

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- Funds have been encumbered out of funds previously appropriated for such purpose.
- Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- Other - Grant Funds Available

Jennell P. Brown
 City Controller of the City of Houston, Texas

Date: 7-14, 2020

FUND REF: 1000-1000-520107 AMOUNT: 200,000.00 ENCUMB. NO.: 10277061
 DE OA 46-16022

City of Houston, Texas Ordinance No. 2020-630

A
 AN ORDINANCE APPROVING AND AUTHORIZING A SOLE SOURCE CONTRACT BETWEEN THE CITY OF HOUSTON AND ECCENTEX CORPORATION FOR PROFESSIONAL SERVICES AND CASE MANAGEMENT FOR THE HOUSTON POLICE DEPARTMENT; PROVIDING A MAXIMUM CONTRACT AMOUNT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston.

The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. The total allocation for each contract, agreement or other undertaking approved and authorized hereby shall never exceed \$1,062,000.00 unless and until this sum is increased by ordinance of City Council.

Section 5. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 15th day of July, 2020.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 21 2020.

[Signature]
City Secretary

(Prepared by Legal Dept. *[Signature]*)
(RLG/bt 05/21/2020) Assistant City Attorney
(Requested by Jerry Adams, Strategic Procurement Department)
(L.D. File Nos. 034-1400297-002)

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
	ABSENT-ON PERSONAL BUSINESS	DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

AGREEMENT FOR PROFESSIONAL SERVICES AND CASE MANAGEMENT SYSTEM

THIS AGREEMENT FOR PROFESSIONAL SERVICES AND CASE MANAGEMENT SYSTEM (“Agreement”) is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** (the “City”), a Texas Home Rule City of the State of Texas principally situated in Harris County, and **ECCENTEX CORPORATION** (“Contractor” or “Eccentex”), a California corporation doing business in Texas.

1. PARTIES

1.1 Address

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

City
Chief of Police
Houston Police Department
1200 Travis Street
Houston, TX 77002

Contractor
Eccentex Corporation
Attention: Burr Dalton
6101 W. Centinela Avenue, Suite 110
Culver City, California 90230

The Parties agree as follows:

[Remainder of Page Intentionally Left Blank]

1.2 Table of Contents

1.2.1. This Agreement consists of the following sections:

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Exhibits

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Exhibit B – Drug Policy Compliance Agreement

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Exhibit D – Drug Policy Compliance Declaration

Exhibit E – Software & Maintenance Services Agreement

1.3 Parts Incorporated

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

1.4 Controlling Parts

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

[Remainder of Page Intentionally Left Blank]

1.5 Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

ECCENTEX CORPORATION

DocuSigned by:
Burr Dalton
By: _____
FDD2FB18069B44D...
Name: Burr Dalton
Title: Chief Financial Officer
Tax Id. No. 20-3189161
City of Houston Vendor No. 142892

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

DocuSigned by:
[Signature]

6AAA6085F4424AD...
Chief of Police
Houston Police Department

City Controller

DocuSigned by:
Jerry Adams

9DD950130A6F408...
Chief Procurement Officer

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

DocuSigned by:
Rachel L. Grier

6849061A264241A...
Assistant City Attorney
L.D. File No. 0341400297002

2. DEFINITIONS

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

- 2.1. "Agreement" means this agreement between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.2. "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.3. "City's Information" means all data, Documents, information, electronically stored information, agendas, reports, notes, meeting minutes, records, or documents provided to, entered in, posted, transmitted, stored, hosted, received, collected, or processed by Contractor on behalf of the City or any software, databases, or applications developed by Contractor for the City and provided by Contractor, and any Documents that Contractor may have access to in connection with this Agreement.
- 2.4. "Contractor" or "Eccentex" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.5. "Countersignature Date" means the date the City Controller countersigns this Agreement.
- 2.6. "Director" means the Chief of Police of the City of Houston Police Department or the person he or she designates.
- 2.7. "Documents" means any analyses, audio and video recordings, charts, computations, computer programs, correspondence, data or data compilations, databases and diskettes, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, inventions, items, letters, manuals, maps, materials, models, notebooks, notes, operating manuals, original tracings of all drawings and plans, photographs, plans, policies, procedures, records, reports, social media communications, software, sound recordings, specifications, tabulations, underlying data, writings, and other work products (and any modifications or improvements to them) that Contractor prepares, obtains, modified, creates, or provides to or for the City pursuant to or in connection with this Agreement.
- 2.8. "HPD" means the Houston Police Department.
- 2.9. "Include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation."
- 2.10. "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.
- 2.11. "Parties" means all the entities set out in the Preamble who are bound by this Agreement.
- 2.12. "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.

- 2.13. "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 Code for the Software.
- 2.14. "Licensed IP" means Contractor's proprietary platform, applications templates, or software identified on **Exhibit E**.

3. DUTIES OF CONTRACTOR

3.1 Scope of Services

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

3.2 Coordinate Performance

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

3.3 Reports

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

3.4 Prompt Payment of Subcontractors

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

3.5 Personnel of Contractor

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

3.6 RELEASE

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

NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

3.7 INDEMNIFICATION

3.7.1. GENERAL/NEGLIGENCE

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

3.7.1.1.1. 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;

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

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

3.7.1.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S NEGLIGENCE.

3.7.2. INTELLECTUAL PROPERTY

3.7.2.1. 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.

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

3.7.2.3. 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.

3.8. SUBCONTRACTOR'S INDEMNITY

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

3.9. INDEMNIFICATION PROCEDURES

3.9.1. 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 30 days. The notice must include the following:

- 3.9.1.1. a description of the indemnification event in reasonable detail,
- 3.9.1.2. the basis on which indemnification may be due, an
- 3.9.1.3. 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.

3.9.2. Defense of Claims

3.9.2.1. 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.

3.9.2.2. Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel, at the City's sole expense, 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, and (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.10. Insurance

3.10.1. Risks and Limits of Liability. Contractor shall maintain the following coverage and limits of liability:

Commercial General Liability insurance including Contractual Liability insurance	\$1,00,000 per occurrence; \$2,000,000 aggregate
Worker's Compensation including Broad Form All States endorsement	Statutory amount
Professional Liability	\$1,000,000 per claim/aggregate
Automobile Liability insurance	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Employer's Liability	Bodily Injury by Accident \$500,000 (each accident); Bodily Injury by Disease \$500,000 (policy limit); Bodily Injury by Disease \$500,000 (each employee)
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.10.2. Insurance Coverage. At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives

any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

- 3.10.3. Form of insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Bests Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.
- 3.10.4. Required Coverage. The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contactor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies, except professional liability, must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion.
- 3.10.5. Notice. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 3.10.6. Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

3.11. Warranties

- 3.11.1. Contractor should make citizen satisfaction a priority in providing services under this Agreement. Contractor's employees should be trained to be customer-service oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees should be clean, courteous, efficient, and neat in appearance at all times and committed to offering the highest degree of service to the public. If, in the Director's determination, the Contractor is not interacting in a positive and polite manner with citizens, the Contractor shall take all remedial steps to conform to the standards set by this Contract and is subject to termination for breach of contract.

3.11.2. 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. Upon the Director's request, Contractor shall promptly re-perform or re-provide, at no charge to the City, any services or products that fail to reasonably conform to the warranty contained in this section.

3.11.3. Contractor represents and warrants that it is legally permitted to provide all Services to the City and Contractor is not under any legal obligation of any kind whatsoever to refrain from providing Services to the City. Contractor acknowledges that the City is relying on this representation and it is an inducement for the City to issue this Agreement.

3.12. Ownership and Return of City Data

3.12.1. The City is, will be, and shall remain at all times the owner of all of the City's Information. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in the City's Information and Contractor shall not possess or assert any lien or other right against the City's Information.

3.12.2. The City may use and is permitted to use for any purpose any of the City's Information, including data provided by Contractor, if any. At all times, including during the Term of this Agreement, and after the termination or expiration of this Agreement or any licenses or sublicenses Contractor grants to the City, the City retains the right to reveal or extract the City's Information from Deliverables provided by Contractor in connection with this Agreement, and the right to use the City's Information in any way or manner determined by the City.

3.12.3. Upon request by the Director at any time during the Term and upon expiration or termination of this Agreement, Contractor shall retain, migrate, or dispose of the City's Information as directed by the Director. Within five (5) days of Contractor's receipt of the Director's written request to retain, migrate, or dispose of the City's Information, Contractor shall notify the Director, in writing, of the estimated storage size of the data to be retained, migrated, or disposed of, and any charges that the City will incur based on the requested task, media type, and method of destruction. Within thirty (30) days of the occurrence of either or both of (a) the Director's written approval of the charges Contractor estimated, or (b) Contractor's receipt of the Director's written request for services for which the City will not incur any charges, Contractor shall perform the following services, to the extent applicable, unless otherwise instructed:

3.12.3.1. deliver the City's Information (in whole or in part, as directed by the Director) and physical media owned or provided by the City to the Director, in the format and on the media reasonably requested by the Director;

3.12.3.2. destroy the City's Information (in whole or in part, as directed by the Director) and provide a notarized statement of destruction to the Director;

3.12.3.3. destroy physical media owned or provided by the City, using secure methods;

3.12.3.4. remove the City's Information (in whole or in part, as directed by the Director) from the hosted database, storage device, or other repository.

3.13. Confidentiality and Data Security

- 3.13.1. Contractor, its agents, employees, contractors, and subcontractors shall hold all of the City's Information in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the City's Information unless the Director authorizes it in writing.
- 3.13.2. Upon the Director's request, Contractor shall sign any protective order or other confidentiality agreements required by the City governing Contractor's use of documents related to a litigation or other confidential matter being handled by Contractor.
- 3.13.3. Contractor will maintain and enforce safety and physical security procedures with respect to its access and maintenance of the City's Information that are (1) at least equal to industry standards for such types of locations and (2) which provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration, or unauthorized disclosure or access of the City's Information and all other data owned by the City and accessible by Contractor under this Agreement.
- 3.13.4. Contractor agrees to store and process Customer Data only in the continental United States. Contractor shall store all of the City's Information in a physically and logically secure environment designed to protect it from unauthorized access, loss, alternation, disclosure, modification, theft, misuse, and destruction. Contractor shall maintain an adequate level of data security controls designed to ensure compliance with the requirements of this Contract or any protective order, HIPAA Business Associates Agreement, or confidentiality agreement signed by Contractor.
- 3.13.5. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors who provide services in connection with this Agreement which written agreements shall bind them to the terms no less restrictive than those provided in this Section 3.13, Confidentiality and Data Security.

3.14. Criminal Justice Information Services (CJIS) Compliance

- 3.14.1 HPD recognizes that by allowing physical or logical (electronic) access to HPD facilities or networking resources, people may gain access to information or systems they are statutorily prohibited from accessing. To comply with state and federal regulations, HPD is required to document and investigate access requests to be sure access is necessary and permitted. Contractor shall review the Criminal Justice Information Services (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm> and, further, Contractor shall comply with the terms and requirements therein.

3.15. HPD Security

- 3.15.1. Contractor shall comply with HPD's physical and technical security controls to ensure all of the security requirements are met. In addition, all of the Contractor's personnel will adhere to the rules and regulations on site.
- 3.15.2. Contractor will complete the required security documents and have successful approval from HPD and Texas DPS, before the project can begin and before staff can appear on site. Contractor's personnel shall not start working at HPD sites or with HPD equipment (in person or remotely)

until a national fingerprint based background check is conducted along with the required level of training required by the Texas Crime Information Center and National Crime Information Center. Required documents for vendor and employee completion are listed below and can be found on the HPD CJIS Compliance website for Vendor Certification, <http://www.houstontx.gov/police/ciis/hpdvendorcertificationhtm>:

- 3.15.2.1. CJIS Security Addendum / Certification signatory page by the contractor;
- 3.15.2.2. CJIS Security Addendum Certification Sheet signed by each employee requested to have remote access to HPD's network (logical access) or physical unescorted access where criminal justice information may be transmitted, stored, or processed;
- 3.15.2.3. Authorization of Release of Personal Information and Identity Verification Forms in order to conduct background checks for unescorted and or escorted access; and
- 3.15.2.4. Training Acknowledgement forms (TCIC/NCIC Practitioner's Course and Security Awareness) video courses.

3.15.3. Security is extremely important to keep HPD's information confidential and to insure protection of the public that HPD serves. Certain processes and procedures will be implemented with any new systems, and Contractor shall follow defined processes when working near confidential information. All hardware and software, encryption, and security of devices will meet or exceed the CJIS minimum requirements for a wireless device in a non-secured location.

3.16. Use of Work Products

3.16.1. Contractor agrees that all documents drafted or created pursuant to this Agreement are the property of the City. The City owns and may use all Documents, notes, plans, computations, databases, tabulations, exhibits, photographs, reports, drawings, graphs, patent applications, underlying data and other work products that the Contractor prepares or obtains under this Agreement (collectively, the "Work Products").

3.16.2. Contractor warrants that it owns the copyright to the Work Products.

3.16.3. Contractor shall deliver the original Work Products to the Director on request.

3.16.4. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Work Products, and all other files, load files, data exports, and materials Contractor produces or gathers during its performance under this Agreement.

3.17. Licenses and Permits

3.17.1. Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation to perform the services under this Agreement. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against its licenses.

3.18. Compliance with Laws

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

3.19. Compliance with Equal Opportunity Ordinance

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

3.20. Drug Abuse Detection and Deterrence

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

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

3.20.2.1. a copy of its drug-free workplace policy,

3.20.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit B**, together with a written designation of all safety impact positions and,

3.20.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit C**.

3.20.3. 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.

3.20.4. Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

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

3.21. Pay or Play

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

3.22. Anti-Boycott of Israel

3.22.1. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

3.23. Zero Tolerance Policy for Human Trafficking and Related Activities

3.23.1. The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.24. Preservation of Contracting Information

3.24.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy; which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

3.24.2. If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. 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.

4. DUTIES OF THE CITY

4.1. Payment Terms

4.1.1. During the term of this Agreement and subject to the allocation of funds as set out below, the City shall pay and Contractor shall accept the annual fees as set forth in **Exhibit A**.

4.2. Expenses and Reimbursement

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

4.3. Taxes

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

4.4. Method of Payment

4.4.1. The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director showing the services provided and the corresponding fees. Contractor shall invoice City ninety (90) days in advance of the applicable due date for the annual subscription fees. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.5. Disputed Payments

4.5.1. 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.

4.6. Limit of Appropriation

4.6.1. The City's duty to pay money to Contractor for any purpose under this Contract is limited in its entirety by the provisions of this Section.

4.6.2. 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 **\$200,000.00** 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.

4.6.3. 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

DS
BD

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.

\$ _____

4.6.4. 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.

4.7. **Suspension of Performance**

4.7.1. The Director may suspend Contractor's performance under this Agreement, with or without cause, by notifying Contractor in writing. Contractor shall resume work when directed to do so by the Director. The parties may negotiate and mutually agree in writing to a plan to reduce Contractor's stand-by costs during the suspension period. The City shall not grant any compensation or extension of time under this Section if the suspension results from non-compliance of Contractor or its subcontractors with any requirement of this Agreement.

4.8. **Changes**

4.8.1. At any time during the Agreement Term, the Director and Contractor may agree to and 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.

4.8.2. 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]

- 4.8.3. The Director may issue more than one Change Order, subject to the following limitations:
- 4.8.3.1. 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.
 - 4.8.3.2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - 4.8.3.3. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 4.8.4. Whenever Contractor receives a fully executed 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.
- 4.8.5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- 4.8.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

4.9. Access to Data

- 4.9.1. The City shall, to the extent permitted by law, allow the Contractor to access and make copies of documents (including electronically stored information) in the possession or control of the City or available to it that are reasonably necessary for the Contractor to perform under this Agreement.
- 4.9.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for the Contractor's use.

5. TERM AND TERMINATION

5.1. Term

5.1.1. This Agreement is effective on Countersignature Date, and shall remain in effect for three years from the Countersignature Date ("Initial Term"), unless sooner terminated under the provisions of this Agreement.

RS

5.2. Renewal

↑
I agree to the changes made in sections 5.1.1 and 5.2.1
↓

5.2.1. 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 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.

5.3. Termination for Convenience by the City

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

5.3.2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit 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 4.4 unless the fees exceed the allocated funds remaining under this Agreement.

5.3.3. 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.

5.4. Termination for Cause by City

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

- 5.4.1.1. Contractor fails to perform any of its material duties under this Contract;
- 5.4.1.2. Contractor becomes insolvent;
- 5.4.1.3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
or
- 5.4.1.4. a receiver or trustee is appointed for Contractor.

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

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

5.5. No Quantity Guarantee

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

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

6. MISCELLANEOUS

6.1. Independent Contractor

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

6.2. Force Majeure

6.2.1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, 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.

- 6.2.2. 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.
- 6.2.3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.
- 6.2.4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
- 6.2.5. If the Force Majeure continues for more than 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.**
- 6.2.6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

6.3. Severability

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

6.4. Entire Agreement

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

6.5. Written Amendment

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

6.6. Governing Law and Venue

- 6.6.1. This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement

shall lie exclusively in Harris County, Texas.

6.7. Notices

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

6.8. Captions

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

6.9. Non-Waiver

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

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

6.10. Inspections and Audits

6.10.1. City representatives may perform, or have performed, (1) audits of Contractor's books and records that are related to any aspect of this Agreement, 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 three years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.10.2. During the Term of this Agreement, the City or its designee is permitted to perform audits of Contractor's environment and the locations where the City's Information is stored, hosted, or resides, as it relates to the receipt, maintenance, use, retention, and protection of the City's Information. Within reasonable timeframes, Contractor shall comply with all reasonable recommendations that request from such inspections, test, and audits.

6.11. Enforcement

6.11.1. 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.

6.12. Ambiguities

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

6.13. Survival

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

6.14. Publicity

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

6.15. Risk of Loss

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

6.16. Parties in Interest

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

6.17. Successors and Assigns

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

6.18. Business Structure and Assignments

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

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

6.19. Remedies Cumulative

6.19.1. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in

the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

6.20. CONTRACTOR DEBT

6.20.1. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, THE CITY CONTROLLER SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

EXHIBIT A
Scope of Services & Pricing

1. License. Enterprise Site License & Maintenance Services Agreement for AppBase platform and IAD Case Management System and COP Document Tracker (“Enterprise Site License” – see Exhibit E)

- 1.1. The Enterprise Site License subscription is for fully-functional Solution use for all HPD personnel (including, but not limited to, any staff, volunteers, and consultants performing services for HPD).
- 1.2. Included in the Enterprise Site License are all minor and major upgrades of the Solution including any professional services required to perform those upgrades unless significant effort is required to integrate new functionality with HPD’s systems in existence at the time, in which case the parties shall negotiate a mutually agreeable Statement of Work and associated fees to provide the necessary services. In all events, any and all changes must be quoted and approved by the Director, in writing prior to the City incurring additional fees, and the payment of fees is subject to the allocation and appropriation of funds.
- 1.3. Included in the Enterprise Site License is Contractor’s Standard Software Support for the Solution any other support for the Solution required by HPD for the year(s) that the license covers.

2. Pricing.

Enterprise License Renewal-Option One	Annual
Year One - Three	\$200,000.00
Year Four (10% increase)	\$220,000.00
Year Five (10% increase)	\$242,000.00

3. Audits and Reviews. At any time, representatives of the City may audit the Contractor’s invoices, billings, and invoicing and billing practices respecting the services and Deliverables the Contractor provides to the City. The Director shall review all bills and invoices and may request that the Contractor reasonably adjust such bills and invoices to comply with the policies contained in this Agreement.

**EXHIBIT B
DRUG POLICY COMPLIANCE AGREEMENT**

I, Burr Dalton, Chief Financial Officer as an owner or officer of (Name) (Print/Type)
(Title)

Eccentex Corporation (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.

March 12, 2020
Date

Contractor Name Burr Dalton

Signature _____

Title

Chief Financial Officer

EXHIBIT C

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

I, Burr Dalton, Chief Financial Officer
(Name) (Title)

as an owner or officer of Eccentex Corporation (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 this City Contract. Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

(Date)

Burr Dalton
(Typed or Printed Name)

(Signature)

Chief Financial Officer
(Title)

**EXHIBIT D
DRUG POLICY COMPLIANCE DECLARATION**

I, Burr Dalton, Chief Financial Officer as an owner or officer of
(Name) (Print/Type) (Title)
Eccentex Corporation (Contractor)
(Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from January 1, 2020 to June 30, 2020.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.

Initials _____ The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's

Initials _____ Drug Detection and Deterrence Procedures, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human

Initials _____ Services (HHS) guidelines.

_____ 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 _____.

From	to	the following test has occurred				
	(Start date)	(End date)	Random	Reasonable <u>Suspicion</u>	Post Accident	Total
Number Employees Tested	_____	_____	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____	_____	_____

_____ Any employee who tested positive was immediately removed from the City worksite

Initials _____ consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance

Initials _____ 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)

Burr Dalton
(Typed or Printed Name)

(Signature)

Chief Financial Officer
(Title)

EXHIBIT E

ENTERPRISE SITE LICENSE & MAINTENANCE SERVICES AGREEMENT

This Exhibit describes the additional terms and conditions for the Enterprise License described in Exhibit A and includes the items listed below:

1. License Grant

- a. For the term of this Agreement, including any renewal terms, Contractor hereby grants City a non-exclusive, non-transferable, worldwide right for an unlimited number of Users paid for the City to use the AppBase platform, including but not limited to the IAD Case Management System and COP Document Tracker applications, for any HPD business including, but not limited to, software identified below (the "Licensed IP"). As used herein, "User" means a City employee; contractor of the City; or other individual that the City determines, at its discretion, requires access to the Licensed IP for any HPD business as determined by the Director.
 - i. Licensed IP includes at least the following:
 - 1) Platform – a proprietary, enterprise, platform known as AppBase™;
 - 2) Applications Templates – proprietary, pre-built software-as-a-service (SaaS) applications templates for Investigative Applications, and other business processes;
 - 3) IAD Case Management System and COP Document Tracker System specific software and/or modules – includes, but is not limited to, modifications delivered under this Agreement.
 - 4) Additional software – all current commercially available platform features and functions. Third party products are included to the extent necessary for the use of the Solution in accordance with the terms of this Agreement.
- b. The tangible property and tangible work products created by Contractor for the City pursuant to this Agreement shall belong to the City; provided however, all right, title and interest in and to the Licensed IP (including any updates, upgrades, and new releases generally made available by Contractor and any suggestions, ideas, enhancement requests, feedback, and recommendations related to the Licensed IP) and any development performed by Contractor or Contractor's subcontractors under this Agreement that will become part of the Licensed IP shall belong solely to Contractor, subject to the provisions of Section (c), below. Contractor shall retain the unlimited right to license such Licensed IP and developments to any other person, firm, or corporation for any purpose with no requirement that any license fees, royalties or other forms of compensation be paid to the City, except for Custom Software described in Section (c), below. All systems, programs, and

specifications, and other materials and hardware in the possession of Contractor prior to execution of this Agreement and owned by Contractor or used by Contractor in conjunction with performing the services for City shall continue to belong exclusively to Contractor. The City will not reverse engineer the source code for the Licensed IP.

- c. Notwithstanding the provisions of Section (b), above, the City shall own any unique or specialized computer software or templates developed by Contractor for the City for which the City has paid for as part of this Agreement ("Custom Software"). The City receives a royalty free license to the background intellectual property (aside from Licensed IP) which may be included in the Custom Software.

2. Maintenance and Support.

- a. **General.** Contractor shall provide support and maintenance services in conjunction with the Licensed IP .
- b. **Standard Software Support.** Standard Software Support shall include:
 - i. **Maintenance Releases and Upgrades:** During the Agreement term, Contractor agrees to deliver to City without charge any upgrades containing error corrections or enhancements to the Licensed IP. Contractor may also offer to City new versions of the Licensed IP at no cost to the City.
 - ii. **Standard Telephone Support:** Contractor shall provide live telephone and email support during normal business hours of City (Monday – Friday, 8:00 a.m. to 6:00 p.m. Central Standard Time, excluding City holidays), or at such other hours as the Director and Contractor agree to in writing, for (a) configuration issues, (b) questions regarding the usability and specific functions of the Licensed IP, (c) problem diagnosis, (d) provision of work-arounds where required by the City; and all priorities of technical support as defined in "Technical Support," below.
 - iii. **Critical Telephone Support:** Contractor shall provide the City live telephone support 24 hours per day, 7 days a week for problems where there is a complete loss of Licensed IP or a mission-critical system is down or sufficiently impaired and usability is severely affected and all A-Priority and B-Priority of technical support as defined in "Technical Support," below.
- c. **Technical Support.** Contractor shall provide the City with a single point of contact for all product support questions and errors. Contractor shall respond to problems in accordance with the "Priority Codes" set forth below.
 - i. **"A Priority"** - Licensed IP error which, in the Director's sole discretion, renders the Licensed IP completely inoperable. Contractor shall assign

resources within two (2) hours after notice during Standard Telephone Support hours.

- ii. "*B Priority*" - Licensed IP error which, in the Director's sole discretion, seriously impairs system operations, but does not render it inoperable. Contractor shall assign resources within four (4) hours after notice during Critical Telephone Support hours.
- iii. "*C Priority*" - Licensed IP error which, in the Director's sole discretion, does not seriously impair the operation of Licensed IP and for which there is a known workaround. Resources assigned within eight (8) hours after notice during Standard Telephone Support hours.
- iv. "*D Priority*" - Licensed IP error which, in the Director's sole discretion, is a minor problem and which Contractor shall correct in a future release of the Licensed IP, such future release of the Licensed IP shall be provided to the City at no cost during the Contract term.

Once Contractor's resources are assigned to the Licensed IP error, the Contractor's resources shall resolve the error as quickly as possible. Contractor will use commercially reasonable efforts to resolve an error either through permanent fix or a workaround are as follows:

- A - Priority: not to exceed 12 hours
- B - Priority: not to exceed 2 days
- C - Priority: not to exceed 7 days