



CITY OF HOUSTON
FINANCE DEPARTMENT
Strategic Procurement Division

Annise D. Parker

Mayor

Lourdes Coss
Chief Procurement Officer
P.O. Box 1562
Houston, Texas 77251-1562

F. 832.393.8755
<https://purchasing.houstontx.gov>

September 30, 2014

Craig Duncan
Selex ES, Inc.
205H Creek Ridge Road
Greensboro, NC 27406

Subject: Notice to Proceed

Re: 1) Contract No. 4600012916 for Automate License Plate Recognition Solution for the Houston Police Department (HPD).
2) Bid No. S33-T24598

Dear Mr. Duncan:

This will serve as your Notice-to-Proceed on Contract No. 4600012916 passed by the Houston City Council on September 24, 2014 Ordinance Number 2014-0874. The Contractor shall begin work on this contract at 12:01 a.m. on October 1, 2014 and shall continue to provide the services specified therein until expiration of the initial contract term on September 30, 2017.

This contract was awarded for an amount not to exceed \$514,221.25.

Attached is your copy of the signed contract. You will find therein the contract and ordinance numbers. The contract (4600012916) and ordinance (2014-0874) numbers must be used on all invoices and correspondence relating to this contract or work accomplished under this contract.

If you have any questions regarding this contract, please contact Conley Jackson at 832-393-8733.

Sincerely,

Calvin D. Wells, Deputy Director
City Purchasing Agent

Attachment: Contract Number 4600012916

cc: Pat Cheesman, HPD

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

4600012916
2014-0874

This **AGREEMENT FOR AUTOMATIC LICENSE PLATE RECOGNITION SOLUTION** is made and entered into on the date it is countersigned by the City Controller, by and between the **CITY OF HOUSTON, TEXAS** (“City” or “Customer”), a home-rule municipality of the State of Texas, and **SELEX ES INC.** (“SELEX” or “Contractor”) [as successor in interest of ELSAG NORTH AMERICA LLC], a Delaware corporation with its principal place of business at 205H Creek Ridge Road, Greensboro, North Carolina, 27406, and doing business in Texas.

The Parties agree as follows:

I. PARTIES

A. Addresses

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

<u>City</u>	<u>Contractor</u>
Chief of Police Houston Police Department 1200 Travis Street Houston, TX 77002	SELEX ES INC. 205H Creek Ridge Road Greensboro, NC 27406

B. Table of Contents

This Agreement consists of the following sections:

[Remainder of page intentionally left blank.]

TABLE OF CONTENTS

	Page
I. PARTIES.....	1
A. Addresses	1
B. Table of Contents	1
C. Parts Incorporated.....	4
D. Controlling Parts.....	4
E. Signatures	4
II. DEFINITIONS	6
III. DUTIES OF CONTRACTOR.....	7
A. Scope of Services	7
B. License Grant	8
C. Coordinate Performance.....	9
D. Reports	9
E. Schedule of Performance.....	9
F. Time Extensions	9
G. Prompt Payment of Subcontractors.....	9
H. Personnel of Contractor	9
I. RELEASE.....	10
J. INDEMNIFICATION	10
K. Insurance	12
L. Warranties.....	16
M. Liability for Loss or Corruption of Data	17
N. Use and Ownership of Documents and Work Products.....	17
O. Source Code for Software	18
P. Acceptance and Rejection	19
Q. Licenses and Permits	20
R. Compliance with Laws	20
S. Compliance with Equal Opportunity Ordinance.....	20
T. MWBE Compliance.....	20
U. Spare Parts	21
V. Drug Abuse Detection and Deterrence	21
W. Contractor's Performance	22
X. Pay or Play.....	22
IV. DUTIES OF CITY.....	22
A. Payment Terms	22
B. Taxes.....	23
C. Method of Payment.....	23
D. Method of Payment - Disputed Payments	23
E. Limit of Appropriation.....	23
F. Changes.....	24
G. Access to Site	25
H. Access to Data.....	26
V. TERM AND TERMINATION	26

A.	Contract Term.....	26
B.	Renewals	26
C.	Termination for Convenience by City.....	26
D.	Termination for Cause	27
VI.	MISCELLANEOUS.....	28
A.	Independent Contractor.....	28
B.	Force Majeure	28
C.	Severability	29
D.	Entire Agreement.....	29
E.	Written Amendment.....	29
F.	Applicable Laws	29
G.	Notices	29
H.	Captions	30
I.	Non-Waiver	30
J.	Inspections and Audits	30
K.	Enforcement	30
L.	Ambiguities.....	30
M.	Survival.....	30
N.	Publicity	31
O.	Risk of Loss.....	31
P.	Parties In Interest	31
Q.	Successors and Assigns.....	31
R.	Business Structure and Assignments	31
S.	Remedies Cumulative	31
T.	Confidentiality.....	31

EXHIBITS

EXHIBIT "A"	SCOPE OF SERVICES
EXHIBIT "B"	EQUAL EMPLOYMENT OPPORTUNITY
EXHIBIT "C"	DRUG POLICY COMPLIANCE AGREEMENT
EXHIBIT "D"	DRUG POLICY COMPLIANCE DECLARATION
EXHIBIT "E"	CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS

[Remainder of page intentionally left blank.]

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.

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

By: [Signature]
Name: *ELLIE CRUMP*
Title: *EXECUTIVE ASSISTANT*

SELEX ES INC.

By: [Signature]
Name: Willem Nieuwkerk
Title: President and Chief Operating Officer
Federal Tax ID Number: 98-0353098

ATTEST/SEAL

[Signature]
City Secretary

APPROVED:

[Signature]
City Purchasing Agent

APPROVED:

[Signature]
Chief, Houston Police Department

CITY OF HOUSTON, TEXAS

Signed by:
[Signature]
Mayor [Signature]

COUNTERSIGNED BY:

[Signature]
City Controller [Signature]

DATE COUNTERSIGNED:

9-30-14

APPROVED AS TO FORM:



Senior Assistant City Attorney
L.D. File No. 0621400216001

[Remainder of page intentionally left blank.]

II. DEFINITIONS

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

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

“ALPR” means Automatic License Plate Recognition.

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

“City Documents” means all Documents of City that Contractor receives or obtains from City, or to which Contractor is allowed or authorized access by City, under, pursuant to, or in connection with this Agreement. “City Documents” includes all City data or information of any kind or description stored, residing, retained, or maintained in the Software (but does not mean or include the Software).

“City Personnel” means all employees, but not elected officials.

“Contractor” is defined in the preamble of this Agreement and includes its agents, employees, contractors, subcontractors, successors, and assigns.

“Contractor Documents” means all Documents of Contractor that City receives or obtains from Contractor, or to which City is allowed or authorized access by Contractor, under, pursuant to, or in connection with this Agreement.

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

“Deliverables” mean the ALPR System, Equipment, Software, Professional Services, and Training Services (as each is defined in Section III.A and further set forth in Exhibit A) that Contractor provides to City under, pursuant to, or in connection with this Agreement.

“Director” means the Chief of Police of the City of Houston Police Department (or the person he or she designates).

“Documents” means the original and any non-identical copy of all written, typed, or printed matter, or electronically stored information, of any kind or description. The word “documents” includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations,

notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).

“Final Acceptance” means acceptance by the Director of all Deliverables (as set forth in Section III.O) that Contractor provides to City under this Agreement.

“HPD” means the Houston Police Department.

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

“Notice to Proceed” means a written communication from the Director that authorizes Contractor to begin performance under this Agreement.

“Object Code” means the programming code for a computer software program, in a form not readily readable or perceivable by humans, that is suitable for execution by a computer without the intervening steps of interpretation or compilation.

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

“Proprietary Rights” mean any copyrights, trademarks, trade secrets, patents, and any other intellectual or proprietary rights.

“RFP” means City’s Notice of Request for Proposal (RFP) Solicitation No. S33-T24598 dated June 7, 2013 (including all Letters of Clarification issued for the RFP).

“Source Code” means the programming code for a computer software program, in a human-readable form, that is not suitable for execution by a computer without the intervening steps of interpretation or compilation.

“Work Products” mean all Documents that Contractor prepares, creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. “Work Products” does not mean or include the Software subject to the Licenses granted by Contractor to City under this Agreement or the Source Code or Object for the Software.

III. DUTIES OF CONTRACTOR

A. Scope of Services

This Agreement is executed in connection with City’s purchase of products and services from Contractor relating to and necessary for installation, implementation, configuration, and

deployment of a complete and fully functional ALPR solution and system for continuous scanning and interpretation of license plates as specified in this Agreement (“ALPR System” or “ALPR Solution”).

In consideration of the payments specified in this Agreement, Contractor shall provide the following products and services to City:

1. All equipment, hardware, and other material specified in Exhibit “A-2” necessary for operation of the ALPR System in compliance with this Agreement (“Equipment”).

2. Perpetual software licenses as further specified in Section III.B (“Licenses”) for the ELSAG Operation Center software specified in Exhibit “A-2” and all other software necessary for operation of the ALPR System in compliance with this Agreement (“Software”).

3. All labor, material, and supervision necessary to perform the following services relating to and/or necessary for operation of the ALPR System in compliance with this Agreement (collectively, “Services”):

a. Professional services described in Exhibit “A-1” relating to installation, implementation, configuration, and deployment of the ALPR System, Equipment, and Software (“Professional Services”).

b. Training services described in Exhibit “A-1” relating to the Professional Services, ALPR System, Equipment, and Software (“Training Services”).

c. Maintenance and support warranty services described in Exhibit “A-3” relating to the Equipment, Software, and Licenses (“Warranty Services”) for an initial term of 3 years beginning on the Final Acceptance (“Initial Warranty Term”).

4. If the Director, at his or her sole discretion, makes a written request for additional Equipment, Professional Services, and Warranty Services as specified in Exhibit “A-2.1” (“Additional Services/Equipment”) on or before 2 years from the Effective Date, then Contractor shall provide such Additional Services/Equipment to City.

B. Software License Grant

Contractor grants to City a perpetual, irrevocable, non-exclusive, non-transferable, non-assignable, non-sub-licensable license to use the Software in connection with the ALPR System and Equipment and for other internal business purposes and activities, including, but not limited to, use in and for backup, disaster recovery, testing environments, and extracting, accessing, using, revealing, or otherwise obtaining City’s data and/or confidential information for City’s internal purposes. City shall not reverse engineer, decompile or disassemble the Software or alter, modify or create derivative works of the Software, except as otherwise expressly stated in the Escrow Agreement (as defined and provided for in Section III.O of this Agreement). Contractor shall retain title and exclusive ownership of any and all copies of the Software licensed hereby. City acknowledges, agrees and warrants that City shall protect the Software

from unauthorized use, reproduction, distribution, or publication by City or City Personnel. Contractor acknowledges and agrees that, notwithstanding anything else whatsoever to the contrary (including, but not limited, anything in any Exhibit) it shall not be necessary for City to agree to, sign, or execute any other license agreement relating to the Software and that no other license agreement, terms, or conditions shall any force, effect, or application.

C. 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.

D. Reports

Contractor shall submit all reports and progress updates required by the Director.

E. Schedule of Performance

The Director shall provide Contractor a written Notice to Proceed specifying a date to begin performance (“Start Date”).

Contractor shall begin its performance of the Professional Services as set forth in Exhibit “A-1” no later than the Start Date. Contractor shall complete its performance of the Professional and Training Services within 180 days from the Start Date unless the Director extends the time for completion in writing. Contractor acknowledges that time is of the essence.

F. Time Extensions

If Contractor requests an extension of time to complete its performance of the Professional and Training Services, then the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. 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).

G. Prompt 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.**

H. Personnel of Contractor

Contractor shall replace any of its personnel or subcontractors whose performance, work, or work product is deemed unsatisfactory by the Director.

I. 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.

J. INDEMNIFICATION

1. GENERAL / NEGLIGENCE

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:

- a. CONTRACTOR 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;
- b. THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- c. 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 \$1,000,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

2. PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL RELEASE AND 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 BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS 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.

IF ANY INJUNCTION OR OTHER RULING IS ISSUED PROHIBITING, PREVENTING, OR OTHERWISE LIMITING THE CITY'S USE OF THE EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS, CONTRACTOR SHALL IMMEDIATELY, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

3. 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.

4. INDEMNIFICATION PROCEDURES

a. **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 30 days. The notice must include the following:

- i. a description of the indemnification event in reasonable detail,
- ii. the basis on which indemnification may be due, and

- iii. 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 30 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.

b. Defense of Claims.

i. **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.

ii. **Continued Participation.** If Contractor elects to defend the claim, the City may retain separate counsel, at the City's own expense and such expense shall not constitute an indemnification loss so long as Contractor assumes the defense of City as provided above, 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.

K. Insurance

Contractor shall provide and maintain certain insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows:

1. Risks and Limits of Liability

Contractor shall maintain the following coverage and limits of liability:

COVERAGE

LIMIT OF LIABILITY

Workers' Compensation

Statutory for Workers' Compensation

Employer's Liability

- Bodily Injury by Accident
\$100,000 (each accident)
- Bodily Injury by Disease

COVERAGE

LIMIT OF LIABILITY

	\$100,000 (policy limit)
	▪ Bodily Injury by Disease \$100,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability Coverage	\$1,000,000 per claim/aggregate

Aggregate Limits are per 12-months policy period unless otherwise indicated.

If professional liability coverage is written on a “claims made” basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of 2 years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion.

2. Form of Policies

The insurance may be in one or more policies of insurance, the form of which must be approved by the Director and City Attorney; however such approval shall never excuse non-compliance with the terms of this Section.

3. Issuers of Policies

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 of Best’s Key Rating Guide.

4. Insured Parties

Each policy, except those for Worker’s Compensation, Employer’s Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacement.

5. Deductibles

Contractor shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

6. Cancellation

Contractor shall notify the Director in writing 30 days prior to any cancellation or material change to Contractor's insurance coverage. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled 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 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

7. Subrogation

Each policy, except Professional Liability, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

8. Endorsement of Primary Insurance

Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

9. Liability for Premium

Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

10. Subcontractors

Contractor shall require all subcontractors whose subcontracts exceed \$100,000 to provide proof of professional liability coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

11. Delivery of Policies

a. At the time this Agreement is signed and as long as this Agreement continues, Contractor must furnish to the Director certificates of insurance, including any necessary endorsements, that meet the requirements of this Agreement. These certificates must bear the Contractor's name in which it is insured. If requested by the Director, must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact

issuing them. Contractor shall provide updated certificates of insurance to the Director upon request. Every certificate of insurance Contractor delivers for the Project shall:

- i. be less than 12 months old;
 - ii. include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
 - iii. include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
 - iv. be appropriately marked to accurately identify:
 - (a) all coverages and limits of the policy;
 - (b) effective and expiration dates; and
 - (c) contain endorsements for waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.
- b. Contractor shall continuously and without interruption, maintain in force the required insurance coverage specified in this Section. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may:
- i. immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
 - ii. purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.
- c. The City shall never waive or be estopped to assert its rights to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.
- d. Contractor shall, upon the City's request, deliver an assurance letter from Contractor's insurer stating that the insurer intends to issue Contractor a new policy that meets the terms of this Article.

12. Other Insurance

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

L. Warranties

1. General

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

With respect to the ALPR System, Equipment, Software, and any other parts and goods it furnishes, Contractor warrants:

- a. that all items are free of defects in title, design, material, and workmanship,
- b. that each item meets or exceeds the manufacturer's specifications (including, but not limited to, those set forth in Exhibit "A-4") and requirements for the equipment, structure, or other improvement in which the item is installed,
- c. that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- d. that no item or its use infringes any patent, copyright, or proprietary right.

2. Professional Standards

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 ALPR System, Equipment, Software, Services, and any other services and products that Contractor provides under this Agreement.

3. Manufacturer's Specifications

Contractor warrants that ALPR System, Equipment, Software, and all other products that Contractor provides under this Agreement are free of defects in material and workmanship and that they will perform in accordance with all manufacturer's specifications for a period of 4 years after the Final Acceptance.

4. Replacement Parts

Contractor warrants all replacement parts against defects in material and workmanship for a period of 4 years after installation.

5. Manufacturer's Warranties

Contractor assigns to City all manufacturer's warranties on all Equipment of which Contractor is not the manufacturer and shall deliver all related documentation to the Director within 5 days after execution of this Agreement.

M. Liability for Loss or Corruption of Data

Where City confirms to Contractor that, as a result of Contractor's negligence in performing the Professional Services or Warranty Services, any City database is lost or corrupted, Contractor shall restore the database to the previous day's uncorrupted state. Such obligation shall be limited exclusively to databases which reside on the same disk volumes or Microsoft SQL servers as databases that are used or accessed by applications sold, installed, or managed by Contractor. Contractor's obligation is conditioned on the following requirements:

1. Contractor's staff are permitted to take back-up copies of the database on a daily basis and City shall provide sufficient disk space for such back-ups, and
2. The City notifies Contractor of a lost or corrupted database within 24 hours after it becomes aware of it.

Contractor shall promptly notify City in writing upon restoration of the database to the previous day's uncorrupted state.

A lost or corrupted database means a database that is inaccessible by the Software, and not merely one that contains inaccurate data due to Software defects or other reasons.

N. Use and Ownership of Documents and Work Products

1. The City may use and shall be permitted to use for any purpose all Contractor Documents.
2. Contractor warrants that it owns the copyright to the Contractor Documents.
3. Contractor conveys and assigns to City its entire interest and full ownership worldwide in and to all Work Products and all Proprietary Rights therein. Work Product shall not mean or include Software subject to the Licenses granted by Contractor to City under this Agreement or the Source Code or Object Code for the Software.
4. Contractor shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by Director, Contractor shall place a conspicuous notation on any Work Products indicating that City owns the Work Products and the Proprietary Rights therein.
5. Contractor's assignment of the Work Products and the Proprietary Rights therein to City does not constitute a mere license or franchise to City.

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

7. Contractor shall deliver to Director all or any part of the original Contractor Documents, Work Products, and all other files and materials that Contractor produces or gathers during its performance under this Agreement, in the format and on the media specified by Director, within 5 business days after written request from Director or after this Agreement terminates or otherwise expires.

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

9. Contractor may retain copies of the Work Products for its archives. Contractor shall not otherwise use, sell, license, or market the Work Products.

10. Notwithstanding anything to the contrary, City is, will be, and shall remain at all times the sole owner of all City Documents and all Work Products. Contractor expressly acknowledges that City has all right, title, or other ownership interest in all City Documents and all Work Products. Vendor shall not possess or assert any lien or other right against any City Documents or Work Products.

O. Source Code for Software

At any time during the Initial Warranty Term or any Renewal Warranty Term, Contractor shall, within 20 days after written request by the Director, unless the Director extends the time for doing so, enter into an agreement (the "Escrow Agreement") with a reputable source code escrow agent (the "Escrow Agent"), under which Contractor shall deposit the Source Code for the Software subject to terms and conditions mutually agreeable to Contractor and City, including, but not limited to, the following:

1. City shall pay all charges associated with the Escrow Agent and Escrow Agreement.

2. The Escrow Agreement shall designate City as a beneficiary.

3. The Escrow Agreement shall provide that access to the Source Code of the Software shall be provided to City if: (a) Contractor becomes insolvent or is named debtor in a bankruptcy proceeding; (b) Contractor makes an assignment for the benefit of creditors, (c) a receiver or trustee in bankruptcy or similar authority is appointed to take charge of Contractor's assets, (d) Contractor suspends its business or has wound up or been liquidated, voluntarily or otherwise; (e) Contractor fails to maintain or provide support for the Software in accordance with the terms for the Maintenance Services under this Agreement; and/or (f) Contractor materially modifies the Software in a manner that materially adversely impacts City's beneficial use of the Software and Contractor fails to address or resolve such material adverse change in the Software, to the Director's satisfaction, within at least 30 after written request by Director.

4. City's rights to use Source Code provided under the Escrow Agreement shall be conditional upon the following: (a) City acquires no ownership rights in the Source Code by reason of the release of Source Code and shall only have a license to use such Source Code for maintenance and support of the Software for internal use of the Software by City and otherwise in accordance with the provisions of this Agreement; and (b) City shall keep the Source Code confidential and protect it from disclosure to third parties under the terms of this Agreement, and shall only permit access to the Source Code to persons who have a need to know such information for the above purposes.

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

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

P. Acceptance and Rejection

Contractor shall provide written notice to the Director upon completion and/or delivery of all Deliverables. The Director shall accept in writing the Deliverables on or before the 20th business day after the date of receipt of such notice by the Director unless, prior to such 20th business day, the Director sends written notice to Contractor stating the reason(s) why any Deliverable(s) have been rejected and not accepted.

In the event the City rejects any Deliverable(s), Contractor shall have 10 business days after the Director sends written notice of rejection to correct or otherwise replace any Deliverable(s) as necessary to conform to this Agreement, at no additional cost to the City. Contractor shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either accept or reject and Contractor shall continue to make any necessary corrections or replacements, as provided under this Section, until the Director accepts in writing all Deliverable(s) including any previously rejected Deliverable(s).

If the Director does not accept all Deliverable(s) on or before the 60th business day after the date the Director first rejects any Deliverable(s), then the Director may choose, in his or her sole discretion, to issue a final rejection notice to Contractor for all Deliverable(s) (whether or not previously accepted), the City shall return all Equipment and Software to Contractor at no cost to the City, the City shall have no obligation to pay any amount whatsoever under this Agreement, and this Agreement shall immediately terminate. The City reserves all other available rights and remedies at law or in equity.

Q. 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 any such licenses, permits, or certificates of Contractor and/or any of its employees, contractors or agents performing services under this Agreement.

R. Compliance with Laws

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

S. Compliance with Equal Opportunity Ordinance

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

T. MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 7% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO"), and will comply with them.

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers 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 OBO 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 such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

3. Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving

any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

U. Spare Parts

(1) Contractor shall provide a list of spare parts required for the continuous operation of the Equipment. The list must include estimated delivery times. Spare parts must be provided in accordance with the manufacturer's specifications and, subject to the requirements for no-cost replacement under the Warranty Services, must be priced, including discounts, if any, FOB the delivery address for the Equipment as specified in writing by the Director. The price (if any) must include provisions for suitable packing for shipment and storage. Contractor shall submit the spare parts lists at least 30 days before the Equipment shipment.

(2) Contractor shall maintain a fully-stocked inventory of all spare parts required for the Equipment. Contractor shall constantly replenish the inventory as parts are used for maintenance services.

(3) If Contractor uses all practicable means to comply with Subsection (2) above, but is unable to complete any Maintenance Services because of a lack of spare parts, the Director may, on Contractor's written request, allow a longer period of time for the completion of the Maintenance Services.

(4) In addition to the above, and notwithstanding anything else to the contrary, Contractor shall provide at no cost to City, so that City can maintain in its inventory in the event necessary under the Warranty Services, at least 2 complete MPH900 Mini Split LPR Systems and all other necessary component equipment or hardware for complete replacement and installation on at least 2 HPD vehicles, which Contractor shall replenish as necessary in order to maintain compliance with the requirements of this subsection.

V. 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 Effective Date, 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 "C," 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 "E."

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 "D." 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.

W. Contractor's Performance

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

X. Pay or Play

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

IV. DUTIES OF CITY

A. Payment Terms

The City shall pay and Contractor shall accept payment of amounts provided in Exhibit "A-2" for all Services rendered and other Deliverables furnished by Contractor under this Agreement. The amounts shall only be paid from Allocated Funds, as provided below.

The City shall have no duty to pay any other amount whatsoever and Contractor shall not be entitled to payment of any other amount whatsoever (including, but not limited to, any travel or other expenses whatsoever).

Notwithstanding anything else to the contrary, Contractor shall be entitled to payment for the Equipment, Licenses, and Services only after the Final Acceptance.

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 shall 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 for the Equipment, Licenses, and Services on the basis of a single invoice submitted by Contractor and approved by the Director. Contractor shall submit such invoice no earlier than the day after the Final Acceptance. City shall pay Contractor within 30 days of the receipt and approval of such 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. 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 \$411,377.00 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.

F. Changes

1. At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the Scope of Services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

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

CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of Director]

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

- (a) The City Council expressly authorizes the Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
- (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

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

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

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

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 the 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 Contractor (as defined in this Agreement) as a result of its use of the common areas.

H. Access to Data

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

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

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for 3 years unless sooner terminated under this Agreement ("Initial Term").

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal of this Agreement to Contractor before expiration of the then-current term, and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement shall renew for up to 2 successive terms of 1 year each upon the same terms and conditions.

If the Director, at his or her sole discretion, makes a written request to Contractor for renewal of the Warranty Services before expiration of the Initial Warranty Term, and if sufficient funds are allocated, then, upon expiration of the Initial Warranty Term, the Warranty Services under this Agreement shall renew for up to 2 successive terms of 1 year each ("Renewal Warranty Term"), upon the same terms and conditions, for a price not to exceed the amount of \$1,275.00 per year for each MPH-900 MS2 ALPR mobile system or FCU-900 1-4 ALPR fixed camera system.

If the Director, at his or her sole discretion, chooses to limit the Warranty Services for any Renewal Term to only the Software Maintenance and Support as set forth in Exhibit A-3, the price for each such Renewal Warranty Term shall not exceed \$500.00 per year for each MPH-900 MS2 ALPR mobile system or FCU-900 1-4 ALPR fixed camera system.

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. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this

Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section 4 unless the fees exceed the allocated funds remaining under this Agreement.

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

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 a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

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

- (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.

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 worker's 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, 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 any reimbursement for expenses or any other payment whatsoever.

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 14 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.**

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

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 3 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. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for the Equipment passes from Contractor to the City upon the Final Acceptance.

P. Parties In Interest

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

Q. 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.

R. 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 Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

S. 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.

T. Confidentiality

1. In order for Contractor or City Personnel to perform the obligations under this Agreement, it may become necessary for either party to receive or have access to Documents or

other technical or business information of the other party that either existed before performance of work or was subsequently developed independent of the parties performance of contract obligations (“Background Information”), which is considered proprietary or confidential by the other party. In addition, information developed in connection with the performance of this Agreement (“Delivered Information”), which is provided under this Agreement is proprietary and confidential. All Background Information and all Delivered Information are collectively referred to in this Section as “Information”. Information means and includes the Source Code and the Object Code for the Software.

2. The party to whom Information is disclosed shall:

(a) hold the Information in confidence and protect it in accordance with the security regulations by which it protects its own proprietary or confidential information;

(b) restrict disclosure of the Information solely to those employees, agents and representatives with a need to know; and

(c) advise those employees, agents and representatives of their obligations with respect to the Information.

3. The party to whom Information is disclosed shall have no obligation to preserve the proprietary nature of any Information that:

(a) was previously known to it free and clear of any obligation to keep it confidential;

(b) except as otherwise provided under this Agreement, is disclosed to third parties by the disclosing party without restriction;

(c) is or becomes publicly available by other than unauthorized disclosure;

(d) is independently developed by it; or

(e) is disclosed in response to requests made under the Texas Public Information Act or a court order. However, the party ordered to disclose the Information shall: (i) give the disclosing party of the Information or Software prompt written notice of all such requests, and (ii) cooperate with the disclosing party’s efforts to obtain a protective order protecting the Information or Software from disclosure.

4. Neither party shall be liable for the inadvertent or accidental disclosure of Information, if the disclosure occurs despite the exercise of a reasonable degree of care, which is at least as great as the care the party normally takes to preserve its own proprietary information of a similar nature.

5. All Information owned by Contractor or its suppliers and furnished to the City under this Agreement is the property of Contractor or the supplier, and unless otherwise expressly provided in the applicable Order, the City, its agents and representatives shall: