Amendment No. 6
to
Contract No. MA 5600 NA170000002
for
Integrated Electronic Health Records System
between
eClinicalWorks, LLC
and the
City of Austin

1.0   The City hereby exercises this extension option for the subject contract. This extension option will be effective December 07, 2019 to December 06, 2020. Three options will remain.

2.0   The total contract amount is increased by $354,200 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 12/07/2016 – 12/06/2017	$1,192,125.00	$1,192,125.00
Amendment No. 1: Administrative Increase (Each term) 05/09/2017	$4,200.00	$1,196,325.00

Amendment No. 2:
2.1 Addendum 1
  11/13/2017
2.2 Option 1 – Extension
  12/07/2017 – 12/06/2018
	$0.00
	
	$354,200.00
	$354,200.00
		
		$1,550,525.00

Amendment No. 3: Invoice Address Change 11/27/2017	$0.00	$1,550,525.00
Amendment No. 4: Schedule A Modification 12/21/2017	$0.00	$1,550,525.00
Amendment No. 5: Option 2 – Extension 12/07/2018 – 12/06/2019	$354,200.00	$1,904,725.00
Amendment No. 6: Option 3 – Extension 12/07/2019 – 12/06/2020	$354,200.00	$2,258,925.00

3.0   By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

4.0   All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: _____ 12/4/2019

Printed Name: SAMEER BHAT
Authorized Representative
eClinicalWorks, LLC
Two Technology Drive
Westborough, Massachusetts 01581
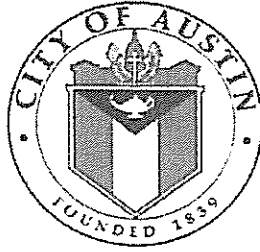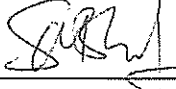Michael.calderone@eclinicalworks.com
508-836-2700

Sign/Date: _____ Elisa Folo 12/5/19

Jim Howard Elisa Folo
Procurement Manager
Austin Energy
721 Barton Springs Road
Austin, Texas 78704

jb

Amendment No. 5
to
Contract No. 5600 170000002
for
Integrated Electronic Health Records system
between
eClinicalWorks, LLC
and the
City of Austin

1.0 The City hereby exercises this extension option for the subject contract. This extension option will be December 07, 2018. through December 06, 2019. Four (12 month) options will remain.

2.0 The total contract amount is increased by $354,200.00 by this extension period. The total contract authorization is recapped below:

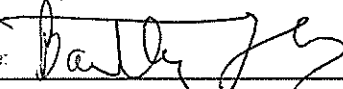| Action	Action Amount	Total Contract Amount
Initial Term: 12/07/2016 – 12/06/2017	$1,192,125.00	$1,192,125.00
Amendment No. 1: Administrative Increase 05/09/2017	$4,200.00	$1,196,325.00
Amendment No. 2: Option 1 – Extension 12/07/2017 – 12/06/2018	$354,200.00	$1,550,525.00
Amendment No. 3: Invoice Address Change	$0.00	$1,550,525.00
Amendment No. 4: Schedule A Modification	$0.00	$1,550,525.00
Amendment No. 5: Option 2 – Extension 12/07/2018 – 12/06/2019	$354,200.00	$1,904,725.00

3.0 MBE/WBE goals do not apply to this contract.

4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: _11/19/2018_   Sign/Date: _11/19/18_

Printed Name: _Sameer Bhat_   Printed Name: _Bartley Tyler_
Authorized Representative   Authorized Representative

eClinical Works, LLC.   Sign/Date: _11/19/18_
Two Technology Drive
Westborough, MA 01581   Printed Name: _James T. Howard_

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

Amendment No. 4
to
Contract No. NA170000002
for
Integrated Electronic Health Records System
between
eClinicalWorks, LLC
and the
City of Austin

1.0 The above referenced contract is hereby amending Schedule A:

Acceptance of:

$125 per month per Named Provider Integrated Services - Unlimited Enhanced Insurance Eligibility/IE (270/271) - Unlimited Paper & Electronic Claims (837) - Real-time Claim Scrubbing - Unlimited Clearinghouse Claim Status Reports (277CA) - Unlimited Electronic Remittance Advice/ERA (835) Services from TriZetto - paperResolve* - Auto Appeals - Advanced Alerts - Claim Status Inquiry (CSI) - Advanced Reimbursement Manager * paperResolve electronic document retention is limited to twelve months	✓ Accept

Removal of:

$79 per month per Named Provider - Unlimited Enhanced Insurance Eligibility/IE (270/271) - Unlimited Paper & Electronic Claims (837) - Real-time Claim Scrubbing - Unlimited Clearinghouse Claim Status Reports (277CA) - Unlimited Electronic Remittance Advice/ERA (835)

Workers Comp Claims (Electronic Claims with PWK Attachments): - $0.85 per claim (includes all attachments)
eStatements** - $0.64 single page - $0.16 additional page(s) - $20.00 per month per practice minimum **eClinicalWorks reserves the right to pass on postage increases for Paper Claims and Patient Statements to the End Users as appropriate. For each forward of a statement a National Change of Address (NCOA) fast-forward fee of $.50 will be charged and for

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Initial Term: 12/07/2016 – 12/06/2017	$1,192,125.00	$1,192,125.00
Amendment No. 1: Administrative Increase 05/09/2017	$4,200.00	$1,196,325.00
Amendment No. 2: Option 1 – Extension 12/07/2017 – 12/06/2018 Addendum 1 Attached & Incorporated by reference	$354,200.00	$1,550,525.00
Amendment No. 3: Invoice Address Change	$0.00	$1,550,525.00
Amendment No. 4: Schedule A Modification	$0.00	$1,550,525.00

4.0 MBE/WBE goals were not established for this contract.

5.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

6.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

eClinical Works, LLC

Signature:

Date:

_ 12/21/17 :

Printed Name:

Alicia Cusato

City of Austin

Signature:

Date:

12/21/17

Jim Howard, Procurement Manager

Amendment No. 3
to
Contract No. NA170000002
for
Integrated Electronic Health Records System
between
eClinicalWorks, LLC
and the
City of Austin

1.0 The above referenced contract is hereby amended to change the invoice address, effective November 16, 2017, to the following:

	City of Austin
Department	Austin Public Health
Email	HHASDAPInvoices@austintexas.gov

Or

	City of Austin
Department	Austin Public Health
Address	7201 Levandar Loop, Building E Office E.1
City, State, Zip Code	Austin, TX 78702

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Initial Term: 12/07/2016 – 12/06/2017	$1,192,125.00	$1,192,125.00
Amendment No. 1: Administrative Increase 05/09/2017	$4,200.00	$1,196,325.00
Amendment No. 2: Option 1 – Extension 12/07/2017 – 12/06/2018 Addendum 1 Attached & Incorporated by reference	$354,200.00	$1,550,525.00
Amendment No. 3: Invoice Address Change	$0.00	$1,550,525.00

4.0 MBE/WBE goals were not established for this contract.

5.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties
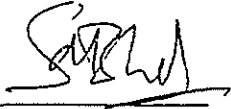
Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

6.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

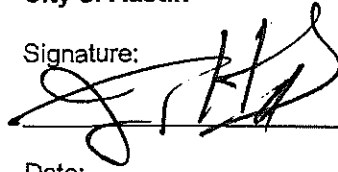**eClinical Works, LLC**

Signature:

Date: 11/21/17

Printed Name: Sameer Bhat

City of Austin

Signature:

Date: 11/27/17

Jim Howard, Procurement Manager

Amendment No. 2
to
Contract No. NA170000002
for
Integrated Electric Health Records Sytem
between
eClinicalWorks, LLC
and the
City of Austin

1.0 The City hereby exercises the extension options for the above-referenced contract. Effective December 7, 2017 the term for the extension option will be December 7, 2017 through December 6, 2018 and there are four (4) options remaining.

2.0 The City hereby includes Addendum 1, hereto attached.

3.0 The total contract amount is increased by $354,200.00 for the current extension option period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 12/07/2016 – 12/06/2017	$1,192.125.00	$1,192,125.00
Amendment No. 1: Administrative Increase 05/09/2017	$4,200.00	$1,196,325.00
Amendment No. 2: Option 1 – Extension 12/07/2017 – 12/06/2018; Addendum 1 Attached & Incorporated by reference	$354,200.00	$1,550,525.00

4.0 MBE/WBE goals do not apply to this contract.

5.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: _____

Printed Name: _Sameer Bhat_
Authorized Representative

Michael Calderone
eClinicalWorks, LLC.
Two Technology Drive,
Westborough, MA 01581
michael.calderone@eclinicalworks.com

Sign/Date: _____ 11/13/17

Printed Name _James T. Houng(?)_
Authorized Representative

City of Austin
Purchasing Office

ADDENDUM 1

This Addendum to the "Contract between the City of Austin and eClinicalWorks, LLC for Integrated Electronic Health Records System," and executed December 7, 2016 ("the Agreement") between the City of Austin ("Austin" or "End User"), a home-rule municipality incorporated by the State of Texas, and eClinicalWorks, LLC, a Massachusetts limited liability company, is made effective this November 13, 2017. This Addendum is subject to and made the last document under the Order of Precedence (i.e., section "1.2.4") as set forth in December 7, 2016 executed contract (Section 1.2, et. seq.)

Recitals

eClinicalWorks provides EHR software and services ("eCW Services") to End User pursuant to the Agreement.

End User desires to use certain electronic data interchange services (the "EDI Services") provided by TriZetto Provider Solutions, LLC ("TriZetto"), and eClinicalWorks desires to enable End User's access to those services.

Pursuant to an agreement between eClinicalWorks and TriZetto, eClinicalWorks must amend the Agreement between End User and eClinicalWorks before the EDI Services may be provided.

This Addendum acts as an amendment to the "Contract between the City of Austin and eClinicalWorks, LLC…" dated December 7, 2016.   This Addendum is subject to the Order of Precedence set forth in that Contract, City's Request for Proposal and Contractor's Original Offer are given precedence over this document.

Definitions

A.   "Documentation" means the user manual, instructions, and specifications provided, or otherwise made available, by TriZetto for distribution to End User.

B.   "End User Data" means data that originates from End User and that is (a) processed by the EDI Services or stored within the EDI Services, or (b) provided to TriZetto to be processed or stored by TriZetto in connection with the performance of the EDI Services, including all of the corrections and updates to the data and all copies of the data created by TriZetto.

C.   "HIPAA Rules" means the Health Insurance Portability and Accountability Act of 1996, 45 U.S.C. § 1320d-9, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, and its implementing regulations set forth at 45 C.F.R. Parts 160 and 164.

D.   "Intellectual Property Rights" means all worldwide patent, patent applications, copyrights, trademarks, design rights, service marks, trade names, trade dress, trade secrets, know-how, moral rights, and any other intellectual property or proprietary rights.

Amended Services

1.   <u>Acknowledgement of Rights</u>. End User acknowledges that the EDI Services constitute valuable trade secrets and other Intellectual Property Rights of TriZetto.

2.   <u>Restrictions</u>. Except as expressly permitted by this Addendum, End User shall not: (a) modify, adapt, alter, translate, or create derivative works from the EDI Services or Documentation; (b) merge the EDI Services with other services, products, equipment, data, or software; (c) sublicense, distribute, sell, use for outsourcing purposes, lease, rent, loan, or otherwise transfer the EDI Services or Documentation to any third party; (d) solicit or obtain orders for EDI Services; (e) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the EDI Services; (f) remove or alter any copyright or any other proprietary rights notice included in the EDI Services or Documentation; (g) otherwise use EDI Services except as expressly permitted hereunder; or (h) permit any third party to do any of the foregoing.

3.   <u>Remedies</u>. Breach of this Addendum by End User shall constitute a material breach of the Agreement. As a result of such a breach and at the sole option of eClinicalWorks, eClinicalWorks may terminate the eCW Services or the EDI Services. eClinicalWorks may confer with TriZetto in the exercise of eClinicalWorks' rights under this paragraph. This provision does not alter any remedies available to eClinicalWorks, and it does not alter any contractually obligated remedies set forth in a separate agreement between End User and TriZetto.

4.   <u>TriZetto's Right to Use Data</u>. As a condition of this Addendum, End User authorizes TriZetto to extract End User Data from any existing database and to de-identify the End User Data in accordance with the HIPAA Rules to create a de-identified data set. Further, End User grants TriZetto a nonexclusive, worldwide, paid-up, royalty-free, perpetual and irrevocable right and license to create derivative works of the data set and to use, copy, process, analyze, execute, reproduce, display, perform, transfer, distribute, and sublicense the data set and such derivative works in any technology now existing or later developed. Subject to the End User's sole continuing ownership of the End User Data, TriZetto shall own all such data sets, and all products, solutions and services that it creates using the data sets, and all of the Intellectual Property Rights embodied in and related to the data sets and such products, solutions and services.

5.   <u>TriZetto Intellectual Property Rights</u>. The EDI Services, Documentation, TriZetto's trademarks (the "TriZetto Marks"), TriZetto's marketing, training, and other materials, and all Intellectual Property Rights therein and related thereto, are the exclusive property of TriZetto. All rights in and to the EDI Services, Documentation, TriZetto Marks, and marketing, training, and other materials not expressly granted to End User in this Addendum are reserved by TriZetto. Except for the limited rights expressly granted hereunder, nothing in this Addendum shall be deemed to grant, by implication, estoppel, or otherwise, a license under any of TriZetto's Intellectual Property Rights in or to the EDI Services, Documentation, TriZetto Marks, or marketing, training, and other sales materials.

6. <u>Payment</u>. Nothing in this Addendum alters any payment terms for End User to receive the EDI Services. eClinicalWorks and End User acknowledge that such payment terms shall be pursuant to the option selected in Schedule A.

7. <u>Limitation of Liability for Availability of EDI Services</u>. eClinicalWorks and End User acknowledge that their respective rights to the EDI Services are limited. Separate agreements between (a) eClinicalWorks and TriZetto and (b) End User and TriZetto, including those not yet executed, may prevent eClinicalWorks from providing and/or End User from accessing the EDI Services. ACCORDINGLY, NEITHER ECLINICALWORKS NOR END USER MAY SEEK ANY DAMAGES FROM THE OTHER ARISING SOLELY FROM THE INABILITY TO ACCESS (BY TERMINATION OR OTHERWISE) THE EDI SERVICES. This waiver does not affect damages for any other claim arising under this Agreement.

8. <u>Limitation of Other Liability</u>. NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT AND ANY OF ITS EXHIBITS FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING SPECIAL DAMAGES OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUBJECT TO THE FOREGOING PARAGRAPH 7, ECLINICALWORKS' LIABILITY TO END USER FOR ANY LOSSES OR DAMAGES, IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE LIMITED TO THOSE ACTUAL AND DIRECT DAMAGES WHICH ARE REASONABLY INCURRED BY END USER AND SHALL NOT EXCEED THE FEES PAID BY END USER WITH RESPECT TO THE SERVICES GIVING RISE TO THE LIABILITY OVER THE MONTHS IN WHICH LIABILITY OCCURRED NOT TO EXCEED TWELVE (12) MONTHS.

9. <u>Indemnification</u>. Each party agrees to defend, indemnify and hold the other party, its directors, officers, agents, employees, and related entities harmless from any and all third party claims, demands, liabilities, damages, penalties, fines, losses, attorneys' fees and expenses, suits, judgments and settlements arising out of or in connection with the party's performance under this Addendum.

10. <u>Headings</u>. Headings or titles to paragraphs in this Addendum are for convenience of reference only and shall not affect the meaning or interpretation of this Addendum or any part of it.

11. <u>Assignment</u>. This Addendum may not be assigned by either party without the prior written consent of the other, which shall not be unreasonably withheld or delayed.

12. <u>Term</u>. This Addendum shall be in full force and effect until the earlier of (a) the EDI Services are no longer provided by way of eClinicalWorks to End User or (b) the Agreement terminates. Paragraphs 2, 4, 5, 7, 8, and 9 of this Addendum shall survive following termination.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, End User and eClinicalWorks have caused their authorized representatives to execute this Addendum.

City of Austin, Texas
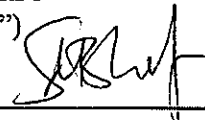("End User")

_____
Signature

JAMES T. HOWARD
_____
Name

PROCUREMENT MANAGER
_____
Title

11/13/07
_____
Date

eClinicalWorks, LLC
("eClinicalWorks")

_____
Signature

Sameer Bhat
_____
Name

VP of Sales
_____
Title

11/13/17
_____
Date

SCHEDULE A

TriZetto	$79 per month per Named Provider • Unlimited Enhanced Insurance Eligibility/IE (270/271) • Unlimited Paper & Electronic Claims (837) • Real-time Claim Scrubbing • Unlimited Clearinghouse Claim Status Reports (277CA) • Unlimited Electronic Remittance Advice/ERA (835)	✓ Accept
	$129 per month per Named Provider Integrated Services • Unlimited Enhanced Insurance Eligibility/IE (270/271) • Unlimited Paper & Electronic Claims (837) • Real-time Claim Scrubbing • Unlimited Clearinghouse Claim Status Reports (277CA) • Unlimited Electronic Remittance Advice/ERA (835) Services from TriZetto • paperResolve* • Auto Appeals • Advanced Alerts • Claim Status Inquiry (CSI) • Advanced Reimbursement Manager * paperResolve electronic document retention is limited to twelve months	✓ Accept
	Workers Comp Claims (Electronic Claims with PWK Attachments): • $0.85 per claim (includes all attachments)	✓ Accept
	eStatements** • $0.64 single page • $0.16 additional page(s) • $20.00 per month per practice minimum • **eClinicalWorks reserves the right to pass on postage increases for Paper Claims and Patient Statements to the End Users as appropriate. For each forward of a statement a National Change of Address (NCOA) fast-forward fee of $.50 will be charged and for each undeliverable address a Coding Accuracy Support System (CASS) a $.05 fee will be charged per TriZetto, this cost will be passed on to the End User.	✓ Accept

Amendment No. 1
to
Contract No. NA170000002
For
Integrated Electronic Health Records System
between
eClinicalWorks, LLC.
and the
City of Austin

1.0 The City hereby amends the above-referenced contract to add an annual amount of $4,200.00 for fax line integration, for the Initial Term and each Option. Amendment No. 1 is adding $4,200.00 to the Initial Term. $4,200 will also be added, annually, to each option as shown below:

Initial Term: Add $4,200
Option 1: Add $4,200
Option 2: Add $4,200
Option 3: Add $4,200
Option 4: Add $4,200
Option 5: Add $4,200

2.0 The total contract amount is increased by $4,200.00. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 12/07/2016 – 12/06/2017	$1,192,125.00	$1,192,125.00
Amendment No. 1: Administrative Increase 05/09/2017	$4,200.00	$1,196,325.00,

3.0 MBE/WBE goals do not apply to this contract.

4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: _____

Printed Name: ____JAMES T. HOWARD____
Authorized Representative

City of Austin
Purchasing Office

eClinicalWorks

eClinicalWorks® ADD Digital Fax (Incoming and Outgoing fax line) AGREEMENT

Customer Name	City of Austin Public Health Department	eClinicalWorks
Customer Address	124 West 8th Street	2 Technology Drive
City, State, Zip Code	AUSTIN, TX, 78701	Westborough, MA 01581
Customer Phone Number	5129725413	Phone : 508-836-2700
Customer Contact Name	Mausuf Sheikh	Fax : 508-599-3950

Effective Date : Apr 11, 2017   APU ID : 308126   Initial Term : 12 Months from Effective Date

This addendum is valid for 30 days from April 12, 2017. If addendum hasn't been signed within 30 days of issuance, please contact Sales at eClinicalWorks for a new addendum.

OPTIONAL ITEM(S)					Case #		5409375

Item(s)	Cost	Quantity	Type	Provider Name(s)	Onetime	Monthly	Yearly
Digital Fax (Incoming and Outgoing fax line)	$ 50.00	7	Lines		$ 0.00	$ 350.00	$ 0.00
Digital Fax (Outgoing only fax line)	$ 0.00	0	Lines		$ 0.00	$ 0.00	$ 0.00
Digital Fax (Incoming only fax line)	$ 0.00	0	Lines		$ 0.00	$ 0.00	$ 0.00
Total					**$ 0.00**	**$ 350.00**	**$ 0.00**

Total Onetime : $ 0.00   **Total Yearly : $ 4,200.00**

Payment Terms	Recurring payments will begin upon installation and will be billed on an annual/quarterly or monthly basis as per original contract. - Training fees will be due upon service being rendered if applicable. - License fee and set up fee is due upon installation.

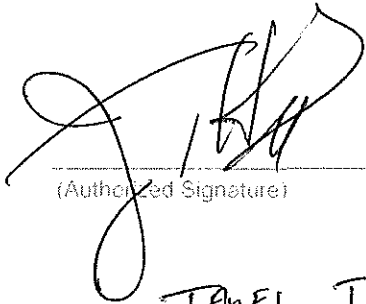| Description	*Minimum $50.00 per month for each incoming/outgoing line and for each outgoing line only. This covers up to 1000 outgoing pages per line. After that point every outgoing fax will be $.04 per page

CONTRACT EXECUTION

IN WITNESS WHEREOF, the respective authorized representative of each party has executed this Agreement, including any other applicable addenda or exhibits as specified herein, to be effective as of the date set forth above.

Customer	eClinicalWorks
(Authorized Signature)	_(Authorized Signature)_
JAMES T. HOWARD	Paul Dunkerly
(Name - Print or Type)	_(Name - Print or Type)_
CITY OF AUSTIN	eClinicalWorks
(Customer Company - Print or Type)	_(Company - Print or Type)_
5/9/17	04/12/2017
Date	Date
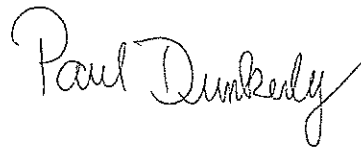
Responsible Department:	Health and Human Services Department
Department Contact Person:	Michael Maddux
Department Contact Email Address:	Michael.Maddux @austintexas.gov
Department Contact Telephone:	512-972-5846
Contractor Name:	eClinicalWorks, LLC.
Contract Number:	MA 5600 NA170000002
Contract Period:	12/07/2016 – 12/06/2017
Dollar Amount	$1,192,125.00
Extension Options:	5 12-month
Requisition Number:	16050300428
Solicitation Type & Number:	RFP PAX0133
Agenda Item Number:	41
Council Approval Date:	10/06/2016

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Sai Xoomsai Purcell
Senior Buyer Specialist
City of Austin
Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
eClinicalWorks, LLC. ("Contractor")
for
Integrated Electronic Health Records System
MA 5600 NA170000002

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between eClinicalWorks, LLC. having offices at Westborough, MA 01611 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number RFP PAX0133.

1.1 **This Contract is composed of the following documents:**

 1.1.1 This Contract

 1.1.2 The City's Solicitation, Request for Proposal (RFP), PAX0133 including all documents incorporated by reference

 1.1.3 eClinicalWorks, LLC.'s Offer, dated 06/25/2016, including subsequent clarifications

1.2 **Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

 1.2.1 This Contract

 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference

 1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 **Term of Contract.** The Contract will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to five (5) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of $1,192,125 for the initial Contract term and $350,000 for each extension option in an amount not to exceed $2,942,125.

1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

1.6 **Clarifications and Additional Agreements.** The following are incorporated into the Contract.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.
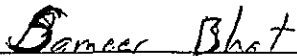
eClinicalWorks, LLC.   **CITY OF AUSTIN**
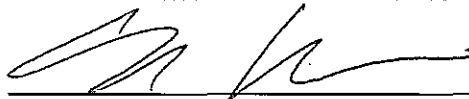
_____   Sai Purcell
Printed Name of Authorized Person   _____
                                             Printed Name of Authorized Person

Sameer Bhat   _____
Signature   Signature

VP Sales   Senior Buyer Specialist
Title: Title:

_12-7-16_   _12/7/16_
Date: Date:

Jim Howard
_____
Printed Name of Authorized Person

_____
Signature

Corporate Purchasing Manager
_____
Title:

12/7/16
_____
Date:

CITYOFAUSTIN, TEXAS
Purchasing Office
REQUEST FOR PROPOSAL (RFP)
OFFER SHEET

SOLICITATION NO: PAX0133

DATE ISSUED: 05/30/2016

REQUISITION NO.: 16050300428

COMMODITY CODE: 92003

FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT THE FOLLOWING AUTHORIZED CONTACT PERSON:

Sai Xoomsai Purcell
Senior Buyer Specialist

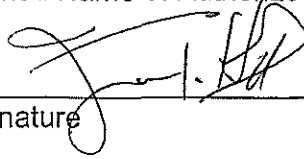**Phone: (512) 974-3058**

E-Mail: sai.xoomsai@austintexa.gov

COMMODITY/SERVICE DESCRIPTION: Integrated Electronic Health Records System

PRE-PROPOSAL CONFERENCE TIME AND DATE:
06/07/2016, 9:00 am, local time

LOCATION: Communications and Technology Management. 1124 S IH 35, Austin, TX 78704. Meet at 3rd floor main entrance

PROPOSAL DUE PRIOR TO: 06/30/2016, 2:00 pm, local time

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET RM 308, AUSTIN, TEXAS 78701

LIVE SOLICITATION CLOSING ONLINE: For RFP's, only the names of respondents will be read aloud

For information on how to attend the Solicitation Closing online, please select this link:

http://www.austintexas.gov/department/bid-opening-webinars

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # PAX0133	Purchasing Office-Response Enclosed for Solicitation # PAX0133
P.O. Box 1088	124 W 8th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.

All Offers (Including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

SUBMIT 1 ORIGINALAND 10 ELECTRONIC COPIES OF YOUR RESPONSE The electronic version must be on flash drive or CDs in PDF format ***SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT***

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	8
0500	SCOPE OF WORK	137
	Excel Appendix B – Functional Requirements	18
	Excel Appendix C – Technical Standards Requirements	5
	Excel Appendix D – Project Management/Implementation Requirements	3
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	11
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION CERTIFICATION	*
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0815	LIVING WAGES CONTRACTOR CERTIFICATION–Complete and return	1
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE NO GOALS FORM – Complete & return	2
	Attachment A – Price Proposal Form	3
	Attachment B – Proposal Exceptions	3
	Attachment C – Additional Clarifications	8

* Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:

http://www.austintexas.gov/financeonline/vendor connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

INTERESTED PARTIES DISCLOSURE

In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 "Certificate of Interested Parties" that is signed and notarized for a contract award requiring council authorization. The "Certificate of Interested Parties" form must be completed on the

Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution.

https://www.ethics.state.tx.us/whatsnew/elf info form1295.htm

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: eClinicalWorks

Company Address: Two Technology Drive

City, State, Zip: Westborough, MA 01581

Federal Tax ID No.:   ███████

Printed Name of Officer or Authorized Representative: Sameer Bhat

Title: Vice President

Signature of Officer or Authorized Representative:

Date:

Email Address:

Phone Number: 508-839-2700

* Proposal response must be submitted with this Offer sheet to be considered for award

eClinicalWorks cannot agree to be bound by the terms   therein, including all documents incorporated by reference.   Further, please refer to **Tab 4 – Exception Form** for exceptions taken to RFP PAX0133.

<u>Section 0605: Local Business Presence Identification</u>

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	eClinicalWorks	
Physical Address	2 Technology Drive, Westborough, MA 01581	
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	(No)
or	Regional Office	
Has your branch office been located in the Corporate City Limits for the last 5 years?	9606 N. Mopac Expy #100 Austin, TX 78759	eCW has had a regional office in Austin, TX for the past 2 years
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	(No)

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

Section 0700: Reference Sheet

eClinicalWorks

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

eCW Response:

As a courtesy to our customers, we do not include contact information in proposal responses. An eClinicalWorks representative is named to facilitate a conversation with reference customers. Please contact Ms. Maggie Kizior, Sales Coordinator, (508) 836-2700, Ext. 15934 to set up a confidential conversation with the reference contact.

Please be advised the submitted references are for the evaluation of the City of Austin, RFPPAX0133 proposal only.

1.

Company's Name	**City of Philadelphia**
Name and Title of Contact	**Confidential**
Project Name	
Present Address	**1101 Market St 10th Floor**
City, State, Zip Code	**Philadelphia, PA, 19107**
Telephone Number	**215-686-5200** Fax Number ( )
Email Address	

2.

Company's Name	**San Mateo Medical Center**
Name and Title of Contact	**Confidential**
Project Name	
Present Address	**222 West 39th Ave**
City, State, Zip Code	**San Mateo, CA, 94403**
Telephone Number	**650-573-2222** Fax Number ( )
Email Address	

Company's Name	**Bear River Health Department**
Name and Title of Contact	**Confidential**
Project Name	
Present Address	**655 East 1300 North**
City, State, Zip Code	**Logan, UT, 84341**
	(435) 734-0845 Fax Number ( )

Telephone Number

4.Company's Name   **New York Department of Health**

Name and Title of Contact   **Confidential**

Project Name

Present Address   **Corning Tower**

City, State, Zip Code   **Empire State Plaza, Albany, NY 12237**

Telephone Number   **347-396-4100**

Email Address

5.Company's Name

Name and Title of Contact

Project Name

Present Address

City, State, Zip Code

Telephone Number

Email Address

Section 0835: Non-Resident Bidder Provisions

Company Name: eClinicalWorks

A. Bidder must answer the following questions in accordance with Vernon's Texas Statues and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: non-resident Bidder

(1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

B. If the Bidder id a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: No   Which State: Commonwealth of MA

C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: NA

Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Utilization Plan
(Please duplicate as needed)

SOLICITATION NUMBER: PAX0133	
PROJECT NAME:	Electronic Health Records

PRIME CONTRACTOR / CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	eClinicalWorks LLC
Address	2 Technology Drive
City, State Zip	Westborough, MA 01581
Phone Number	508-836-2700 Fax Number 508-836-4466
Name of Contact Person	Michael Calderone, Sales Coordinator	michael.calderone@eclinicalworks.com
Is Company City certified?	Yes No MBE WBE MBE/WBE Joint Venture

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)   Diane Burrows, Director, Human Resources

_____   _____ 6/21/16
Signature   Date   June 25, 2016

Provide a list of all proposed subcontractors / sub-consultants / suppliers that will be used in the performance of this Contract. Attach Good Faith Effort documentation if non MBE/WBE firms will be used.

Sub-Contractor / Sub-Consultant	N/A – eClinicalWorks does not use subcontractors			
City of Austin Certified	MBE	WBE	Ethics / Gender Code:	Non-Certified
Vendor ID Code				
Contact Person		Phone Number		
Amount of Subcontract	$			
List commodity codes & description of services				

Sub-Contractor / Sub-Consultant				
City of Austin Certified	MBE	WBE	Ethics / Gender Code:	Non-Certified
Vendor ID Code				
Contact Person		Phone Number		
Amount of Subcontract	$			
List commodity codes & description of services				

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____

SOLICITATION NUMBER: PAX0133

PROJECT NAME: Electronic Health Records

The City of Austin has determined that no goals are appropriate for this project. Even though goals were not assigned for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract, using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

.No   X   If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope

——————— If yes, please contact SMBR to obtain further instructions and an availability list and perform Good
Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your
Yes   Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, sub-consultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though goals were not assigned, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

eClinicalWorks

Company Name

Diane Burrows, Director, Human Resources

Name and Title of Authorized Representative (Print or Type)

Diane L. Burrows   6/21/16

Signature   **Date**

Company Name

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than $13.03 per hour.

The below listed employees of the Contractor who are directly assigned to this contract are compensated at wage rates equal to or greater than $13.03 per hour.

Employee Name	Employee Job Title
eClinicalWorks does not assign a named Implementation Team to any project at the proposal phase.	Project Manager
At the right is a listing of the Implementation team roles/job titles.	Technical Architect
All persons who will be involved with the Implementation will be paid a wage equal to or greater than $13.03/hour.	Data Migration Analysis
	Integration Analysis
	Billing Specialist
	Trainer(s) Installation Specialist Others: As needed to support the project

USE ADDITIONAL PAGES AS NECESSARY

(1) All future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than $13.03 per hour.

(2) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each affected employee the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision or fraudulent statements made on this certification may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment, or result in legal action.

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect unless earlier terminated as provided below..

3. **INTENTIONALLY OMITTED.**

4. **INTENTIONALLY OMITTED.**

5. **OWNERSHIP**: The City acknowledges that: (i) the Deliverables are licensed and not sold; and (ii) by accepting the licenses set forth in this Contract, the City acquires only the right to use the Deliverables in accordance with the terms of this Contract, and that Contractor, or its licensors, will retain all rights, title, interest, including all associated patent, copyright, trademark, trade dress, trade secret and other proprietary rights in and to the Deliverables. The City may not attempt to sell, sublicense, lease, permit, rent or transfer in any way whatsoever the Software. The City agrees that it will not, at any time, without the prior written consent of Contractor, decompile, disassemble or reverse engineer any software included within the Deliverables, including without limitation the applications, to develop functionally similar software or permit any third party to do any of the foregoing. The City further agrees to not grant access to any third party for any purpose without the prior written consent of Contractor.

6. **INTENTIONALLY OMITTED.**

7. **ACCEPTANCE**:
    a)   As to EMR Go-Live and PM Go-Live (collectively the "Software"), the City will have the opportunity for thirty (30) days "Initial test period" to test the Software to ensure all components are functioning. EMR Go-Live offers the ability to document progress notes, generate Rx, order entry, route orders, scan documents and generate referral request. . "PM Go-Live" offers the ability to send claims, post payments generate statements, and generate reports. If the Software does not perform any of the functions described above, the City must notify Contractor of the deficient component in writing within three (3) business days of the end of the Initial test period. Contractor must restore the functionality of the deficient component within a commercially reasonable amount of time after receiving such notice. Once Contractor restores the functionality, the City will have fifteen (15) days "final test period" to test those corrections. If no errors are reported during initial or final test period, the Software is automatically deemed to be accepted. The City may also notify Contractor in writing of acceptance of Software. If Contractor is unable to correct issues as reported by the City during final test period, the City may elect to repeat final acceptance testing to or to cancel the Contract. In the event of cancelation by the City in accordance with this paragraph, Contractor will reimburse the City for all license fees paid by the City for the Software through the date of termination.

    b)   As to any services provided by Contractor under this Contract, the City shall notify Contractor in writing (a "Notice of Non-Conformity") promptly upon becoming aware that the service did not conform to the specifications included in the applicable work order. The City may request that Contractor either re-perform the service or replace the personnel assigned to perform the service. If Contractor does not receive a Notice of Non-Conformity within three (3) business days after completion of the applicable service, the City will be deemed to have accepted such service.

8. **INTENTIONALLY OMITTED.**

9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications.

10. **WORKFORCE**

A. The Contractor shall employ competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .

    i.   use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; or

    ii.   use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. **INVOICES**:

A. Contractor shall invoice the City in advance for fees applicable to any software or services provided under this Contract.

B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a description of the work performed, the applicable hourly rate and must clearly identify the order number. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly agreed by the parties in writing, the Contractor shall be responsible for any fees or compensation owed to any subcontractor engaged by Contractor to provide services or supplies in connection with this Contract.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon execution of this Contract.

13. **PAYMENT**:

A. All undisputed invoices received by the City will be due and payable within thirty (30) calendar days of the City's receipt of the invoice.

B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum rate allowed under applicable law; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of failure of the Contractor to submit proper invoices with all required attachments and supporting documentation.

E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty charged to the City.

14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

http://www.gsa.gov/portal/category/21287

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. **FINAL PAYMENT AND CLOSE-OUT**:

A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from the Contractor's continuing obligations under the

Contract, including but not limited to indemnity and warranty obligations, or (3) arising under the City's right to audit; and

ii.   a waiver of all claims by the Contractor against the City, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from the City's continuing obligations under the Contract, including but not limited to indemnity obligations, or (3) arising under the City's right to audit.

16.   **INTENTIONALLY OMITTED.**

17.   **RIGHT TO AUDIT:**

A.   The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit or examine, any and all records of the Contractor related solely to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract. The City shall have the right to conduct an audit or examination no more than once each calendar year during the term of the Contract and the City shall bear all costs and expenses associated with any audit or examination conducted pursuant to this Section. Any audit or examination shall take place at Contractor's offices at dates and times mutually agreed upon between the parties. The Contractor agrees to refund to the City any overpayments disclosed by any such audit and the City agrees to pay any underpayments or unbilled charges disclosed by any such audit.

B.   The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18.   **SUBCONTRACTORS:**

A.   If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

B.   Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

i.   require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii.   prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii.   require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv.   require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v.   require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

E. The City acknowledges that Contractor may obtain services and products from third parties and may incorporate such services and products into the services and Deliverables provided by Contractor under this Contract. The parties acknowledge and agree that such third parties shall not be deemed "subcontractors" for purposes of this Section 18 unless such third party provides the service or product directly to the City.

19. **WARRANTY-PRICE**:

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

20. **LIMITED WARRANTY – TITLE**: The Contractor warrants that it either owns or has the right to license the Deliverables and services furnished under the Contract.

21. **LIMITED WARRANTY – SERVICES AND DELIVERABLES**: The Contractor warrants and represents that the Software will perform the functions described in Section 7, and any services provided to the City under the Contract shall be performed in a good and workmanlike manner.

A. **CONTRACTOR MAKES NO WARRANTY THAT ANY SOFTWARE OR SERVICES PROVIDED UNDER THIS CONTRACT WILL PERFORM ERROR-FREE OR UNINTERRUPTED, OR THAT CONTRACTOR WILL CORRECT ALL ERRORS THAT MAY EXIST WITHIN SUCH SOFTWARE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND ANY SOFTWARE IS PROVIDED "AS IS" AND CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY NON-INFRINGEMENT WARRANTY AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. ANY IMPLIED WARRANTIES THAT BY LAW CANNOT BE DISCLAIMED ARE LIMITED IN DURATION TO: (I) NINETY (90) DAYS FROM THE DATE OF THE CITY'S EXECUTION OF THIS CONTRACT; OR (B) THE SHORTEST PERIOD PERMITTED BY LAW, WHICHEVER IS GREATER.**

B. Unless otherwise specified in the Contract, the warranty period shall be one year from the date of acceptance of the Deliverables or from the date of acceptance of the applicable service. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand, at its option either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, or re-perform the services. All costs incidental to such repair, replacement or re-performance shall be borne exclusively by the Contractor. The City shall give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty.

C. The warranty and remedies provided in this Section 21 do not apply to any Software to the extent that such Software: (i) has been modified, enhanced or altered in any way, except by Contractor; (ii) has not been installed, operated, repaired or maintained in accordance with the Software documentation; (iii) has been subjected to abuse, misuse, negligence, or accident; (iv) has been subjected to external forces, such as power failures or electrical power surges; or (v) cannot reasonably reproduce the error reported by the City.

D. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall provide reasonable assistance and cooperation to the City to enforce such manufacturer's warranty for the benefit of the City.

E. This Section 21 sets forth the City's entire and exclusive remedy with respect to any action or claim for an alleged breach of warranty with respect to any software or services provided under this Contract.

22. **INTENTIONALLY OMITTED.**

23. **INTENTIONALLY OMITTED.**

24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected.

26. **DEFAULT**: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City. The City shall be in default under the Contract if the City (y) fails to perform any of its material obligations under the Contract, including failure to make any payment when due or (z) fails to provide adequate assurance of performance under Paragraph 24.

27. **TERMINATION FOR CAUSE:**. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the City, Contractor shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, or unless the City, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to Contractor's reasonable satisfaction that such default does not, in fact, exist.

28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

29. **FRAUD**: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. **DELAYS**:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. Contractor shall be excused from performance until the parties reach a mutually agreeable resolution.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:

A. Definitions:

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
    (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties, but expressly excluding patients); and/or
    (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties, but expressly excluding patients),

ii. "Fault" shall include gross negligence and willful misconduct.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. **INSURANCE**: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the

City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

viii. The City may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies. Contractor shall have no obligation to undertake any action requested pursuant to this Section if such action will increase or otherwise cause Contractor to incur additional costs.

ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to request reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor. Contractor shall have no obligation to undertake any action requested pursuant to this Section if such action will increase or otherwise cause Contractor to incur additional costs.

x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.

xii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the

Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: Except as provided in Section 6 and [EXHIBIT _] – the Mutual Confidentiality and Non-disclosure Agreement, all material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

36. **INFRINGEMENT CLAIMS**: Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from any claim that the Deliverables or the services provided by Contractor hereunder infringe the intellectual property rights of any third party. In the event of any such claim, the City shall have the right to monitor such claim, or at its option and expense, engage its own separate counsel to act as co-counsel on the City's behalf. Contractor will have no liability to the City with respect to any claim that is based upon, arises out of, or would not have occurred but for (A) any alteration or modification of the Deliverables or the services by the City or any third party acting on the City's behalf, or (B) the City's combination, operation, or use of the Deliverables with any software, hardware, product or apparatus installed in its application environment following the installation of the Deliverable by Contractor. If Contractor reasonably believes that any Deliverable infringes a copyright or patent, or misappropriates a trade secret of a third party, then Contractor, within its sole and absolute discretion, may (i) acquire the right for the City to continue to use the Deliverable upon the terms of this Contract; (ii) modify the Deliverable to avoid or correct the infringement; (iii) replace the Deliverable; or (iv) terminate this Contract and refund the City any fees paid by the City for the unused portion of the infringing Deliverable. Upon such termination the City will immediately discontinue use of, remove from its system, and return to Contractor such infringing Deliverable. This Section 36 sets forth the City's exclusive remedy with respect to any action or claim for an alleged violation of the intellectual property rights or other rights of third parties with respect to the Deliverables or the services provided hereunder.

37. **CONFIDENTIALITY**: The terms of the Mutual Confidentiality and Non-Disclosure Agreement entered by the parties on August 8, 2016, and attached hereto as [EXHIBIT _], are incorporated herein by reference. In the event of a conflict between the terms of this Contract and the terms of [EXHIBIT _], the terms of [EXHIBIT _] shall prevail.

38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without.

41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract.

42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Except as provided in Section 18E, any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

48. **DISPUTE RESOLUTION**:

   A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B.   If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49.   **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50.   **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51.   **HOLIDAYS:** The following holidays are observed by the City:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52.   **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii.   "Domestic end product" means-

(1)   An unmanufactured end product mined or produced in the United States; or

(2)   An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv.   "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v.   "Foreign end product" means an end product other than a domestic end product.

vi.   "United States" means the 50 States, the District of Columbia, and outlying areas.

B.   The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C.   The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D.   The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate". The parties acknowledge and agree that the provision of certain support services from locations outside of the United States shall not be deemed a violation of this Section 56.

56.   **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL CONTRACTOR BE LIABLE TO THE CITY FOR LOSS OF PROFITS OR OTHER ECONOMIC LOSS, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF BUSINESS, PROFITS, REVENUE, GOODWILL, USE, OR DATA), EVEN IF CONTRACTOR HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION CAUSES OF ACTION ARISING OUT OF TERMINATION OF THIS CONTRACT, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, PRODUCT LIABILITY AND ANY OTHER TORTS. UNLESS PROHIBITED BY LAW, THE MAXIMUM AGGREGATE CUMULATIVE AMOUNT OF MONEY DAMAGES FOR WHICH CONTRACTOR MAY BE LIABLE UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNTS ACTUALLY PAID OR PAYABLE BY THE CITY TO CONTRACTOR UNDER THIS CONTRACT DURING THE TWELVE (12) MONTHS PRECEDING A CLAIM.

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

    All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to sai.xoomsai@austintexas.gov no later than close of business on 06/10/2016.

2. **INSURANCE:** Insurance is required for this solicitation.

    A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

        i.   The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
        ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
        iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
        iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

        City of Austin Purchasing Office
        P. O. Box 1088
        Austin, Texas 78767

    B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

        i.   **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.
             (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
                 (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
        ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are $1,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
             (1) The policy shall contain the following provisions:
                 (a) Contractual liability coverage for liability assumed under the Contract (b) Contractor/Subcontracted Work.
                 (c) Products/Completed Operations Liability for the duration of the warranty period.
             (2) The policy shall also include these endorsements in favor of the City of Austin:
                 (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
                 (b) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
        iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $500,000 per

occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:
  (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
  (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

iv. **Professional Liability/Technology Errors and Omissions Insurance**: The Contractor shall provide coverage, at a minimum limit of $5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of a negligent act, error, omission, or breach of security (including but not limited to confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

v. **Cyber Liability Insurance:** coverage of not less than $2,000,000 each claim and $4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3)invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

3. **TERM OF CONTRACT:**

A. The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to five (5) additional 12-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.

4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term.

Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

5. **INVOICES and PAYMENT**: (reference paragraphs 12 and 13 in Section 0300)

    A.   Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

           Invoices shall be mailed to the below address:

	City of Austin
Department	Communications and Technology Management Department
Attn:	Accounts Payable
E-mail Address	CTMAPInvoice@austintexas.gov

    B.   The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

6. **INTERLOCAL PURCHASING AGREEMENTS**: (applicable to competitively procured goods/services contracts).

    A.   The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.

    B.   The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

7. **SOFTWARE TERMS**:

    A.   In the event of termination of the contract, the service provider shall implement an orderly return of City data in a relational database at a time agreed to by the parties and the subsequent secure disposal of City data.

    B.   During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.

    C.   In the event of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data for a period of:

           10 days after the effective date of termination, if the termination is in accordance with the contract period
           30 days after the effective date of termination, if the termination is for convenience
           60 days after the effective date of termination, if the termination is for cause. After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.

D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA. Any post-termination assistance will be at an additional cost.

    The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.

E. Data Location: Except for technical support services, the service provider shall provide its services to the City and its end users solely from data centers in the U.S. Storage of City data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store City data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The service provider may provide technical user support only on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this contract.

F. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

    1   The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider

applies

        to its own personal data and non-public data of similar kind.

    3. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included

in

        the service level agreement (SLA), or otherwise made a part of this contract.

    4. Unless otherwise stipulated, the service provider shall encrypt all non-public data in transit. The City shall identify data it deems as non-public data to the service provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.

    5. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the City.

    6. The service provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

G. Security: The service provider shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.

H. Security Incident or Data Breach Notification: The service provider shall inform the City of any security
incident or data breach.

I. Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

J. Breach Reporting Requirements: If the service provider has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

K. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession of control of service provider.

L. The service provider, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

M. The service provider, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The service provider shall:
(1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach,
(2) promptly implement necessary remedial measures, if necessary, and (3) document responsive action taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

N. Responsibilities and Uptime Guarantee: The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the service provider. The system shall be available 24/7/365 (with agreed-upon maintenance downtime).

8. **Web Services**: The service provider shall use Web services exclusively to interface with the City's data in near real time when possible.

9. **Ownership**:

A. OWNERSHIP AND PROPRIETARY RIGHTS. City may not attempt to sell, sublicense, lease, permit, rent or transfer in any way whatsoever the Software. City agrees that it will not, at any time, without the prior written consent of Contractor, decompile, disassemble or reverse engineer any software included within the Software, including without limitation the applications, to develop functionally similar Software or permit any third party to do any of the foregoing. City agrees to not grant access to any third party for any purpose without the without the prior written consent of Contractor.

B. OWNERSHIP OF DATA. All the patient demographics and medical records created by this Software will be solely owned by the City.

10. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Michael Maddux, Health and Human Services IT System Manager

Michael.Maddux@austintexas.gov
512-972-5846

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1.0 INTRODUCTION

1.1 Purpose

This request for proposal (RFP) by the City of Austin (City), on behalf of Health and Human Services Department (HHSD) seeks proposal for an Integrated Electronic Health Records system (EHR). The needed EHR system will be used to provide:

- A replacement for currently used disparate applications into an integrated solution.
- A solution that shall be scalable for multiple HHSD programs
- An implementation of a single solution with integration to existing health care systems in use by HHSD
- An increase in efficiencies in the following areas:
    o Chart management/Electronic Patient Management (EPM)
    o Coordination of care, referrals and patient outcomes
    o Billing/Revenue Cycle Management (RCM)
    o Access to patient health records
    o The disposition of data after it has met its retention requirements
    o Inventory Management
- An assurance of compliance with Health Insurance Portability and Accountability Act (HIPAA) privacy and security regulations
- A capability of Public Health Informatics/Data Analytics/Business Intelligence/Quality Assurance/Continuous Quality Improvement (CQI)
- A capacity to implement a future connection to a Texas Health Information Exchange (HIE)
- A replacement of annual software maintenance cost for older systems
- A decrease in the cost associated with supporting paper based business processes

The HHSD EHR solution, when completed in approximately six (6) years, will be the City of Austin Public Health integrated connection to the Texas Health Information Exchange (HIE) supporting a sector of the population historically underinsured or uninsured.

1.2 Business Goals

The Health and Human Services Department requires an integrated electronic health records system designed:

- For population-based public health
- To provide new functionality and
- To manage single case files (single customer record) across various programs and services

1.2.1 Increased Efficiencies

This integrated solution will increase efficiencies in the areas of:

- Chart Management/Electronic Patient Management (EPM) through a single customer record accessed on-line
- Coordination of care, referrals and patient outcomes through a single customer record accessed on-line
    o Provide multiple clinicians concurrent access, regardless of location to the same patient data

- o Share critical information more efficiently
- o Expedite client referrals internally and externally
- Office space utilization
- Improved records management
- Health records by the reduction in handwriting-based errors through a single customer record accessed on-line
- Billing/Revenue Cycle Management (RCM) including optimization of current billing for maximum return on claims, the development of new claim capabilities, and file reimbursement for claims for services
- Disposition of data after it has met its retention requirements per the City of Austin Office of City Clerk approved Records Control schedules in the following HHSD areas of:
  - o Disease Prevention Health Promotion
  - o Community Services
  - o Maternal Child and Adolescent Health (MCAH)
  - o Director and Administrative Services
  - o Vital Records
  - o Environmental Health Services
- Inventory Management
- Availability of data for strategic public health planning and response
- Preparedness response department wide
- Uniform systems development and process improvements

1.2.2   Increased Functionality

This integrated solution will provide new functionality in the areas of:

- *Public Health Informatics* in the areas of surveillance, prevention, preparedness and health promotion
- *Population Health Management* through proactive application of strategies and interventions to defined groups of individuals across the continuum of care in an effort to improve the health of the individuals within the group at the lowest necessary cost.
- *Data Analytics* – ensure access to all system data:
  - o including automating extraction, aggregation and integration of clinical, financial, administrative, patient experience and other relevant data
  - o apply Business Intelligence and advanced analytics to organize and measure clinical, patient safety, cost and patient satisfaction processes and outcomes for Quality Assurance improving the future quality of care, increasing financial efficiency, and operational effectiveness, conducting innovative research and satisfying regulatory requirements
- *Eligibility* screening and alerting for referral opportunities
- *Data compilation* for budget reporting, grant writing efforts and employee evaluation

1.2.3   Ensure Regulatory Compliance

This integrated solution will ensure regulatory compliance with medical, legal and security protocols in the areas of:

- HIPAA Privacy Rule for individually identifiable health information held by covered entities and their business associates and providing patients' rights to that information
- HIPAA Security Rule for administrative, physical, and technical safeguards for covered entities and business associates to use the confidentiality, integrity, and availability of electronic protected health information

- Patient access to health records with patient portal availability upon implementation of the system to the following:
    - o Immunizations
    - o Medications
    - o Laboratory Report

1.2.4 Reduction in Operation Costs

This integrated solution will provide a reduction in operating costs in the areas of:

- Replacement of a paper-based business processes and a reduction
- Reduction administrative steps by streamlining operations and increasing productivity

1.3 Project Scope

1.3.1 General Information
The project team created business Use Case requirements describing processes that the new EHR solution shall address. The Function requirements in Section 0500 are created from Use Case requirements in **Appendix A.**

June 30, 2017 priority implementation solutions for the City are:

- Schedule Appointment - see *Section 1.3.1.5 in this RFP scope of work*
- Tuberculosis (TB) Clinic – see *Section 1.3.1.1 in this RFP scope of work*
- Sexually Transmitted Disease (STD) Clinic - see *Section 1.3.1.1 in this RFP scope of work*

The following Use Cases summaries are the general functional summaries of the scope of work for the City HHSD EHR Project which includes ten (10) areas of public health care and information technology and management.

1.3.1.1 Treat Communicable Disease Patient Scope Statement - PRIORITY
Based on a previously scheduled appointment, the Client attends their scheduled appointment and provides the Clinic Staff information necessary to determine and/or perform treatment. The Clinic Staff creates or updates the Client Medical Record with new or updated information. Based on the disposition of the Client, the Clinic Staff determines test requirements. If the Client does not require testing (such as latent Tuberculosis), the Clinic Staff reviews medications requirements with Client and tracks medication usage. If the Client has active disease, the Clinic Staff reviews medical requirements with the Client, completes tests, tracks medications, sets up contact investigation, and provides outreach services. Center for Disease Control (CDC) 72 A, B, and C for Tuberculosis and post HIV testing is required by the state and regularly posted to the Public Health Information Network depending on the disposition of the Client. The Clinic Staff report HIV/AIDS and other reportable data using the Enhanced HIV/AIDS Reporting System (eHARS), National Electronic Disease Surveillance System (NEDSS) among others.

1.3.1.2 Provide Disease Prevention Scope Statement
For economically disadvantaged Clients (Medicare, Medicaid, un-insured, under-insured, or high risk, etc.), the system provides the Client a Web portal to access their Client Medical Record to intake relevant information prior to an appointment. They may use the Web portal to print or save medical information to include, but not limited to shot records, etc. The Client reports to the Clinic Receptionist (i.e., Clinic Staff) by appointment or walk-in. The Clinic Staff verifies Medicaid patients using Texas Medicaid Healthcare Partnership (TMHP), looks up

immunization history in Texas-Wide Integrated Client Encounter System (TWICES) and the state's immunization tracking system ImmTrac. The Clinic Staff reviews the Client Medical Record and makes adjustments as required or creates a new Client Medical Record if none exists. The Clinic Staff uses the system to determine immunization needs and administers immunization with approved consent. The system provides a mobile platform for outreach Clinic Staff to perform field-administered immunizations for certain high-risk Clients. Once administered, the Clinic Staff enters medication/immunization administered in the Medication Usage portion of the Client Medical Record. The system tracks medication/immunization usage against supply to identify reorder thresholds when required. The system automatically provides a Medication reorder to the Electronic Vaccine Inventory system to track inventory Vaccines for Children (VFC). The Clinic Staff uses the system to track certain case files requiring workflow management and reminder notifications. Clinic Staff use the system to document state reportable public health education activities and events.

1.3.1.3   Qualify and Intake Referred Refugee Scope Statement
When the Clinic Staff receives a Refugee Referral Form from the system and determines eligibility, the Clinic Staff sends indication of eligibility to the Volunteer Agency. The Clinic Staff use the system to create a new Client Medical Record for the refugee and enters Client Demographics or other pertinent Client Information. For special needs Clients, the Clinic Staff assigns a social worker.

1.3.1.4   Administer Refugee Health Needs and Records Scope Statement
A qualified refugee Client reports to the Refugee Health Clinic for screening. On first visit, the Client completes various intake forms to provide consent, medical history, etc. representing the Client Demographics. During clinic visits, the Clinic Staff performs various medical testing such as blood work, vision, vital signs (blood pressure, pulse, etc.), basic hearing test, and take physical vitals (height, weight, etc.). Clinic Staff administer vaccinations based on vaccine history provided by Center for Disease Control (CDC) - sometimes the CDC provides refugee Client information in the form of Electronic Disease Notification (EDN) - could include report from refugee camps supported by International Organization for Migration (IOM) or United Nations High Commissioner for Refugees (UNHCR). Based on this information, the Clinic Staff administers appropriate vaccines or medications. Sometimes Clinic Staff must wait for test results prior to administering some medications or vaccines. Client appointments occur in house for two appointments to make an overall assessment; afterwards, Clinic Staff dispense refugee Clients to civilian health care agencies. Clinic Staff may refer sexually transmitted disease (STD) or Tuberculosis (TB) cases to the Austin STD/TB Clinic. The Clinic Staff maintains a complete refugee Client Medical Record, which requires civilian health care agencies to fax health record information for inclusion in Client Medical Record. In addition, all refugee Clients receive medical education. Clients may receive additional follow up appointment, if needed.

1.3.1.5   Schedule Appointment Use Scope Statement - PRIORITY
The Client can either setup an appointment using a Web enabled interface or call the hotline to schedule an appointment with an Appointment Scheduler. A call management system dashboard provides leadership indication of Appointment Scheduler performance as well as indication of current and anticipated call volume metrics. A geographic depiction of clinic locations is provided to assist in optimal location identification to the Client and Appointment Schedulers to assist in appointment location. The Client is provided automated notifications either by text message or automated voice indication to confirm, remind, or indicate appointment status. Appointment Schedulers manage schedulable resources as required.

1.3.1.6 Provide WIC Services Scope Statement

Women, Infants and Children (WIC) is a nutrition program that helps pregnant women, new mothers, and young children eat well, learn about nutrition, and stay healthy. Nutrition education and counseling, breastfeeding support, nutritious foods, and help accessing health care for low-income women, infants, and children through the Special Supplemental Nutrition Program. Services are free to those who are eligible. Part of the WIC nutrition program includes breastfeeding clinic (Mom's Place) run by the City of Austin. The state does not provide electronic record access at Mom's Place clinics. Therefore, there is a need for a system to track client demographics, schedule appointments and administered breastfeeding and nutrition services – includes electronic health records. Clinic Staff use the system to connect virtually using tele-presence to the locally run WIC Office when specialized hands on support require Mom's Place Clinic Staff. The system provides a Web interface to replace current intake forms - allows Clients to enter demographics and other questionnaire queries prior to each visit. The system uses the same system interface as computer kiosks in local WIC Clinics. Clinic Staff use the system to assist in finding Client referrals, track referrals to and from other programs/clinics, track non-returnable inventory, track breast pumps, and identify follow up items.

1.3.1.7 Process Claims Scope Statement

Collects fee for service, posts services for billing, bills Medicaid, bills for large immunization event, bills Medicare immunization, and manually bills outstanding claims. Used to receive payments, update claim status and manage exceptions to include unresolved claims.

1.3.1.8 Conduct Claim Appeal Process Scope Statement

The Billing staff use the system to manage unpaid or partially paid claims. Currently, the Billing Staff uses TMHP and TWICES to verifying and reconciling the details associated with a medical insurance claim. If the health plan in question requires additional documentation, the Billing Staff prepares the required letters to the Health Plan Provider, including copies of records showing the claims and treatments provided. If the Health Plan Provider offers a Website for claims, the Billing Staff uses the Website to submit the appeal; otherwise, the Billing Staff creates a CMS1500 form and resubmit the claim with the most current information. The Billing Staff then updates the Medicaid conversion database and an Excel tracking log used to track claim submissions. As the last step, plan providers file CMS1500 claim submissions.

1.3.1.9 Conduct GAX Refund Scope Statement

General Accounting Expenditures (GAX) refunds are issued when monies have been paid by the City erroneously and need to be refunded. The Billing Staff completes a GaxRefundRequest form and forwards it to Health and Human Services (HHS) Accounting Department. HHSD reviews the request and accesses the Advantage Information Management System (AIMS) system to mark a specific payment for reversal. The City's Accounts Payable team verifies the AIMS registry entry and ultimately drafts the required refund check.

1.3.1.10 Initiate Refund Scope Statement

In certain situations, a Client is due a refund from the City of Austin. Normally this is the result of a customer paying and then the Health Plan Provider also paying the same claim. When this situation occurs, the Billing Staff accesses TWICES, TMHP, PaymentTech (if original payment was via credit card) and verifies the treatment and the amount paid. The Billing Staff completes a Request for Refund form and obtains the Billing Supervisor's approval signature. If the refund is cash or check, HHS Accounting prepares and sends a check to the Client. For credit card transactions, the Client returns to the treatment location, offers the credit card used for the original transaction, and the Billing Staff uses the card to reverse the charge via the

credit card terminal. Lastly, the Billing Staff modifies the ExcelTrackingLog, reflecting activity with the Customer and claim.

1.3.2   City's Responsibilities

The City will be responsible for:
- Identifying priority scope implementations
- Setting work hours on City sites and work associated with the City's network
  - Normal City business hours are 7:45 a.m. – 4:45 p.m. CST, Monday through Friday no weekends or City holidays
- Approving all scope of work and or changes in the scope of work, including adds, deletions, and equal changes
- Approving process flows
- Approving implementation schedules
- Approving all measurable project objectives, including but not limited to, milestones and requirement functionality implementation through User Acceptance Testing
- Approving Vendor invoices
- Providing all data entry elements to include forms and sources of information

1.3.3   Vendor's Responsibilities

The Vendor shall be responsible for:
- Business Analysis to make recommendations on system design, software installation, and performance tuning, training, updating, data backup, documentation and implementation required for the system.

Note: The City reserves the right to purchase hardware from other sources
- Providing all technical documents for the proposed system and its components. These documents shall include administrator and end user manuals about product installation and maintenance. The supplier shall grant the City the authorization to reproduce any provided documents for internal use.
- Providing detail data backup and restore plan if hosted by eClinicalWorks.
- Providing disaster recovery and business continuity plan if hosted by eClinicalWorks.
- Assisting in the development of an acceptance test plans. During testing, the Vendor shall be available for assistance and correction of any error detected.   Testing shall be successfully performed before the City approves the final sign-off for the acceptance of the system
- Providing a detailed list of the necessary resources and expertise, complete with personnel job descriptions, which shall be required for the City to maintain the system once implemented
- Adhering to City of Austin holidays and normal business hours as identified by the City in the approved Project Schedule
- Work with the City Communication Technology Management Staff (CTM) technical staff on related security and network matters through a Project Communication Plan
- Work with the City on related project matters through a Project Communication Plan

2.0 DESCRIPTION OF EXISTING SYSTEMS

2.1 Current System

The description of the existing system is based on the City of Austin's Technical Reference Model and the current system(s) comprising the HHSD Health Services.

2.1.1 Technical Reference Model

The Technical Reference Model is based on the September 24, 2015 model provided by the Office of the Chief Enterprise IT Architect. It is the City of Austin's component-based technical framework used for standards, specification and technologies that support and enable the delivery of service to City departments.

Table A: Technical Reference Model

Area	Category	Standard
Application Technology		
Development Tools	Analysis, Design and Modeling	Unified Modeling Language (UML)
	Requirements Management	Rational Software Architect (RSA)
	Software Change and Configuration Management Tools	GitHub
	Web Authoring and Content Management Tools	Drupal (outward)
	Application Development Tools	Visual Studio
		PL/SQL Developer
		Notepad++
		Java
		Cold Fusion
Software Engines	Search Engines	Solr
	Geographic Information System (GIS) Engines	ESRI Current minus 2 versions (10.1-10.3)
		ArcGIS for Desktop current minus 2 versions (10.1-10.3)
		ArcGIS for Server current minus 2 versions (10.1-10.3)
		ArcGIS Online current minus 2 versions (10.1-10.3)
		Smallworld Electronic Office (AE only)
		ArcSDE current minus 2 versions (10.1-10.3)
		FME current minus 2 versions (10.1-10.3)
	Business Rules Engines	BPM
		BPMN
	Business Process Management Engines	Websplore

Area	Category	Standard
Application and Web Server Software	Application Server Software	ArcGIS Server (includes server extensions) current minus 2 versions (10.1-10.3)
		FME Server current minus 2 versions (10.1-10.3)
	Web Server Software	Apache current minus 2 versions
		Internet Information Services (IIS) current minus 1 version
		IBM WebSphere
Integration Software	Enterprise Service Bus (ESB)	IBM Integration Bus (IIB)
Application Testing Software	Debugging Test Tools	PL/SQL Developer
		Fiddler
		Firebug (Firefox plugin)
		IE Developer Tools
	Function Testing Tools	PL/SQL Developer
	Load and Performance Testing Tools	PL/SQL Developer
		Visual Studio
		Jmeter
	System Testing Tools	Visual Studio
		PL/SQL Developer
	Unit Testing Tools	Visual Studio
		PL/SQL Developer
Information Management Technologies		
Business Intelligence and Data Warehouse Platforms	Business Intelligence Platforms	MicroStrategy
	Web Reporting Tools	Google Analytics
		DBNetGrid
		CADReports
		Microcall
	Dashboard/Scorecard Tools	MicroStrategy
	Data Mining Tools	Oracle Discoverer
		PL/SQL Developer
	Data Warehouses	Oracle
		SQL Server
	Geospatial Tools	ArcGIS Desktop current minus 2 versions (10.1-10.3)
	Data Analytics (Statistical Analytics, Prediction, and Modeling)	ERWin
		Visio
	Unstructured Data/Natural Language Processing	EDIMS
		OS File
		CIFS
Data Management	Database Connectivity	PL/SQL Developer
		Oracle SQL Developer
		Oracle SQL *Net
	Object Oriented DBMS	Oracle

Area	Category	Standard
	Relational DBMS	Oracle
		SQL Server
		Oracle
		SQL Server
	Database Related Management Tools	IDERA
		PL/SQL Developer
Data Integration	Database Replication and Clustering	PL/SQL Developer
		FME
		Oracle Real Applications Cluster (RAC)
		SQL Server Cluster
	Data at Rest	EMC
		NetApp Storage
		Tintri
		Nimble
		Pure
	Data Synchronization	GeoWorx Sync
		DFS
	Extract, Transform, Load (ETL)	FME Server
		FME Desktop
		Informatica
	Data in Motion (Common Message Terminology and Semantics)	SQL *Net
		TCP/IP
		BigIP
Collaboration and Electronic Workplace		
Collaboration Software	Content Management	SharePoint
		GitHub
		Drupal CMS
	Electronic Messaging	Microsoft Exchange
	Unified Messaging	Lync/Skype
	Email and Calendaring	Microsoft Outlook
	Real Time and Team Collaboration	SharePoint
		GoToMyPC
		Cisco VPN
		NetMotion
		Citrix
		Adobe Connect
		Vidyo
		Cleo
		Lync/Skype
	Shared Whiteboard	SmartBoard
		BMC Service Desk Express
	Process and Schedule Synchronization	Tivoli
		AirWatch

Area	Category	Standard
	Computer Based Training (CBT)	Adobe Connect
Productivity Software	Accounting and Finance	Advantage
	Desktop Publishing	Microsoft Publisher
	File Manager and Viewer	EDIMS (OpenText)
		Adobe Acrobat
	Enterprise Faxing	Captaris RightFax
	Graphics Design Software	Adobe Creative Suite
	Multimedia Software	Adobe Creative Suite
	Standard Office Suite	Microsoft Office 2013
	Miscellaneous Productivity Tools and Utilities	Windows Snipping Tool
	Web Browsers	Internet Explorer current minus 1 (IE 11 and 10)
		Firefox current minus 1
		Chrome current minus 1
	Case Management	AMANDA
		BMC Magic Service Desk Express
		FDM
		Versadex
		LIMS
	Surveys	Survey Monkey
		Survey Builder
		SharePoint
System Management		
System Management Tools	Alert Management	Orion SolarWinds
		Puppet
		Microsoft SCCM
		Idera
		Trend IWSVA
		NetBotz
		ISX Environmental Monitoring
		Avaya ASA
		Avaya Session Manager
		ADV NMS
	Application Management	Tivoli
	Asset Management and Work Order	Maximo
		BMC Magic Service Desk Express
		Mobile Workforce Manager
	Data Center Automation Software	AppSense
		Idera
		Microsoft SCCM
		EMC Networker
		APC StructureWare
		Active Directory
	Disaster Recovery	NetApp VSC

Area	Category	Standard
	Monitoring	Orion SolarWinds
	Remote Desktop Management	DameWare
		MS RDP
	System Change and Configuration Management	Puppet
		Microsoft SCCM
Network Infrastructure	Switching and Routing	Cisco
		Brocade
		ADVA
	Load Balancing and Failover	F5 Big-IP
	Network Name and Address	Windows DHCP
		Windows DNS
		IP - IPv6 (not used yet)
		IPsec
		WINS
		BIND DNS
Network and Telecommunications		
Transport	Local/Campus Area Network (LAN/CAN)	Cisco
		Brocade
	Wide Area Network (WAN)	City Owned Fiber
		AT&T Connections
		Avaya Equipment
		Nortel Equipment
		TimeWarner Cable
	Cabling	BICSI
Wireless and Mobile Networks	Cellular Networks	AT&T (Public Safety)
		Verizon (Public Safety)
		AT&T (AVL- Public Safety)
		Verizon (AVL)
		Sprint (AVL)
	Secure WiFi	Cisco WAP
	Public WiFi	Cisco WAP
		Meraki WAP
	Radio	P25
		Motorola
	Pagers	USA Mobility
	Aircards	Sprint
		Verizon
		AT&T
End User Computer Devices	Personal Computers (PCs)	Dell Workstations/Laptops
	Mobile Hardware	iPad current minus 1
		iPhone current minus 1
		Android current minus 1
	Hardened Laptops	Panasonic
		Dell
Platforms and Storage		

Area	Category	Standard
Operating Systems	Desktop/Laptop	Win 7 current minus 1
		Win 8 current minus 1
	Mainframe	AIX current minus 2
	Mobile Device	Android current minus 1
		iOS current minus 1
	Server	Windows Server current minus 1
		AIX current minus 2
		Linux (Red Hat) current minus 1
Cloud Services/Virtualization	Cloud Technologies	ArcGIS Online current minus 2
	Virtualization Software	VMWare
		Citrix Xen Server
		VirtualBox
Storage	Long Term Back-up	EMC Networker
		NetApp
		Avamar
	Operational Recovery	EMC Networker
		NetApp
		Avamar
	Production	EMC Networker
		NetApp
		Avamar
System Management Tools	Network Performance Optimization	Microsoft SCCM
		Trend Antivirus
		Puppet
		GitHub
		PKI
		GPO
		IBM HMC
		Trend IWSVA
	Logging	Splunk
	Patch Management	WSUS
		Microsoft SCCM
Enterprise Architecture		
Employment	Application	Rational Software Architect (RSA)
		MS Picture Manager
		HTML-Kit
		SnagIt
		FTP
		Subversion
	Framework	Eclipse
		Unified Modeling Language (UML)
		IBM UPIA

2.1.2 Current HHSD System(s)

The HHSD currently does *not* have an integrated system. The department's system is made up of numerous existing external and internal Federal, State, Local and Third-Party systems used through-out the Health Programs.

2.1.3 End User Interfaces

Current End User interfaces require external interfaces to the Federal, State, Local governments and to Third-party applications. The various systems, applications, and databases required to interface with the new solution are:

2.1.3.1 Federal Government Interfaces

- **EDN WED – INTERFACE**
  o Electronic Disease Notification (EDN)

  o EDN provides notifications of all newly arriving refugees (with or without medical conditions) and immigrants with medical conditions

- **HMIS – INTERFACE**
  o Homeless Management Information System (HIMS)

  o HMIS is a system used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness

- **HUD SYSTEM – INTERFACE**
  o United States Department of Housing and Urban Develop (HUD)

- **NEDSS – INTERFACE**
  o National Electronic Disease Surveillance System (NEDSS)

  o NEDSS is an Internet-based infrastructure for public health surveillance data exchange that uses specific PHIN (Public Health Information Network) and NEDSS Data Standards

- **ACE Pro-32 – Interface**

  o Use to submit Medicare claims for billing

2.1.3.2 State Government Interfaces

- **ARIES – INTERFACE**
  o AID Regional Information Evaluation System (ARIES)

  o ARIES is a web-based, client level software that State Service HIV Providers use to report services provided to eligible clients

- **CoCASA – INTERFACE**
  o CoCASA is the tracking of the number of clients and shots given at Immunization clinics

  o Comprehensive clinic/provider assessment

- **EHARS – INTERFACE**
  o Enhanced HIV/AIDS Reporting System (eHARS)

  o Enhanced HIV/AID reporting

- **ESHARES – INTERFACE**
- **EVI – INTERFACE**
  o Texas State Health system to assist in reordering vaccines

- **FPS – INTERFACE**
  - o Texas Department of Family and Protective Systems (FPS)
  - o Reporting Child to Adult client abuse

- **HIV/STD PISCES INTERFACE**
  - o Identifies, reports, prevents, and controls HIV, AIDS, STDs in the State of Texas while minimizing complications and costs

- **IMMTRAC – INTERFACE**
  - o Texas Department of State Health Services Immunization Registry. A centralized automated-statewide immunization tracking registry that records immunizations administered to citizens in the State of Texas. ImmTrac safely consolidates and stores immunization information electronically. Texas law requires written consent for ImmTrac participation and limits access to individuals who have been authorized by the Texas Immunization Registry.

- **ITEAMS – INTERFACE**
  - o Inventory Tracking Electronic Assess Management System (ITEAMS)

- **STDMIS – INTERFACE**
- **TMHP – INTERFACES**
  - o Used to retrieve TMHP claim reports and to research changes in the law.

- **TWICES – INTERFACE**
  - o Texas Wide Integrated Client Encounter System (TWICES)
  - o A billing system

2.1.3.3   Local Government Interfaces
- **INFOLINX – INTERFACE**
  - o City of Austin
  - o Used by the Office of the City Clerk and HHSD to manage physical records

- **PREVENTION OUTREACH – INTERFACE**
  - o City of Austin
  - o In-house access database used by the prevention outreach team

2.1.3.4   Third-party Interfaces
- **CDD – AFTIS**
- **CPL ATLAS**
  - o A remote order entry and results reporting solution
- **Med Claim**
- **Syndromic Surveillance**

2.1.4   Disparate End User Interfaces

Current disparate End User interfaces not required to interface with the new solution and will be the responsibility of the City of Austin for the removal of hardware and software are the following:

- Case Management
  - o CDCIS
  - o 2003E-X
  - o WebMedRec
  - o TBDS (historical TB patient records)
- Records Management
  - o FileTrail

- o Tabquik 7
- Scheduling
  - o DrWorks
  - o Patient Appointment Manager
  - o TB Scheduler
  - o PhoneMaster PMWEB

The vendor shall be responsible for the baselining of disparate software and database systems prior to data migration or system termination for the following:

- Case Management
  - o CDCIS
  - o 2003E-X
  - o WebMedRec
  - o TBDS (historical TB patient records)
- Records Management
  - o FileTrail
  - o Tabquik 7
- Scheduling
  - o DrWorks
  - o Patient Appointment Manager
  - o TB Scheduler
  - o PhoneMaster PMWEB

3.0 REQUIREMENTS INFORMATION

Vendor responses to the requirements are used to evaluate proposals. The Functional, Technical Standards, and Project Management/Implementation requirements are presented in Sections 4.0, 5.0, and 6.0 of this RFP Scope of Work.

Vendor Evaluation Criteria is outlined in Section 0600 of this RFP solicitation.

3.1 Organization of Requirements

Requirements are grouped into three (3) areas:

- **Functional Requirements**: These requirements describe product features and functionality requested by end users.
- **Technical Requirements**: Developed by the City's Communication and Technology Management staff, these requirements describe the technical specifications to support the Functional Requirements and the constraints for security and networking.
- **Project Management/Implementation Requirements**: These requirements describe the project management resources, processes, documentation and training that ensure effective product implementation and accomplishment of project objectives.

3.2 Qualifiers for Requirements

3.2.1 Category Identification (ID)

"Category" ID distinguishes the requirement within each functional, technical, and project management/implementation group. "Category" ID organizes requirements by business process or technical similarity. The "Category" IDs for this RFP are:

- "4" for Functional Requirements
- "5" for Technical Requirements
- "6" for Project Management/Implementation Requirements

3.2.2 Requirement Number

The "Requirement Number" preceded by the "Category ID" provides a unique requirement number to each requirement in the RFP. "Requirement Numbers" begin with 001 are in chronological order by "Category ID".

- 4 -"001", 4 -"002", 4 -"003", etc. = Functional Requirement
- 5 -"001", 5 -"002", 5 -"003", etc. = Technical Standard (Requirement)
- 6 -"001", 6 -"002", 6 -"003", etc. = Project Management/Implementation Requirement

3.2.3 Type

"Type" is a sub-category providing a brief distinguishing description of the requirement within each category.

3.2.4 Use Case Requirement Number

"Use Case Requirement Number" is used only with a Functional requirement. These reference callouts are to the Unified Modeling Language (UML) use-case models in **Appendix A** which identify additional business process and functional processes desired in the Electronic Health Record (EHR) system and are used *for additional clarity only*.

3.2.5   Required Response

The purpose of the "Required Response" is to guide vendors in describing the item, product feature, or system customization that satisfies the requirements as stated in the "Requirement Description".

- BASE describes a product feature in the vendor's product software
- NOT PROVIDED describes a product feature unobtainability through the vendor's product software
- CUSTOMIZATION describes a product obtainability only through the special modification of the vendor's product software
- THIRD-PARTY describes a product obtainability only through the vendor's interface with another vendor's product software

3.2.6   Requirements Rating - Mandatory

Requirements in this Request for Proposal have a rating of **Mandatory** indicating the criticality of the requirements in achieving product and project objectives.   All requirements are **Mandatory** unless rated otherwise.

- HHSD end users have assigned this priority to function and technical requirements.

- Communications and Technology Management (CTM) Project Management staff have assigned the implementation requirement priorities.

Mandatory indicates an essential requirement and Vendor response.

4.0 FUNCTIONAL REQUIREMENTS

4.1 Responding To Functional Requirements

To ensure a proposed solution is thoroughly represented, Vendors shall respond to each Functional requirement in this section of the RFP. Reference callouts are to the Unified Modeling Language (UML) use-case models in **Appendix A** which identify additional business process and functional processes desired in the Electronic Health Record (EHR) system for additional clarity only. See **Appendix B** for the City's Functional requirements.

Proposed operational processes provide contextual reference and scope understanding. However, the Vendor may propose alternative processes or technologies when relevant. The City encourages and is open to innovative solutions when Vendors meet the mandatory requirements.

The City prefers a Cloud (hosted) solution, Software as a Service (SaaS) solution. The Vendor may provide a complete solution or collaborate with Cloud providers to propose the SaaS solution.

The City provides a fully functional IBM Integration Bus (IIB), enterprise service bus (ESB) to include an ESB instance in our demilitarized security zone to interface with internal city applications discussed in our use-case model. The City identified the required performance response in each Functional requirement. The Use Cases describes some, but not all, software interface descriptions shown on sequence diagrams as referenced only. Additional interfaces are listed in this RFP and shall be addressed by the Vendor.

Each Functional requirement shall always indicate explicitly state whether or not the Vendor's proposed Products/Services meets the Functional requirement and/or describes how the proposed Vendor's Products/Services shall accomplish each Functional requirement as it relates to each Functional requirement. Vendors shall indicate if the accomplished requirement is:

- In the BASE solution or
- A CUSTOMIZATION
- How the Vendor will accomplish the CUSTOMIZATION or
- NOT PROVIDED or
- Is provided through a THIRD-PARTY solution

5.0 TECHNICAL REQUIREMENTS

5.1 Responding To Technical Requirements

To ensure a proposed solution is thoroughly represented, Vendors should respond to each Technical requirement of the RFP. See **Appendix C** for the City's Technical Standards/ Requirements.

Each Technical requirement shall always indicate explicitly state whether or not the Vendor's proposed Products/Services meets the Technical requirement and/or describes how the proposed Vendor's Products/Services shall accomplish each Technical requirement as it relates to each Technical requirement. Vendors shall indicate if the accomplished requirement is:

- In the BASE solution or
- A CUSTOMIZATION
- How the Vendor will accomplish the CUSTOMIZATION or
- NOT PROVIDED or
- Is provided through a THIRD-PARTY solution

If the Vendor requires the City to have technologies not listed in the Technical requirements, the Vendor shall list those requirements in their RFP responses.

6.0 PROJECT MANAGEMENT / IMPLEMENTATION REQUIREMENTS

6.1 Responding To Project Management / Implementation Requirements

To ensure a proposed solution is thoroughly represented, Vendors should respond to each Project Management Requirement below. Each requirement shall always indicate explicitly whether or not the Vendor's proposed Products/Services meets the requirement and/or describes how the propose Vendor's Products/Services shall accomplish each requirement. See **Appendix D** for the City's Project Management/Implementation Requirements.

6.1.1 Vendor's Project Management Methodology

Responding Vendors shall provide documentation describing their proven project management methods. The City recognizes each Vendor shall recommend a project management methodology that demonstrates a commitment to completing the project on time and within budget.

Documentation to be included:
- Project Management Methodology (model) used
- Explanation of the Methodology
- Explanation of how the Methodology shall be used on this project
- Explanation of how the Vendor shall staff this project for the project's life cycle, including but not limited to:
  - All specific personnel by name
  - Their technical title
  - Role and responsibilities on the project
  - Resumes including work experience in related implementations, education and tenure with the Vendor
- See Section 0600 of this RFP

6.1.2 Implementation Methodology

Each Implementation requirement shall always indicate explicitly whether or not the Vendor's proposed Services meets the Implementation requirements. Vendors shall describe the format for each document they shall provide and be prepared to deliver selected system documents upon request during the evaluation and selection process outlined in Section 0600. During the project's initiating, designing, implementation and closing phases and prior to system acceptance, the selected Vendor shall provide and maintain updates on the following system documentation:

- Project Schedule(s) based on implementation milestones
  - Schedule Development
  - Baseline Schedule
  - Schedule Updates
- Work Breakdown Structure(s) with:
  - Resource Planning
  - Activity Duration
- Project Plan
- Communication Plan(s) and Matrix
- Quality Plan
- Risk Monitoring Plan with Tracking Log

- Issue Mitigation Plan with Tracking Log
- Scope Change Control Plan with Tracking Log
- Integration Change Control Plan with Tracking Log
- Implementation Plan(s) (by program and/or site)
- Baselining Disparate System(s) Data
- Test Plan(s)
- Cutover /Roll Back Plan(s)
- Disaster Recovery Plan(s)
- Acceptance Documentation
- Training Plan(s)

To ensure the Implementation requirements are thoroughly represented, Vendors should respond to each Implementation requirement in this section of the RFP.

6.1.2.1   Training

The Vendor shall provide the following Training Requirements:

- A comprehensive Training Plan incorporating a developed long-term Training Program with reproducible Training Materials for conducting training over the solution's life-cycle within the City's HHSD Department
- Training for 150+/- City HHSD full time employees (FTEs) or end users
- Training for 40+/- City technical or super users
- Training for 10+/- City system administrators
- Training for on-boarding City employees post-implementation (all user roles)

eClinicalWorks

Proposal for:

**City of Austin
Purchasing Office
Integrated Electronic Health Records System
Solicitation No. RFP PAX0133
124 W 8th Street, Rm 308
Austin, Texas 78701
sai.xoomsai@austintexas.gov**
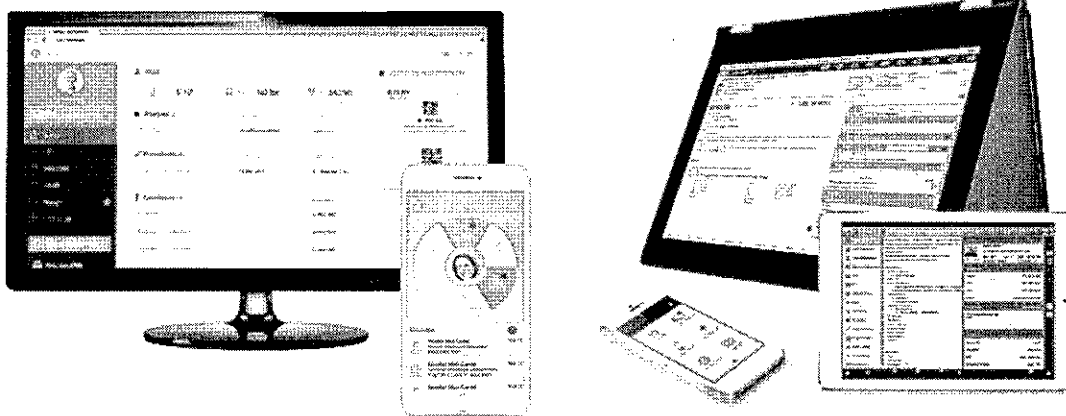
June 30, 2016

ORIGINAL

June 30, 2016

City of Austin
Purchasing Office
124 W 8th Street, Rm 308
Austin, Texas 78701
Sai Xoomsai Purcell, Senior Buyer Specialist

Dear Ms./Mr. Purcell:

eClinicalWorks® (eCW) is pleased to respond to the City of Austin's Solicitation Number: RFP PAX0133 for an Integrated Electronic Health Records System. eCW understands that the City's focus is to protect and promote the health, the environment and the well-being of Austin City's County residents and its visitors, and to help make your community the healthiest in the nation. eClinicalWorks believes that its scalable and flexible comprehensive EHR/Practice Management solution can provide the City with a full spectrum of tools that can meet these concerns by providing clinical, business and operational cutting edge technology, and integrate program data with its existing systems.

eCW is a full-service Health Information Technology vendor and we have evolved to keep pace with the quickly changing needs of healthcare providers and systems, as well as the new models of care delivery and payment reform that are sweeping the country. eCW provides Professional Services to its clients to assist with customization of reports, user adoption of the products, realization of government and private payer incentives, and more.
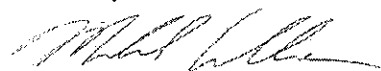
eClinicalWorks offers a Population Health Solution that can be used to meet care planning requirements, and offers many complementary products to enhance the user experience; such as the eClinicalWorks Patient Portal and healow, the eClinicalWorks mobile health application for clients.

eCW has been very successful in the Population Health market segment and was named the "most used system across Accountable Care Organization (ACO) function categories among both electronic health record (EHR) and third-party vendors" in a recent KLAS survey*. eCW's Population Health Management (PHM) solution is the only solution evaluated by KLAS that has the ability to handle data sharing, risk stratification, care management, referral management, reporting, and patient engagement. Frost & Sullivan also recognized eClinicalWorks with the 2014 North America Frost & Sullivan Award for Enabling Technology Leadership.

eClinicalWorks has reviewed the document requirements and believes that its comprehensive EHR with unified PM and ancillary Professional Services can assist the City of Austin to achieve its goal to integrate program data with its existing systems, provide analytics and reporting, and enable comprehensive state-of-the-art service and care to improve the delivery of healthcare to its community.

Thank you for considering eClinicalWorks' EMR/PM solution. I look forward to discussing how eClinicalWorks can work together with the City of Austin to bring affordable, sustainable healthcare technology solutions to its organization as it strives to deliver the same to its patient population.

Sincerely,

Michael Calderone, Sales
eClinicalWorks
508-836-2700, Ext. 15429

eClinicalWorks is a registered trademark of eClinicalWorks®
*Physician ACOs 2014: Variations on the Accountable Care Theme

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*Table of Exhibits

List of Standard Reports

Sample Project Plan

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Audit Logs

Bandwidth Requirements

eCW Device Listing

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Interfaces Integration Interoperability Overview (Company Confidential)

Inventory Management

Project Management Methodology

Sample V10 EMR User Guide (Company Confidential)

Training Overview

*eClinicalWorks is providing information within this document that is confidential and is intended to provide the City of Austin with the information needed to evaluate the eClinicalWorks products and hosting environment. However, additional documents, if released to the public or competitors under any Freedom of Information Act request, is not in the company's or the City's best interests. A Non-Disclosure Agreement is needed to ensure that proprietary data will not be released outside of the City.

SOLICITATION NUMBER: PAX0133

PROJECT NAME: Electronic Health Records

The City of Austin has determined that no goals are appropriate for this project. Even though goals were not assigned for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract, using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No   X   If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope

——— If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your
Yes   Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, sub-consultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though goals were not assigned, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

eClinicalWorks

Company Name

Diane Burrows, Director, Human Resources

Name and Title of Authorized Representative (Print or Type)

Diane L. Burrows   6/21/16

Signature   **Date**

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	**OFFICE USE ONLY** **CERTIFICATION OF FILING**
1 Name of business entity filing form, and the city, state and country of the business entity's place of business. eClinicalWorks, LLC. Westborough, MA United States	**Certificate Number:** 2016-139127 **Date Filed:** 11/21/2016
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed. City of Austin	**Date Acknowledged:**

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA 5600 NA170000002

Electronic Medical Record

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Chunduru, Satya	Westborough, MA United States	X	
Sameer, Bhat	Westborough, MA United States	X	
Dharampuriya, Raj	Westborough, MA United States	X	
Navani, Mahesh	Westborough, MA United States	X	
Navani, Girish	Westborough, MA United States	X	

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

_____
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _Girish Kumar Navani_ , this the _21st_ day of _November_, 20 _16_ , to certify which, witness my hand and seal of office.

Diane L. Burrows	_Diane L. Burrows_	_Notary Public_
Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath