remove the effects of the Force Majeure as

quickly as possible and to continue performance notwithstanding the Force Majeure; and

(b) provides the other party with prompt written notice of the cause and its anticipated effect.

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.

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.

5. If the Force Majeure continues for more than 10 days from the date performance is affected, the Director may terminate this Agreement by giving 7 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.**

C. Severability

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.

D. Entire Agreement

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.

E. Written Amendment

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.

F. Applicable Laws

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.

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

G. Notices

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 I 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.

H. Captions

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.

I. Non-Waiver

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.

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.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) 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 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee 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.

L. Ambiguities

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.

M. Survival

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.

N. Publicity

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.

O. Parties In Interest

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

P. Successors and Assigns

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 the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Q. Business Structure and Assignments

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 §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.

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

R. Remedies Cumulative

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.

S. CONTRACTOR DEBT

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.

## EXHIBIT "A"

### SCOPE OF SERVICES

1. Contractor shall provide the City with an Automated Mobile Pavement Condition Rating and Manual Tagging System and Data Collection Vehicle with the technical specifications proposed by Contractor in response to City's RFP T22581 which are attached to and made a part of this Agreement as Exhibits "A-1" and "A-2."
2. Contractor warrants that it can provide the System with the specifications detailed in Exhibits "A" and "A-1," the Data Collection Vehicle and all the professional services set out in Exhibits "A", "B" and "B-1" of this Agreement for \$1,235,000 and three years of technical support and maintenance set out in Exhibit "A" for \$67,500.
3. Contractor warrants that the System it provides under this Agreement will meet the City's requirements for a System that is capable of:
  - a. electronically storing data generated and collected for a three-year period on pavement conditions for pavements located along 16,000 miles of City streets;
  - b. providing timely and consistent pavement condition ratings based on data collected to enable City to determine if asphalt overlay or patching is required to maintain the streets;
  - c. accessing data from a map-based data system and is equipped to generate reports by fields of data collected;
  - d. incorporating right-of-way video of City assets for which data is collected;

- e. being expanded to store additional data on pavement conditions in areas annexed by the City in the future;
- f. providing for the safe and efficient gathering of data on arterial, collector and local streets while traveling at reasonable speeds without disrupting traffic or endangering the field evaluator;
- g. providing an objective and repeatable method for assessing current pavement conditions;
- h. accurately assessing pavement conditions when such assessments are compared with visual assessments made by field personnel;
- i. accurate assessments of pavement conditions without being impacted by poor lighting conditions, extreme brightness, wet weather, wind, temperature, vehicle speed, vehicle suspension, pavement color or pavement texture;
- j. running on 12 volts of standard vehicle power supply or comes equipped with its own power supply;
- k. having its hardware withstand sustained vehicle vibrations, shock and environmental elements while traveling at speeds between 5 and 55 miles per hour;
- l. providing automated pavement condition assessments without requiring personnel to review raw data and manually assign ratings;
- m. using StarMap ID as the unique identifier for a street section or correlate the unique ID to a single StarMap ID;
- n. providing a single consolidated Pavement Condition Rating (PCR) score

- for each street section;
- o. providing pavement distress ratings for cracking, rutting and riding to justify the overall pavement condition assessment given to a street section;
  - p. incorporating a GPS component to integrate location with all other raw data collected;
  - q. storing one full day of local real-time data prior to transferring such data to a centralized data storage server;
  - r. capturing data at distance-based intervals to prevent the capture of repetitive data in slow traffic or when the vehicle is at a stop at a traffic light;
  - s. allowing user to start or stop the gathering of data so that data may be captured for targeted street sections rather than for all streets along which the vehicle is driven during the day;
  - t. allowing the user to configure the data collection process in order to manage the amount of data stored, by providing the user with the ability to set the interval at which data is to be collected and the quality of data to be gathered;
  - u. interfacing with a standard network interface via Ethernet or other similar high-speed technology for easy data transfer;
  - v. providing for the upload of field data to a centralized relational database;
  - w. being run solely on software developed by Contractor for the System, without requiring any integration with the legacy system currently in use;
  - x. being directly accessed by management and other authorized users;

- y. providing ten predefined and custom reports, including summary and detailed information by fields of data gathered;
- z. providing data in a format that is compatible for use in creating spreadsheets on common programs such as Excel;
- a-1 providing results to data queries in a format that may be printed on standard paper sizes, such as letter and legal, using portrait or landscape orientation;
- a-2 providing user with the ability to preview data results and reports prior to printing the same;
- a-3 using a geospatial framework with application and web interface for data management;
- a-4 allowing for the use of shape files, layers, and OGC-compliant data sources; with solution tools displaying multiple projections, independent of data source projection; and spatial data being viewed and accessed through the System ;
- a-5 allowing users to perform standard functions using its GIS visualization tool, such as panning or zooming the table of contents or making spatial inquiries;
- a-6 providing user-friendly search functions on its data management portal to access pavement assessment, manual asset tagging and supporting data by specific location and via spatial searches;
- a-7 being securely accessed via the City's intranet using Internet Explorer;
- a-8 allowing for the storage of external digital photos and documents which

can be attached to a specific street section;

- a-9 being used on the City's existing personal computers using Windows 2000 or a higher operating system;
- a-10 tagging various assets, including signs, signals, inlets, manholes and ditches, or is equipped to allow for the addition of such a capability in the future;
- a-11 being upgraded in the future with interoperable components and is currently equipped with state-of-the-art end-to-end system technology;
- a-12 being upgraded and added on to during the first five years after implementation, without making the System obsolete;
- a-13 being maintained with ease for another five years, without having to replace physical parts such as the Data Collection Vehicle and all supporting hardware and software;
- a-14 storing historical data collected by the System implemented under this Agreement over the next five years, which will then require City to transfer data saved on the System hard drives to offline media or to storage devices owned by the City; and
- a-15 being implemented in 90 days, with Contractor providing a performance bond or irrevocable letter of credit.

#### PROJECT MANAGEMENT

4. Contractor shall assign a Project Manger to work with the Director to implement the Project. Contractor's Project Manager shall be responsible for coordinating the training (described below) with the Director. Contractor's Project Manager shall also be the Director's contact person for troubleshooting and operational

matters after the City Accepts the System.

#### DATA COLLECTION VEHICLE

5. Contractor shall provide the City with a Data Collection Vehicle that:
  - a. is new, a Ford E350 Econoline Cargo Van or equivalent model, 2008 or later model year, and seats two people comfortably;
  - b. comes with a manufacturer's standard warranty of three years or 36,000 miles;
  - c. is easy to maintain with replacement parts that the manufacturer provides for a period of eight years from the time of purchase;
  - d. has a local service provider where the vehicle may be serviced;
  - e. includes a weather-proof hookup that can be plugged into an external power source to provide power while the vehicle is parked and the engine is off;
  - f. is equipped with the option to have all System hardware mounted externally on the vehicle and if City opts to do so, is weatherproof and is capable of withstanding rough street conditions;
  - g. is equipped with the option of having all hardware housed in the interior of the vehicle and is capable of withstanding rough street conditions;
  - h. is equipped to keep all hardware organized and secure within the vehicle;
  - i. is equipped with hardware that absorbs shocks, sustained vibrations and the elements while traveling at varying speeds of 5 and 55 miles per hour, temperatures ranging from 0 to 140 degrees Fahrenheit, RH: 5-95, shocks of 5G and vibrations of 10-500Hz, 1.0G (0 to peak); and
  - j. includes a source of power supply of 12V or more.

## IMPLEMENTATION PLAN

6. Contractor shall implement the Project in two iterations. Iteration One of the Project, consisting of the Deliverables listed in Exhibit "B" shall be implemented in 90 days from the initial Project kick-off meeting with the Director.  
90 days from the date of Acceptance of Iteration One of the System and in consultation with the Director, Contractor shall implement Iteration Two of the Project consisting of the Deliverables listed in Exhibit "B-1."

## TRAINING ITERATION ONE

7. In consultation with the Director, Contractor shall schedule hands-on training sessions in using the System as set out below:
  - a. three courses taught over a period of two days, with each day consisting of eight hour sessions;
  - b. one course for budget managers, one course for users of the truck and one course for end-users who use the System application in the office;
  - c. the courses will be scheduled in consultation with the Director at a City facility identified by the Director;
  - d. City will provide classrooms with computers for each participant, while Contractor shall provide adequate copies of training materials and shall equip its training consultant with the necessary equipment to enable the training consultant to demonstrate the training exercises during scheduled training sessions; and
  - e. Contractor shall submit all course materials for approval by the Director prior to its use in training sessions provided under this Agreement.

## TRAINING ITERATION TWO

In consultation with the Director, Contractor shall schedule hands-on training in using the advanced features added to the System in Iteration Two, as set out below:

- a. 50 hours of training for System Administrators;
- b. 20 hours of training for truck operators;
- c. 14 hours of training for budget managers; and
- d. 16 hours of training for office administration staff.
- e. Contractor shall submit all course materials for approval by the Director prior to its use in training sessions provided under this Agreement; and
- f. conduct such classes at a City facility identified by the Director.

#### TECHNICAL SUPPORT AND MAINTENANCE

8. Contractor shall provide the City with technical support and maintenance per year to maintain the System, which shall include access to Contractor's trained and experienced technical support staff via:

- i. Contractor's help-desk telephone number at (713)626-5242 to allow City System Administrators to call in with any functional and business logic errors they encounter while operating the System, Monday through Friday, 8:00 A.M. to 6:00 P.M., Central Standard Time, excluding Contractor's holidays. Contractor shall have City calls for System support answered directly by a member of Contractor's technical staff. In the event a staff member is not available immediately, City System Administrators shall leave a message, which shall be logged in by Contractor's help-desk and Contractor's staff shall respond to such a message within one hour.

(Contractor shall provide the Director with 30 days' prior written notice

- regarding a change in Contractor's number (713)626-5242);
- ii. Contractor's fax number at (713) 830-6565 to allow City System Administrators fax supporting data to Contractor's technical support staff regarding problems encountered on the System;
  - iii. Contractor's e-mail at [supportbyIdea@idea.com](mailto:supportbyIdea@idea.com), 24 hours a day, to enable City System Administrators to contact Contractor's technical support staff regarding problems encountered on the System; and
  - iv. Contractor's on-site technician, to be dispatched by Contractor in the event the Director determines that Contractor's technical support staff were unable to fix System errors or problems via remote access or by providing advice or instructions to City System Administrators via phone, fax or e-mail.

#### SEVERITY LEVELS AND RESPONSE TIMES

- iv. In the table below (see next page), City and Contractor have assigned the following Severity Levels to System Software and System problems, the error corrections to be provided by Contractor, and the response times within which Contractor shall respond with such error corrections.
- v. The Severity Levels apply to System Software errors, hardware errors and System functional and business logic errors, all referred to as "System error" or "System errors."
- vi. Contractor shall investigate and correct System errors reported by City System Administrators either by phone, e-mail or by coming on-site to correct such errors.
- vii. When reporting a problem, City System Administrators shall assign a

Severity Level to each error reported, either verbally while calling an error over the phone, or in writing, as applicable.

#### ESCALATION PROCEDURES

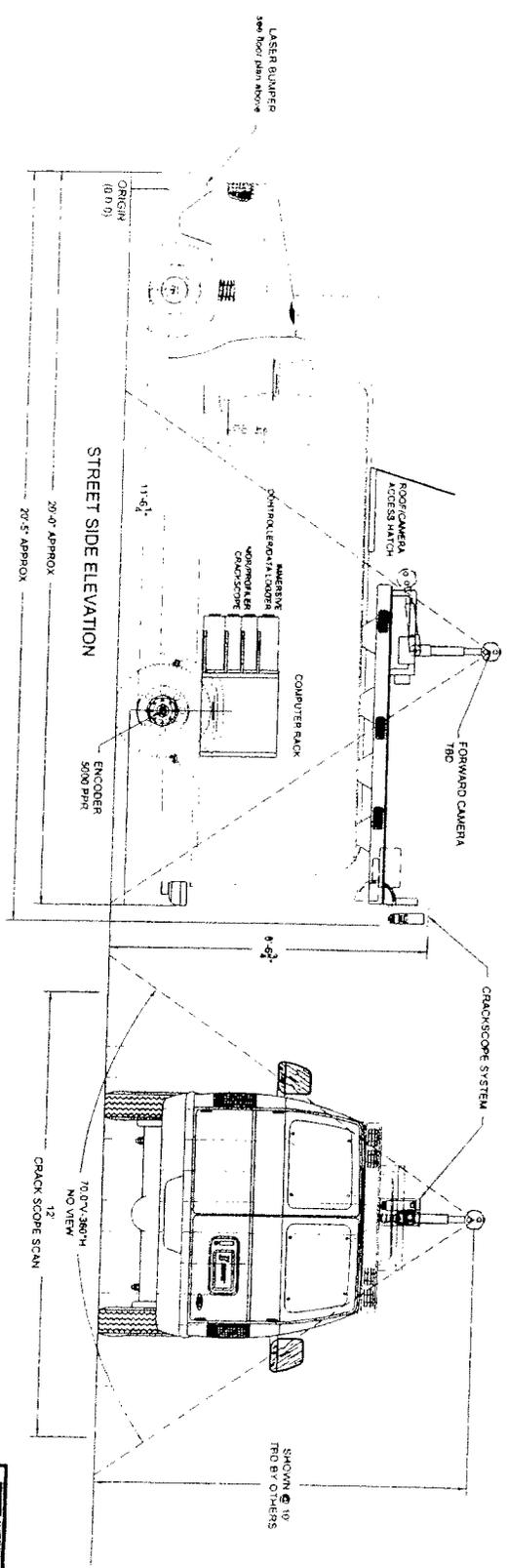
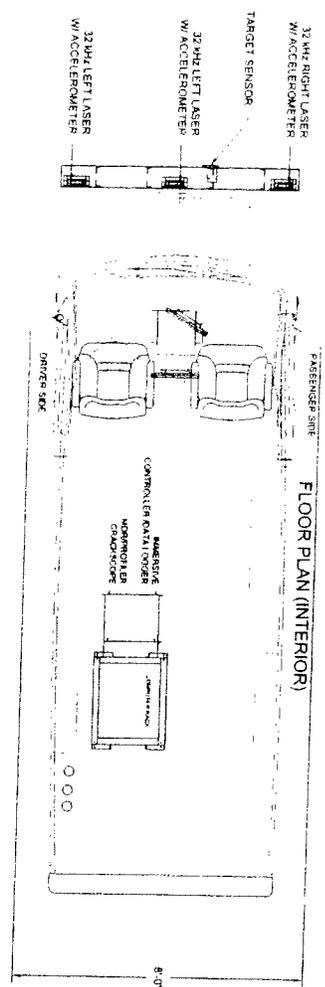
- viii. In the event the technical support staff member assigned by Contractor to handle a Severity Level One or Two error notified by a City System Administrator does not agree with the Severity level assigned or is unable to resolve the error in the response time detailed in the table for Level One or Level Two errors, then Contractor's technical support staff member responding to such calls shall escalate the error to a Developer for resolution. In the event no resolution can be found by the Developer assigned to the call, then the Developer shall bring the error to the attention of the Project Manager. Contractor's Project Manager shall contact the Director, and resolve the problem as mutually agreed to by the parties.
- ix. Contractor shall provide one year of free technical support and maintenance for the System beginning the day after the System with Iteration Two features is Accepted by the City as set out in Section IV (E) of this Agreement.
- x. Contractor shall provide 150 hours of free technical support and maintenance for the System during year two, effective the day after Contractor's one-year of free technical support and maintenance (as set out in Section ix above) for the System expires. Once the City has used up 150 hours of free technical support, Contractor shall provide technical support and maintenance for the annual maintenance fee set out in Section

IV, A(5) above. In years two and three of paid technical support, Contractor shall provide the City with 150 hours of free technical support each year, and upon expiry of 150 hours of free technical support, Contractor shall provide technical support and maintenance for the annual maintenance fee set out in Sections IVA(6) and (7) above.

SEVERITY LEVELS	DEFINITION OF ERROR	TYPE OF ERROR CORRECTION TO BE PROVIDED	RESPONSE HANDLED BY	RESPONSE TIME	ERROR CORRECTION SHALL BE PROVIDED WITHIN TIME GIVEN BELOW
<b>Level One</b>	Affects a single end-user, but system is operational	Configuration change for the end-user affected	Help desk	2 Hours	Error correction, i.e., configuration change for the affected end-user shall be provided within 2 hours
<b>Level Two</b>	Affects multiple end-users, but system is operational	Configuration change for affected end-users	Help Desk	2 hours	Error correction, i.e., configuration change for the affected end-users shall be provided within 2 hours
<b>Level Three</b>	Affects the system's ability to function as intended for most, if not all end-users	Software Patch	Developer	12 Hours	Error correction, i.e., software patch shall be provided within time mutually agreed to by the Director and Contractor's Project Manager.

**EXHIBIT "A-1"**

**DIAGRAM OF SYSTEM DESIGN AND ARCHITECTURE**



**CUSTOMER APPROVAL**

NAME (PRINTED) \_\_\_\_\_

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

**ICC APPROVAL**

NAME (PRINTED) \_\_\_\_\_

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

VEHICLE:	E350 CLUB WAGON, EXTENDED
ENGINE:	
COLOR:	
OPTIONS:	

DATE:	03/18/08	INTERNATIONAL CYBERNETICS CORPORATION LARGO, FLORIDA 33777 www.internationalcybernetics.com
CUSTOMER:	CITY OF HOUSTON	
ICC JOB NO:	NA	
PROJECT:		
SERIAL NUMBER:	TBD	
TITLE:	CONCEPTUAL EQUIPMENT LAYOUT	
PN:	36-00017-01	
DRAWING:	E100171B	

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NOTES:  
1 ALL DIMENSION ARE IN FEET/INCHES

**EXHIBIT "A-2"**

**TECHNICAL SPECIFICATIONS OF SYSTEM EQUIPMENT**

## PROPOSED EQUIPMENT

*6.1 Provide complete Data Collection Vehicle for the Assessment of Pavement description, design, functions and technical specifications of Data Collection Vehicle for the Assessment of Pavement that are being proposed for usage.*

Four major equipment systems are proposed to supply The City with a complete pavement rating and asset tagging system solution. Immersive Media will supply video, ICC will supply pavement condition rating hardware (rutting, cracking) and Idea Integration will supply the integration software. Hardware descriptions for Immersive Media, and ICC are given below. Idea Integration's integrated solution overview is elaborated in other sections.



Immersive Media Corp. (IMC) is an advanced digital video imaging company founded in 1994. In 1995, IMC introduced the Dodeca 2360 System® System which produced the very first immersive video. IMC subsequently developed a wide range of proprietary yet standardized tools and techniques for this new medium, focusing on the best image quality

possible, scalability and compatibility with professional video production standards. The result is the unique Immersive video, which stands alone in the industry. This technology changes your perspective and allows you to capture it all.

Using eleven video streams arranged according to geodesic geometry, Immersive video captures an almost complete spherical image; a high-resolution 360 degree view of surroundings that is seamlessly stitched together. IMC's immersive movies can integrate GIS coordinates and other metadata producing our GeoImmersive™ video. IMC's open platform design easily interfaces with industry standard databases providing viewers with greater visual detail for timely, fact-based decision-making.

IMC's offerings include hardware, software, camera and post-production services, and immersive imagery available for licensing. Applications include: urban planning, oil and gas resource management, emergency response and first responder operations, and commercial media.

IMC's patented system provides unprecedented image capture, display and distribution. This method has several advantages over other forms of video capture as Dodeca 2360 System is the most efficient way to subdivide the complete spherical view of an environment for recording and transmission. Its superior performance is due to proprietary and custom components developed by IMC.

David McCutchen, company founder and Dodeca 2360 System inventor, combined his considerable design and engineering skills with his training as an artist to create the technology, and a powerful new mode of visual communication. McCutchen is an accomplished independent film producer and has dedicated the last sixteen years of his career solely to expanding the successful commercial applications of this breakthrough visual medium. Immersive Media Company, in Portland, Oregon, is a wholly-owned subsidiary of Immersive Media Corp. which is headquartered in Calgary, Alberta. Immersive Media Corp. is a publicly traded company on the TSX Venture Exchange. The stock symbol is IMC.

### **Dodeca® 2360 System & Immersive Video**

Immersive Media (IMC) proposes the use of the Dodeca 2360 System, comprised of the Dodeca 2360 Camera Head and Base Unit, to provide a complete 360-degree perspective of the scene. The Dodeca 2360 System generates synchronized high resolution video streams representing a full-motion spherical world, complete with directional sound. IMC's Dodeca 2360 System records at 100 million pixels per second and streams data at 30 frames per second. We have developed a fundamental shift in the use of technology creating a new visual medium - Immersive



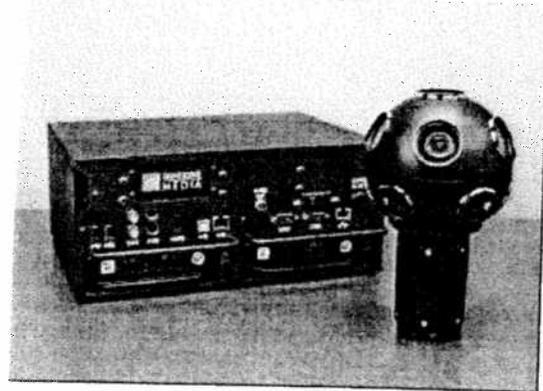
Video - for changing the way you view the world. IMC's immersive movies can also integrate GIS coordinates and other metadata producing our GeoImmersive™ video.

### ***Benefits of Immersive Video Capture***

- Captures 360 degree georeferenced terrestrial, airborne and interior imagery; omnidirectional, synchronized, high resolution video
- Streamlines spatial data-collection process
- 

Introduces a new standard for mapping imagery via web deployment

- Provides easy desktop access and web deployment
- Improves data sharing, analysis, organization and communication
- Allows for more accurate mobilization efforts
- Increases response/execution efficiency
- Facilitates decision-making by providing data-rich information
- Eliminates the "frame" and blind spots
- Allows you to shoot first, edit later
- Portable unified camera system
- Enables greater creativity
- Reduces project costs and timelines while increasing revenues



### **Dodeca 2360 System Specifications**

#### **Camera Head:**

- Eleven Sony 1/3" sensors in modular dodecahedral array.
- Common timing and control, with custom image enhancement.
- Field of view of full array: 360° horizontal, 290° vertical (91.7% of sphere) Max. 96%.
- Alignment accuracy of framework for modules: +/- 10 arc minutes (1 pixel).
- Each lens accepts standard 30.5mm filters and lens hoods.
- Horizontal Resolution per channel: More than 450 TV lines.
- Active picture elements per channel: 659 (H) x 494 (V) square pixels.
- Electronic Shutter: From 1/30 sec. to 1/30,000 sec.
- Automatic frame integration for low light modes.
- Transmission of camera data on gigabit Ethernet PHY, on Cat 5e cable (up to 400') or optional single-mode fiber (over 1 mile).

#### **Base Unit:**

- 11.25"L x 12.5"W x 5.75"H weighs about 20 lbs. with batteries.
- Unified camera control through external Control Pad.
- Proprietary unified processor handles up to twelve channels at once.



- All channels are compressed, recorded and played back in a synchronized, unified form.
- Image files can incorporate GPS or other metadata from any external devices through up to two serial ports.
- Custom multi-channel MJPEG compression of 4:2:2 digital video streams.
- Composite, S-Video and Serial SDI outputs of selected monitor view.
- Power 12V, 75 Watts.

### Data Collection Process

In order to capture integrated spherical video with accurate georeferenced data of urban streets, the camera is mounted on a vehicle fitted with a high-performance navigation system. This system utilizes GPS, inertial, and mechanical sensors to provide accurate spatial coordinates even in urban canyons and other challenging GPS conditions.

The Immersive camera is mounted on top of a vehicle with the base unit located within. Each core street is efficiently captured by driving each route with the normal flow of traffic and allowing the camera to record the spherical view. At thirty frames per second, the collect provides large amounts of georeferenced spherical visual data with precise GPS coordinates (for example, the Immersive camera records a 2.9 megapixel image every 1.5 feet at 30 miles per hour). The Dodeca 2360 has automatic exposure adjustment to adapt to all kinds of lighting conditions, including night scenes.



The Dodeca 2360 Camera records a unified, continuous image of the surrounding scene. A unified single camera ball generates images with an overall resolution of 2400x1200 pixels at 30 frames per second. The overall horizontal field of view is 360 degrees and the vertical field of view is 300 degrees. Metadata, including GPS coordinates, is directly integrated into the recording for later use, including non-destructive display and automatic integration into mapping environments.

The geometry and design of the Dodeca 2360 camera limits the effects of direct sunlight. Each of the eleven facets of the overall image is optically isolated from the others, so that direct sun in one view does not affect the clarity or exposure to all of the nearby views. The exposure for the entire camera ball automatically adapts to changes lighting conditions, such as going from shadow to sun. The system also allows for complete manual control of all parameters, including an exclusive mode where the automatic setting is limited to allow for intentional over or underexposure of a direction of interest.

Because the recording is done continuously and in every direction as the camera car goes down the street, every object in view is seen from many different perspectives. This enables the viewer to look around obstructing objects, or catching the viewpoint from another angle after an obstruction has moved away. Repeated imaging such as this also simplifies the removal of moving objects, which do not follow the same optical flow as static ones.

The camera is arranged as a locked set of optical and electronic elements which essentially define a single point of view that radiates out in all directions. The geometry of the camera does not change, no matter how much it is used for shooting. Each view's orientation relative to the others is fixed, and the mounting of the camera is repeatable. This defines a known immersive world image that allows measurement and identification of objects not only according to where they appear in the image (in terms of azimuth and elevation) but also where they appear on the Earth (in terms of latitude, longitude and altitude). The world image is repeatedly recorded as spherical frames 30 times a second. This enable objects to be seen and measured from several points of view as the camera moves down the street.



The immersive data stream contains detailed time stamped information, which is kept as metadata so it does not change the recorded image.



The International Cybernetics Corp. (ICC) MDR systems allow the use of a GPS subsystem to collect location referencing data. The subsystem may be used with a notebook computer or it can be directly integrated with the MDR computer and be referenced to other data or images collected by the MDR system. The GPS subsystem consists of an embedded GPS receiver, roof antenna, software for integrating it with the other data acquisition systems and a timing pulse to sync time to the MDR. GPS data is collected concurrently with the linear distance measurement Instrumentation (DMI). GPS data is recorded to show the position of each image and profile point. The GPS data provides information on Latitude, Longitude, Direction, Speed, Time, Quality, Height and Height Units. A higher accuracy differential GPS option is also available to improve the real time position accuracy to sub-meter. This option allows processing differential to sub meter values when the proper RTCM or correction data is present.

The GPS subsystem provides georeferencing for data records and video images at reference mileage intervals down to 1 m and less. ICC uses a 12-channel, Trimble differential GPS receiver with Choice technology. This technology combines a GPS receiver and a satellite differential receiver in the same housing. The Trimble differential GPS receiver utilizes free beacon differential signals. These receivers use a combined antenna with a single antenna cable. This configuration greatly improves the accuracy, reliability and availability of differential GPS corrections. The source and status of DGPS corrections can easily be determined for either of the two built-in beacon differential correction receivers or from an external differential correction source.

The medium frequency (MF) beacon receiver uses the broadcasts from government-established navigation beacon reference stations around the world. The L-band satellite differential correction receiver requires a subscription to a differential correction service and provides multiple vendor support. A built-in virtual reference station (VRS) permits the satellite corrections to be uniformly accurate over the entire satellite coverage area, without the degradation in accuracy associated with increasing distance from fixed reference stations. The MF beacon differential correction receiver built into the GPS system is a dual-channel, all-digital low noise design allowing it to receiver corrections at distances of hundreds of miles from the reference stations.



EXHIBIT "B"

ITERATION ONE SYSTEM DELIVERABLES AND PRICING

<u>DELIVERABLE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
1. <u>3 LASER PROFILER</u>	<ul style="list-style-type: none"><li>• 3 - 32 KHz Lasers</li><li>• 2 - 5 G Accelerometers</li><li>• Profiler conforms to ASTM E950 Class 1 requirements Industrial hardened 19 inch rack mount PC with a 4, 2.4 GHz processor, 200 GB hard drive, DVD/CDR-W Combo Drive, USB Thumb Drive</li><li>• Active Matrix Flat Panel Display (17" viewable)</li><li>• Printer</li><li>• Event marker board</li><li>• Distance Measuring System (DMI)</li><li>• Targeting sensor (photo triggering device)</li><li>• ICC's proprietary Windows XP data collection software with 1 year of support</li><li>• ICC's WinRP reporting software with 1 year of support</li><li>• 1 year warranty on parts and labor</li></ul>	<u>\$100,000.00</u>
2. <u>2K LINESCAN IMAGING SYSTEM - Crackscope (2048 x N Pixel resolution with approximately 4 meter coverage)</u>	<ul style="list-style-type: none"><li>• 1 - 2 K monochrome linescan camera utilizing real-time capture And compression</li><li>• Continuous pavement coverage of Images speeds from 5 to 60 MPH</li><li>• Rugged, industrial capture PC Unit utilizing a Multi Core Processor with a 4 GIG RAM, 200 GB hard disk, additional removable Storage drive and a DVD-ROM reader/writer</li><li>• High-speed digital imaging capture software; Crackscope</li><li>• Monochrome images are compressed by The JPEG algorithm and stored on a Removable drive of required size. Selectable quality verses storage control.</li><li>• Interface control board, cabling and software For MDR control system</li><li>• Laser Illumination system with power Generator.</li></ul>	<u>\$152,000.00</u>

DELIVERABLE

AMOUNT

**3. DIGITAL IMAGING WORKSTATION**

\$ 48,000.00

**A. SYSTEM FEATURES**

DESCRIPTION

- Includes Automated and Semi-Automated distress calculations
- Distress measurement on digital images
- View, Export or Print all Distress Data
- User Definable Distress Manager
- Customizable menus, toolbars and grids
- Network compatible
- Camera Image Synchronization
- User Administration
- Database Management Tools
- Digital Image Format
- Display of sensor data including roughness, Rutting, faulting, texture and more
- Display of location data including distance, offset, reference post, latitude, longitude and more

**B. HARDWARE SPECIFICATIONS**

- Intel Multi Core Processor
- Matrox G400 Video Card (Compatible with up to 4 monitors)
- (4) Removable Hard Drives
- (4) GIG RAM
- 2 - DVD-RW
- USB Thumb Drive
- CDRW
- Network Interface
- (2) Ultra 133 Promise Card
- 300 Gigabyte Internal Drive
- (4) 21" Flat Panel Display

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DELIVERABLE

AMOUNT

**4. DGPS SUBSYSTEM  
CONSISTING OF:**

\$ 12,500.00

DESCRIPTION

- An imbedded GPS Receiver
- A Roof Antenna
- Software for using GPS data & Integrating with other data acquisition Systems
- GPS receiver with timing pulse to sync time To MDR
- GPS data collection capability, both realtime linear distance measurement instrumentation and optionally an Electronic compass
- GPS receiver capable of use in different mode to improve accuracy of collected date to submeter
- Carrier phase data collection option to use 12 Channel GPS receiver to allow data to be collected from 12 satellites

DELIVERABLE (CONTINUED)

4. DGPS SUBSYSTEM  
CONSISTING OF:

DESCRIPTION

- position data accurate to within 1 meter 80% of the time when 12 channel base data station data is collected simultaneously
- location accuracy shall be improved to under 1 meter through phase carrier differential processed GPS
- Subsystem shall provide geo-referencing for data records and video images at distance intervals down to 1 meter

DELIVERABLE

AMOUNT

5. DATA COLLECTION VEHICLE

\$32,000.00 TO \$41,000.00

DESCRIPTION

- Price depends on options Selected by Director

DELIVERABLE

AMOUNT

6. INSTALLATION AND TRAINING AT CITY FACILITIES IN HOUSTON, TEXAS

\$13,988.00

DELIVERABLE

AMOUNT

7. IMMERSIVE MEDIA

\$145,240.00

DESCRIPTION

- |   |              |
|---|--------------|
| • Deodeca-2360 Camera System            | \$102,000.00 |
| • Live viewing                          |              |
| • IMS Riser and Vehicle Mount           | \$ 3,000.00  |
| • Camera Case                           | \$ 650.00    |
| • Hard Drives (6) (320 GB) with Carrier | \$ 3,500.00  |
| • ArcGIS Extension                      | \$ 1,900.00  |
| • Monitor                               | \$ 690.00    |
| • Annual Support and Maintenance        | \$ 15,000.00 |
| • Installation and Training             | \$ 18,500.00 |

**DELIVERABLE**

**AMOUNT**

**8. PROFESSIONAL SERVICES**

**\$220,920.00**

**DESCRIPTION**

- Detailed System Design Documentation with Diagrams
- Application Development and System Integration of Software Modules
- Installation of Initial Data Collection Vehicle Equipment
- System Test Plan
- Training Documentation
- Application Build & Design Final Document
- System Production Plan Rollout
- System Testing & Corrections

**EXHIBIT "B-1"**

**ITERATION TWO SYSTEM DELIVERABLES AND PRICING**

<b>DELIVERABLE</b>	<b>DESCRIPTION OF PROFESSIONAL SERVICES</b>	<b>AMOUNT</b>
1. <b>DASHBOARD</b>	1,300 hours to provide synchronization between video, GIS and pavement photographs Robust integration of pavement condition data capture, Road rutting data capture, GPS data capture & video data capture in the web-based application with a map.	\$201,352
2. <b>FULL GIS POST PROCESSING</b>	437 hours to link data to StarMap base layers for context and map features during search	\$60,000
3. <b>FULL INTEGRATION OF GIS CAPABILITIES</b>	562 hours to provide ESRI Geodatabase or flat shapefiles to store GIS data; data to be converted to an appropriate projection for display in order to increase rendering performance; ESRI ArcObjects & Geoprocessing tasks to be utilized to convert, transmit and tie GIS data together in-vehicle and in-office systems ArcEngine to be used to display map content; in-vehicle system to display vehicle location on map in real time.	\$75,000
4. <b>VIDEO INTEGRATION/ SYNC WITH GEOSPATIAL REFERENCE</b>	315 hours to integrate in-office system to allow end-user to click on the map and navigate to the related location on the video and pavement photo location; metadata to be shown based on photo location.	\$40,000
5. <b>ADVANCED SEARCH FEATURE</b>	437 to create advanced search feature to allow end-users to search by StarMap ID, street address, ZIP code, and by date of condition of pavement data was captured.	\$55,000
6. <b>REPORTING</b>	315 hours to create annual reports, ad hoc reports, management reports, StarMap segment detail	\$40,000

reports, using parameters specified by end-users such as date ranges, eg., 5-10 in quantity.

- 7. **ANNUAL ASSET INVENTORY** 250 hours to allow end-users to look at images captured and then manually assign asset labels to database. **\$30,000**

## EXHIBIT "C"

### MWBE SUBCONTRACT TERMS

Contractor shall insure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. \_\_\_\_\_ (MWBE 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 Affirmative Action Director ("the Director").
2. \_\_\_\_\_ (MWBE 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 inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
3. Within five business days of execution of this subcontract, Engineer (prime engineer) 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.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:
  - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
  - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
  - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
  - d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
  - e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

**EXHIBIT "D"**  
**EQUAL EMPLOYMENT OPPORTUNITY**

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT "E"**  
**DRUG POLICY COMPLIANCE AGREEMENT**

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

\_\_\_\_\_ (Contractor)  
\_\_\_\_\_ (Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the 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 the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the 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 the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the 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 the City and may result in non-award or termination of the contract by the City of Houston.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "F"**  
**DRUG POLICY COMPLIANCE DECLARATION**

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

\_\_\_\_\_ (Contractor)  
\_\_\_\_\_ (Name of Company)

have personal knowledge and full 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 the City of Houston contract. The number of employees in safety impact positions during this reporting period is \_\_\_\_\_.

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

	Random	Reasonable <u>Suspicion</u>	Post <u>Accident</u>	<u>Total</u>
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)

EXHIBIT "G"

CONTRACTOR'S CERTIFICATION  
OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT

\_\_\_\_\_, \_\_\_\_\_  
(Name) (Title)

as an owner or officer of \_\_\_\_\_  
\_\_\_\_\_ (Contractor)

(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing \_\_\_\_\_

(Project)

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)