



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

The Austin City Council approved the execution of a contract with your company for accordance with the referenced solicitation.

Responsible Department:	Communication Technology Management Aviation Department
Department Contact Person:	Diana Heath
Department Contact Email:	Diana.heath@ austintexas.gov
Department Contact Telephone:	512-530-6341
Project Name:	CapitalVision Software, Training, Support and Related Services
Contractor Name:	The Solution Design Group, Inc.
Contract Period:	36 months
Dollar Amount	\$265,080
Extension Options:	N/A
Agenda Item Number:	52
Council Approval Date:	06/15/2017
Contract No.	NA170000177

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
Procurement Specialist IV
City of Austin
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
THE SOLUTION DESIGN GROUP, INC.
FOR
CAPITALVISION SOFTWARE, TRAINING, SUPPORT, AND RELATED SERVICES**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and The Solution Design Group, Inc. ("Contractor"), having offices at 3185 South Conway Road, Suite D, Orlando, FL 32812.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.
- 1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Glen Porter, Phone: 407-382-1959, Email: gporter@thesdg.com. The City's Contract Manager for the engagement shall be Diana Heath, Phone: 512-530-6341, Email: diana.heath@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK.

- 2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein 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.

SECTION 3. COMPENSATION:

- 3.1 **Contract Amount.** The Contractor will be paid an amount not-to-exceed \$265,080 for all fees and expenses.
- 3.2 **Invoices**
 - 3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
 - 3.2.2 **Invoices shall contain 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. 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. Invoices received without all required information cannot be processed and will be returned to the Contractor. 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. Invoices shall be mailed to the below address:

	City of Austin
Department	Aviation Department
Attn:	Diana Heath
Address	3600 Presidential Blvd.
City, State Zip Code	Austin, TX 78719

3.2.3 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. 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.

3.2.4 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.5 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 request.

3.3 **Payment**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; 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.

3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 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.

3.3.5 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 transfer of funds.

3.4 **Non-Appropriation.** 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 nor removal fees charged to the City.

3.5 **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 Contract will be reviewed against the City's Travel Policy 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 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 Regulation.

3.6 **Final Payment and Close-Out**

3.6.1 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.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 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 defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

Term of Contract.

4.1 **Term of Contract.** The Contract shall be in effect on the date executed by the City (Effective Date) and will remain in effect for 36 months or the City terminates the Contract.

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- 4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).
- 4.2 **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.
- 4.3 **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 the "Right to Assurance paragraph herein, (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 Contractor to the City.
- 4.4 **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 Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 **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.
- 4.6 **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.

SECTION 5. OTHER DELIVERABLES

5.1 **Equal Opportunity**

5.1.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C.

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.

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

5.2 Ownership And Use Of Deliverables: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.2.1 Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.2.2 Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.2.3 Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.3 Rights to Proposal and Contractual Material: 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.

5.4 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.

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5.5 **Insurance:** The following insurance requirement applies.

5.5.1 **General Requirements**

5.5.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.5.1.2 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 fourteen (14) calendar days after written request from the City.

5.5.1.3 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.

5.5.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by 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.

5.5.1.5 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.

5.5.1.6 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.

5.5.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

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

5.5.1.8 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.

5.5.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements herein, 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.

5.5.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and 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.

5.5.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make 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.

5.5.1.12 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.

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

5.5.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.5.2 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.

5.5.2.1 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.5.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.5.2.1.2 Contractor/Subcontracted Work.

5.5.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.5.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.5.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.5.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.5.2.2 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. The policy shall contain the following endorsements:

5.5.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

5.5.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

5.5.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

5.5.2.3 **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. The policy shall contain the following provisions and endorsements:

5.5.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.5.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

5.5.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage.

SECTION 6. WARRANTIES

6.1 Warranty - Price

6.1.1 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.

6.1.2 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.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Significant Event:** The Contractor shall immediately notify the Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to

Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.1.1 disposal of major assets;

7.1.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this contract;

7.1.3 any significant termination or addition of provider contracts;

7.1.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.1.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this contract;

7.1.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;

7.1.7 known or anticipated sale, merger, or acquisition;

7.1.8 known, planned or anticipated stock sales;

7.1.9 any litigation filed by a member against the Contractor; or

7.1.10 significant change in market share or product focus.

7.2 **Right To Audit**

7.2.1 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, examine, or reproduce, any and all records of the Contractor related 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 or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.2.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.3 **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. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.4 **Indemnity:**

7.4.1 Definitions:

7.4.1.1 "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:

7.4.1.1.1 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); and/or;

7.4.1.1.2 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).

7.4.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.4.2 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.

7.5 **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 affect 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.

7.6 **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 City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Sai Purcell, Procurement Specialist IV

P O Box 1088

Austin, TX 78767

To the Contractor:

The Solution Design Group, Inc.

ATTN: Mr. Glen Porter, Vice President and COO

PO Box 560280

Orlando, FL 32856

7.7 **Confidentiality:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors,

agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- 7.8 **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.
- 7.9 **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 liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 7.10 **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. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.11 **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.
- 7.12 **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.
- 7.13 **Assignment-Delegation:** The Contract shall be binding upon and enure 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. 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.
- 7.14 **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.

- 7.15 **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.
- 7.16 **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.

7.17 **Dispute Resolution**

7.17.1 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.

7.17.2 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.

7.18 **SUBCONTRACTORS**

7.18.1 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.

7.18.2 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:

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

7.18.2.2 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;

7.18.2.3 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;

7.18.2.4 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

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

7.18.3 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.

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

7.19 **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.

7.20 **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.

7.21 **Holidays:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
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.

7.22 **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.

7.23 **Non-Solicitation:**

7.23.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.23.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.23.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's.

7.23.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor

7.24 **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.

7.25 **Incorporation of Documents:** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text.

The full text versions of this Section are available, on the Internet at the following online address:
<http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

7.26 **Order of Precedence:** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.26.1 any exceptions to the Offer accepted in writing by the City;

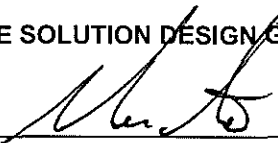
7.26.2 the Supplemental Purchase Terms and Conditions;

7.26.3 the Standard Purchase Terms and Conditions;

7.26.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

THE SOLUTION DESIGN GROUP, INC.

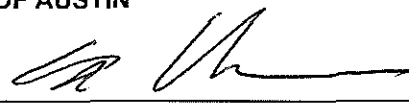
By: 
Signature

Name: GLEN PORTER
Printed Name

Title: VICE PRESIDENT + CDO

Date: 6/20/2017

CITY OF AUSTIN

By: 
Signature

Name: Sai Xoomsai Purcell
Printed Name

Title: Procurement Specialist IV

Date: 6/20/2017

7.27

List of Exhibits

Exhibit A	Offer
Exhibit B	Subscription Agreement
Exhibit C	Scope of Services
Exhibit D	Non Discrimination Certification
Exhibit E	Non Suspension or Debarment Certification

Exhibit A - Offer

Proposed Fees

SDG will perform the consulting and training services described in this scope at \$175 per person-hour. Travel and related expenses will be billed at actual costs. SDG reserves the right to move labor and expenses between phases as needed.

For Phase 3 and any additional related work that may be required in Years 2 and 3, SDG estimates that up to 200 person hours per year may be required. These estimates can be refined upon conclusion of Phases 1 and 2.

Note: CapitalVision® Annual Subscription Fees are not included in this scope of work and are priced separately.

Qty	Description	Fee
1	CapitalVision® Annual Subscription (Unlimited Named Users) (March 1, 2017 – February 28, 2018)	
2	(OPTIONAL) CapitalVision® Annual Subscription (Unlimited Named Users) (March 1, 2018 – February 28, 2019)	\$
3	(OPTIONAL) CapitalVision® Annual Subscription (Unlimited Named Users) (March 1, 2019 – February 29, 2020)	

CP
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Exhibit B
Subscription Agreement



CapitalVision® Software Subscription Agreement

CapitalVision® SOFTWARE SUBSCRIPTION AGREEMENT

LICENSEE AGREES TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING LICENSEE'S USE OF CAPITALVISION'S® ONLINE SERVICE, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE").

RECITALS

SDG is the owner of, or has acquired rights to the CapitalVision® Technology and Content;

Licensee desire to use the CapitalVision® Technology, Content and Services; and

SDG desires to grant to Licensee and Licensee desires to obtain from SDG a non-exclusive license to use the CapitalVision® Technology, Content and Services solely in accordance with the terms and on the conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions

- 1.1 *"Agreement"* means these terms of use;
- 1.2 *"Content"* means the audio and visual information, documents, software, products and services contained or made available to Licensee in the course of using the Service;
- 1.3 *"Customer Data"* means any data, information or material provided or submitted by Licensee to the Service in the course of using the Service;
- 1.4 *"Effective Date"* means the date Licensee begins using the Service;
- 1.5 *"Initial Term"* means the initial period during which Licensee is obligated to pay for the Service;
- 1.6 *"Intellectual Property Rights"* means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;
- 1.7 *"License Administrator(s)"* means those Users designated by Licensee who are authorized to purchase licenses and to create User accounts and otherwise administer Licensee's use of the Service;



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1.8 *"License Term(s)"* means the period(s) during which a specified number of Named Users are licensed for use in the Service.

1.9 *"Order Form(s)"* means the form evidencing the subscription for the Service and any subsequent Order Forms, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to in writing between the Parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail);

1.10 *"CapitalVision® Technology"* means all of SDG's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Licensee by SDG in providing the Service;

1.11 *"Service(s)"* means the specific edition of SDG's online CapitalVision® services identified during the ordering process, developed, operated, and maintained by SDG, accessible via <https://www.capitalvisiononline.com> or another designated web site or IP address, or ancillary online or offline products and services provided to Licensee by SDG, to which Licensee is being granted access under this Agreement, including the CapitalVision® Technology and the Content;

1.12 *"User(s)"* and *"Named User(s)"* means Licensee's employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Licensee (or by SDG at Licensee's request).

1.13 *"SDG Website"* means the Internet website available at <https://www.capitalvisiononline.com> or another designated web site or IP address.

2. License Grant and Restrictions

SDG hereby grants Licensee a non-exclusive, non-transferable, worldwide right to use the Service, solely for Licensee's own internal business purposes for the number of Named Users licensed, subject to the terms and conditions of this Agreement. All rights not expressly granted to Licensee are reserved by SDG.

Licensee may not access the Service if Licensee is a direct competitor of SDG, except with SDG's prior written consent. In addition, Licensee may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

Licensee shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third-party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a

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competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

Licensee may use the Service only for Licensee's internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

SDG may provide Licensee with access to certain open source software to be used in conjunction with the CapitalVision® Technology and Content. This Agreement does not provide Licensee with a license to any open source software, and all such software may be subject to other licenses or conditions imposed by the owner(s) of the open source software.

3. Relationship of Parties

3.1 *Independent Contractor Status; No Agency Relationship.* SDG is an independent contractor and is not an agent or employee of, and has no authority to bind, Licensee by contract or otherwise. SDG will report as income all compensation received by SDG pursuant to this Agreement.

3.2 *Licensee Responsibilities.* Licensee is responsible for all activity occurring under Licensee's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Licensee's use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. Licensee shall: (i) notify SDG immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to SDG immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Licensee or Licensee's Users; and (iii) not impersonate another CapitalVision® user or provide false identity information to gain access to or use the Service.

3.3 *Account Information And Data.* SDG does not own any data, information or material that Licensee submits to the Service in the course of using the Service ("Customer Data"). Licensee, not SDG, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and SDG shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data provided that such deletion, correction, destruction, damage, loss or failure to store any Customer Data was not due to SDG's negligence or misconduct. In the event this Agreement is terminated (other than by reason of Licensee's breach), SDG will make available to Licensee a file of the Customer Data within five (5) days of termination if Licensee so requests at the time of termination. SDG reserves the right to withhold, remove and/or discard Customer Data for any breach, including, without limitation, Licensee's non-payment. Upon termination for cause, Licensee's right to access or use Customer

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Data immediately ceases, and SDG shall have no obligation to maintain or forward any Customer Data.

3.4 *Maintenance and Support.* SDG will provide maintenance and support for current CapitalVision® subscription agreements as outlined in the CapitalVision Maintenance and Support Services, which may be amended from time to time and attached as Exhibit A.

4. Intellectual Property Ownership

SDG alone shall own all right, title and interest, including all related Intellectual Property Rights, in and to the CapitalVision® Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Licensee or any other party relating to the Service. This Agreement is not a sale and does not convey to Licensee any rights of ownership in or related to the Service, the CapitalVision® Technology or the Intellectual Property Rights owned by SDG and does not provide Licensee with the ownership of any copy of the CapitalVision® Technology under 17 U.S.C. § 117. The CapitalVision® name, the CapitalVision® logo, and the product names associated with the Service are trademarks of SDG or third-parties, and no right or license is granted to use them.

5. Confidentiality

5.1 *Acknowledgement.* Licensee acknowledge and agrees that the CapitalVision® Technology constitutes and contain valuable proprietary products and trade secrets of SDG and/or its suppliers, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, Licensee agrees to treat (and take precautions to ensure that Licensee's employees treat) the CapitalVision® Technology as confidential in accordance with the confidentiality requirements and conditions set forth below.

5.2 *Maintenance of Confidential Information.* Each Party agrees to keep confidential all confidential information disclosed to it by the other Party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that neither Party shall have any such obligation with respect to use or disclosure to others not parties to this Agreement of such confidential information as can be established to: (1) have been known publicly; (2) have been known generally in the industry before communication by the disclosing Party to the recipient; (3) have become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing Party; (4) have been known otherwise by the recipient before communication by the disclosing Party; or (5) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing Party) lawfully having possession of such information.

5.3 *Injunctive Relief.* Licensee acknowledges that the unauthorized use, transfer or disclosure of the CapitalVision® Technology or copies thereof will: (1) substantially diminish the value to SDG of the trade secrets and other proprietary interests that are the subject of this Agreement; (2) render SDG's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (3) cause irreparable injury in a short period of time. If Licensee breaches any of



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Licensee's obligations with respect to the use or confidentiality of the CapitalVision® Technology and Content, SDG shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief from any court of competent jurisdiction.

5.4 *Survival.* Licensee's obligations under this Section will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

6. Third-Party Interactions

SDG does not endorse any sites on the Internet that are linked through the Service. SDG provides these links to Licensee only as a matter of convenience, and in no event shall SDG or its licensors be responsible for any content, products, or other materials on or available from such sites. SDG provides the Service to Licensee pursuant to the terms and conditions of this Agreement. Licensee recognize, however, that certain third-party providers of ancillary software, hardware or services may require Licensee's agreement to additional or different license or other terms prior to Licensee's use of or access to such software, hardware or services.

7. Charges and Payment of Fees

Licensee shall pay all fees or charges to Licensee's account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be based on the number of "Named User" licenses needed or for an "Unlimited User" license as indicated on the Order Form. Payments must be made annually in advance unless otherwise mutually agreed upon in an Order Form. All payment obligations are non-cancelable and all amounts paid are nonrefundable. Licensee is responsible for paying for all Named User licenses ordered for the entire License Term, whether or not such licenses are actively used. Licensee must provide SDG with approved order information as a condition to signing up for the Service. An authorized License Administrator may add licenses by executing an additional written Order Form, provided such Order Form is approved in writing by SDG. Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. Unless specifically excluded on the Order Form, SDG reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to Licensee, which notice may be provided by e-mail and first class mail or nationally recognized overnight delivery service.

The City cannot agree to automatic renewals

8. Billing and Renewal

SDG charges and collects in advance for use of the Service. ~~SDG will automatically renew and issue an invoice to Licensee 60 days prior to each year on the subsequent anniversary or as otherwise mutually agreed upon.~~ Unless otherwise indicated on the Order Form, fees are payable within 30 days of invoice by SDG. The renewal charge will be equal to the then-current number of Named Users in effect during the prior term, unless SDG has given Licensee at least 30 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. SDG's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Licensee shall be



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responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on SDG's income.

Licensee agrees to provide SDG with complete and accurate billing and contact information. This information includes Licensee's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. Licensee agrees to update this information within 30 days of any change to it. If the contact information Licensee have provided is false or fraudulent, SDG reserves the right to terminate Licensee's access to the Service in addition to any other legal remedies.

Unless SDG in its discretion determines otherwise: Entities will be billed in U.S. dollars.

If Licensee believes Licensee's bill is incorrect, Licensee must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

9. Non-Payment and Suspension

In addition to any other rights granted to SDG herein, SDG reserves the right to suspend or terminate this Agreement and Licensee's access to the Service if Licensee's account becomes delinquent (falls into arrears). ~~See section 3.3.2 in Contract~~ ~~counts in arrears when payments are not received within 30 days of invoice~~ ~~set of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection.~~ Licensee will continue to be charged for Named User licenses during any period of suspension. If Licensee or SDG initiates termination of this Agreement, Licensee will be obligated to pay the balance due on Licensee's account computed in accordance with the Charges and Payment of Fees section above. Licensee agrees that SDG may invoice Licensee for such unpaid fees.

SDG reserves the right to impose a reconnection fee not to exceed 5% of the license fee in the event Licensee is suspended and thereafter request access to the Service. Licensee agrees and acknowledges that SDG has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if Licensee's account is 30 days or more delinquent. SDG shall notify Licensee of its delinquent account status via email and first class mail or nationally recognized overnight delivery service and of its intention to delete Customer Data within 30 days unless the Customer's Account is brought current. Licensee shall be provided with a copy of its Customer Data within this 30 day time period if requested.

10. Termination upon Expiration/Reduction in Number of Licenses

This Agreement commences on the Effective Date. For CapitalVision® licenses, the Initial Term is the period of time specified on the Order Form. ~~The City cannot accept automatic renewals~~ ~~the Initial Term at SDG's then current fees unless indicated otherwise on the Order Form.~~ Either Party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other Party in writing at least thirty (30) days prior to the expiration of the term. In the event this Agreement is terminated (other than by

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CapitalVision® Software Subscription Agreement

reason of Licensee's breach), SDG will make available to Licensee a file of the Customer Data within five business (5) days of termination if Licensee so requests at the time of termination. Licensee agrees and acknowledges that SDG has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination. In the event of termination, SDG shall notify Licensee via email and first class mail or nationally recognized overnight delivery service of its intention to delete Customer Data within 30 days. Licensee shall be provided with a copy of its Customer Data within this 30 day time period if requested by Licensee.

11. Termination for Cause

Any breach of Licensee's payment obligations or unauthorized use of the CapitalVision® Technology or Service will be deemed a material breach of this Agreement. SDG, in its sole discretion, may terminate Licensee's password, account or use of the Service if Licensee breach or otherwise fail to comply with this Agreement. Licensee agrees and acknowledges that SDG has no obligation to retain the Customer Data, and may delete such Customer Data, if Licensee have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach. In the event of termination for cause, SDG shall notify Licensee via email and first class mail or nationally recognized overnight delivery service of its intention to delete Customer Data within 30 days. Licensee shall be provided with a copy of its Customer Data within this 30 day time period if requested.

12. Representations and Warranties

Each Party represents and warrants that it has the legal power and authority to enter into this Agreement. SDG represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online SDG help documentation under normal use and circumstances. Licensee represents and warrants that Licensee has not falsely identified itself nor provided any false information to gain access to the Service and that Licensee's billing information is correct.

13. Mutual Indemnification

Licensee shall indemnify and hold SDG, its licensors and each such Party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third-party; (ii) a claim, which if true, would constitute a violation by Licensee of Licensee's representations and warranties; or (iii) a claim arising from the breach by Licensee or Licensee's Users of this Agreement, provided in any such case that SDG (a) gives written notice of the claim promptly to Licensee; (b) gives Licensee sole control of the defense and settlement of the claim (provided that Licensee may not settle or defend any claim unless Licensee unconditionally release SDG of all liability and such settlement does not affect SDG's business or Service); (c) provides to Licensee all available information and assistance; and (d) has not compromised or settled such claim.

SDG shall indemnify and hold Licensee and Licensee's parent organizations, subsidiaries,

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CapitalVision® Software Subscription Agreement

affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third-party; (ii) a claim, which if true, would constitute a violation by SDG of its representations or warranties; or (iii) a claim arising from breach of this Agreement by SDG; provided that Licensee (a) promptly give written notice of the claim to SDG; (b) give SDG sole control of the defense and settlement of the claim (provided that SDG may not settle or defend any claim unless it unconditionally releases Licensee of all liability); (c) provide to SDG all available information and assistance; and (d) have not compromised or settled such claim. SDG shall have no indemnification obligation, and Licensee shall indemnify SDG pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of Licensee's products, service, hardware or business process(s).

14. Limitations of Warranties and Liability.

SDG DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OTHER THAN AS SET FORTH IN THIS AGREEMENT, THAT THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE LICENSED SOFTWARE WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE, QUALITY, ACCURACY, PURPOSE OR NEED. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SDG DISCLAIMS ANY AND ALL EXPRESS WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY. SDG WILL NOT BE LIABLE FOR ANY LOSS OF BUSINESS OR PROFITS, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR DAMAGES OR OTHER THAN AS SET FORTH IN THIS AGREEMENT, FOR CLAIMS OR DAMAGES MADE BY CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN OR UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT WILL SDG'S LIABILITY EXCEED THE AMOUNT ACTUALLY PAID TO SDG BY CUSTOMER UNDER THIS AGREEMENT DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, FRAUD AND ANY OTHER TORT. SDG SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE CUSTOMER DATA, FILES, PROGRAMS OR INFORMATION THROUGH ACCIDENT, NEGLIGENCE, FRAUDULENT MEANS OR DEVICES.

15. Internet Delays

SDG'S SERVICES ARE PROVIDED TO LICENSEE THROUGH THE INTERNET AND

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CapitalVision® Software Subscription Agreement

MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SDG IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

15a. Service Level

The CapitalVision® Service shall be fully accessible, usable and functional in accordance with SDG's published technical specifications. CapitalVision Service Levels, which may be amended from time to time, are attached as Exhibit B to this Agreement.

16. Additional Rights

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Licensee.

17. Local Laws and Export Control

SDG provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. The user of this service ("User") acknowledges and agrees that the service shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, Licensee represents and warrants that Licensee is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Licensee agrees to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

SDG may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

SDG and its licensors make no representation that the Service is appropriate or available for use in other locations. If Licensee uses the Service from outside the United States of America Licensee is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government for such purposes.



CapitalVision® Software Subscription Agreement

18. Notice

SDG may give notice by means of a general notice on the Service, electronic mail to Licensee's e-mail address(es) on record in SDG's account information, or by written communication sent by first class mail or pre-paid post. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). Licensee may give notice to SDG (such notice shall be deemed given when received by SDG) at any time by any of the following: letter sent by confirmed facsimile to SDG at the following fax numbers (whichever is appropriate): (407) 382-3959; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to SDG. Notice provided by mail must be sent to the following addressee:

For SDG:

Mr. Glen Porter
Vice President and COO
The Solution Design Group, Inc.
PO Box 560280
Orlando, Florida 32856

For Licensee:

Mr. David Arthur
City of Austin, TX – Department of Aviation
3600 Presidential Drive
Suite 411
Austin, Texas 78719

19. Assignment; Change in Control

This Agreement may not be assigned by Licensee without the prior written approval of SDG but may be assigned without Licensee's consent by SDG to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Licensee that results or would result in a direct competitor of SDG directly or indirectly owning or controlling 50% or more of Licensee shall entitle SDG to terminate this Agreement for cause immediately upon written notice.

20. Governing Law and Dispute Resolution

20.1 *Governing Law.* This Agreement shall be governed by Texas law and controlling United States federal law as interpreted by the federal courts and the United States Supreme Court, without regard to the choice or conflicts of law provisions of any jurisdiction.

20.2 *Binding Arbitration.* Except as provided for in Section Five herein, any dispute or disagreement which may arise between Licensee and SDG in connection with either any interpretation of this Agreement or the performance or nonperformance thereof shall be settled by a board of three arbitrators without appeal under the Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise agreed to by both Parties, any arbitration shall be conducted in Orlando, Florida. The judgment upon any award rendered by the arbitration tribunal may be entered in any court having jurisdiction thereof, for the purpose of judicial enforcement. The Parties, having consented to binding arbitration, DO HEREBY WAIVE THE RIGHT TO A JURY TRIAL ON ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION FIVE HEREIN.

21. Force Majeure

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CapitalVision® Software Subscription Agreement

Neither Party shall be liable for any loss or delay resulting from any force majeure event, including acts of God, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, or inability of carriers to make scheduled deliveries, and any payment or delivery date shall be extended to the extent of any delay resulting from any force majeure event.

22. Entire Agreement; Severability

~~This Agreement, together with the attached Order Form constitutes the complete and exclusive understanding and agreement of the Parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof.~~ Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the Parties hereto. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of SDG to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by SDG in writing.

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CapitalVision® Software Subscription Agreement

Exhibit A CapitalVision® Support and Maintenance Services (January 2015)

SDG shall provide support for CapitalVision® Subscription Agreements as described below:

Software Maintenance: Software maintenance services include maintenance releases and version upgrades to the CapitalVision® software. SDG, may from time to time, create upgrades and provide these upgrades to Licensee on a “when and if” commercially available basis.

Routine, emergency and configuration changes to the CapitalVision® are authorized, logged, tested, approved, and documented in accordance with industry norms for similar systems. SDG will communicate with customers via email when Service use is likely to adversely affected.

SDG shall provide Customer with a 48 hour notice prior to any upgrade to CapitalVision other than ordinary bug fixes.

Support Services: CapitalVision® Support includes the following:

- Unlimited access to telephone support for all Named Users or up to three (3) Designated Users for “Unlimited User” Subscribers. Telephone support is available Monday through Friday 8:00 a.m. to 6:00 p.m. Eastern Standard Time excluding SDG’s published holidays.
- Distribution of technical bulletins via email

Support requests will be acknowledged within 4 business hours of the request.

SDG shall have no obligation hereunder to provide maintenance and support services for corrections of difficulties or defects due to Licensee computer hardware, the computer environment, the computer operating system, use of CapitalVision® on equipment or a browser or operating system not approved by SDG or other causes external to CapitalVision®.

For information about system administration, backups, and service levels – please refer to Exhibit B – CapitalVision Service Levels.

A handwritten signature in black ink, appearing to be 'C. J. P.' or similar, located at the bottom right of the page.

EXHIBIT D
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 20TH day of JUNE, 2017

CONTRACTOR
Authorized
Signature

The Solution Design Group, Inc.
[Signature]

Title

VICE PRESIDENT & COO

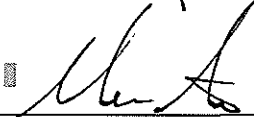
Exhibit E

City of Austin, Texas
Section 0805
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. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: THE SOLUTION DESIGN GROUP, INC.

Signature of Officer or
Authorized
Representative:  Date: 6/20/2017

Printed Name: GLEN PORTER

Title: VICE PRESIDENT & COO



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 03/20/2017

DEPT: Aviation

TO: Purchasing Officer or Designee

FROM: Ruben Reyes

BUYER:

PHONE: (512) 530-6380

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality

☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents

☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property

☐ a procurement for personal, professional, or planning services

☐ a procurement for work that is performed and paid for by the day as the work progresses

☐ a purchase of land or right-of-way

☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

☐ a purchase of rare books, papers, and other library materials for a public library

☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements

☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Capital Vision is a software service created by The Solution Design Group, Inc. to assist with the complex financial management of large capital programs involving funding from FAA Airport Improvement Program grants, general airport revenue bonds, passenger facility fees, and commercial paper. It specifically provides the airport with an effective tool for calculating and allocating capitalized interest income and expense. Capital Vision uses a patented method (US Patent #8, 478, 626, B2) for calculating and allocating capitalized interest income and expense to projects funded by commercial paper and taxable/non-taxable bonds. It is the only solution on the market with this capability.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).


The Solution Design Group has been a provider of custom commercial software specific to airport financial management for over 15 years . They are a well-known and respected software and services provider in the industry. Their staff has intimate knowledge of all aspects of airport industry financial management. Their Capital Vision product is currently used by 5 U.S. airports including Los Angeles, Philadelphia, and Fort Lauderdale. The airport staff has concluded a one year evaluation of the product and has determined that continuation of the service and additional service enhancements will benefit the Aviation Department with tracking and managing complex financial aspects of the various bond and grant funded construction projects currently underway at Austin Bergstrom Airport.


6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with The Solution Design Group which will cost approximately \$ 265,080.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

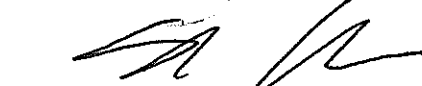
 3/20/17
Originator Date

Approved
Certification

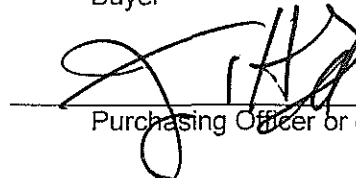
 3/27/17
Department Director or designee Date

 03/28/17
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

 4/19/17 8th
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

 4/19/17
Purchasing Officer or designee Date

02/26/2013



March 6, 2017

Mr. David Arthur
Assistant Director and Chief Financial Officer
City of Austin- Department of Aviation
3600 Presidential Boulevard
Suite 411
Austin, Texas 78719

Re: CapitalVision Sole Source Letter

Mr. Arthur,

CapitalVision®, developed by The Solution Design Group, Inc., is a software as a service solution that has been designed specifically for the financial management of large capital programs that typically involve multiple funding sources such as FAA Airport Improvement Program grants, general airport revenue bonds, commercial paper, and user fees such as passenger facility charges.

CapitalVision® is a patented solution (US Patent # 8,478,626 B2) related to the methods and technology used to calculate and allocate capitalized interest income and expense to projects being funded by commercial paper and/or taxable or non-taxable bonds and is the only solution on the market with this capability.

The Solution Design Group, Inc. retains the exclusive right to offer training and support services related to its CapitalVision® solution.

If you have any questions or comments regarding this letter, please feel free to contact me at 407-382-1959.

Warmest regards,

A handwritten signature in blue ink that reads 'Tom Strange'.

Tom Strange
President and CEO

The Solution Design Group, Inc.

PO Box 560280
Orlando, Florida 32856
(407) 382 - 1959

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Sai Purcell/4-3058	PM Name/Phone	Diana Health/(512) 530-6341
Sponsor/User Dept.	Aviation Department	Sponsor Name/Phone	n/a
Solicitation No	Sole Source	Project Name	The Solution Design Group
Contract Amount	\$265,080	Ad Date (if applicable)	N/A
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – Design Build <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> AD – JOC <input type="checkbox"/> IFB – Construction <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> Ratification <input checked="" type="checkbox"/> Sole Source*			
Provide Project Description**			
The will be a purchase of a patented software and related services. CapitalVision® software is a patented solution (US Patent # 8,478,626 B2) related to the methods and technology used to calculate and allocate capitalized interest income and expense to projects being funded by commercial paper and/or taxable or non-taxable bonds and is the only solution on the market with this capability.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Sole Source in 2016			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
92003 - 70% (APPLICATION SERVICE PROVIDER (ASP), WEB BASED HOSTED) , 92092 - 5% ((TRAINING, COMPUTER BASED (SOFTWARE SUPPORTED) note that Training of this patented software can only be perform by The Solution Desgin Group), 91829 - 25% ((COMPUTER SOFTWARE CONSULTING) only The Solution Design Group can consult on their patented software.)			
, Sai Purcell		4/17/2017	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY		
Date Received	4/17/2017	Date Assigned to BDC
		Jolene Cochran
In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:		
<input checked="" type="checkbox"/> Goals	% MBE	% WBE
<input type="checkbox"/> Subgoals	% African American	% Hispanic

GOAL DETERMINATION REQUEST FORM

	% Asian/Native American	% WBE
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program <input checked="" type="checkbox"/> No Goals		

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|--|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input checked="" type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

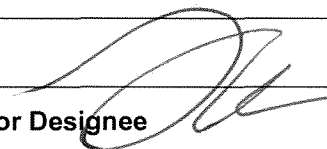
If Other was selected, provide reasoning:
 Requires patented software.

MBE/WBE/DBE Availability

Provide information on availability. Sole Source-Not Applicable.

Subcontracting Opportunities Identified

List any subcontracting opportunities identified. There are no subcontractors available. Patented software must be provided by the provider awarded.

Jolene Cochran		April 21, 0217	
SMBR Staff		Signature/ Date	
			
SMBR Director or Designee		Date	4-25-17
Returned to/ 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

Certificate Number:
2017-226007

Date Filed:
06/20/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

The Solution Design Group, Inc.
Orlando, FL United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

The City of Austin

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.

MA5600NA170000177
CapitalVision Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Porter, Glen	Orlando, FL United States		X
	Strange, Sterling	Warrenton, VA United States	X	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]

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Glen porter, this the 20th day of June, 2017, to certify which, witness my hand and seal of office.

[Signature]
Signature of officer administering oath

FATIHA JAAYFER
Printed name of officer administering oath



Notary Public
Title of officer administering oath