



Amendment No. 1
of
Contract Number MA 8700 NS210000053
for
Datamart Extraction
between
Versaterm Public Safety Inc. and the City of Austin

1.0 The City hereby amends this Contract by extending the contract by \$30,000.00

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 10/01/21 – 09/30/24	\$1,405,369.00	\$1,405,369.00
Amendment No. 1: Administrative Increase @ \$30,000	\$30,000.00	\$1,435,369.00

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

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

5.0 All other terms and conditions remain the same.

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

Signature: Warren Loomis T Rosales

Signature: **Brett D. Hardy** Digitally signed by Brett D. Hardy
Date: 2021.10.28 09:41:53 -05'00'

Date: October 28, 2021 October 28, 2021
Warren Loomis T Rosales

Date: _____
Brett Hardy
Procurement Supervisor

Printed Name: President & CEO VP Finance and Admin
Authorized Representative

VERSATERM Public Safety
2300 Carling Ave, Ottawa, ON CANADA K2B 7G1 613.820.0311
www.versaterm.com
brendalee.kelly@versaterm.com



**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
and
Versaterm Public Safety, Inc. ("Contractor")
for
Software Licenses, Maintenance and Support Services for Versadex Record Management
System (RMS)**

Contract Number: MA 8700 NS210000053

The City accepts the Contractor's Offer for the above requirement and enters into the following Contract. This Contract is between Versaterm Public Safety, Inc. having offices at 2300 Carling Avenue, Ottawa, Ontario and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Document
- 1.1.2 City of Austin Terms and Conditions
- 1.1.3 Application Software License Agreement attached as Exhibit A hereto.
- 1.1.4 Application Software Support Agreement attached as Exhibit B hereto.
- 1.1.5 Contractor's Offer attached as Exhibit C hereto.

1.2 Compensation.

The Contractor shall be paid a total Not-to-Exceed amount of \$1,405,369.00 for the initial Contract term, a total Not-to-Exceed amount of \$485,813.00 for Option 1, a total Not-to-Exceed amount of \$500,385.00 for Option 2, for a total Not-to-Exceed amount of \$2,391,567.00 as indicated in the Offer.

Contract Term		Contract Amount
10/01/2021 - 09/30/2024	Initial Term	\$ 1,405,369.00
10/01/2024 - 09/30/2025	Option 1	\$ 485,813.00
10/01/2025 - 09/30/2026	Option 2	\$ 500,385.00
		\$ 2,391,567.00

1.3 Term of Contract.

This Contract shall become effective on October 01, 2021 and shall remain in effect for an initial term of 36 months or the City terminates the Contract. This Contract may be extended beyond the initial term for up to 2 additional 12-month periods at the City's sole option.

- 1.4 Designation of Key Personnel.** The City 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 shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
Contractor Contract Manager	Sharon Ung	613-820-0311	Sharon.Ung@versaterm.com
City Contract Manager	Enjole Armstrong	512-974-5082	Enjole.Armstrong@austintexas.gov
Procurement Specialist	Elisa Folco	512-438-9904	Elisa.Folco@austintexas.gov

- 1.5 Invoices.** The City's preference is to have invoices emailed to APDaccountspayable@austintexas.gov or mailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Accounts Payable
Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

For questions regarding your invoice/payment please contact the City Contract Manager.

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

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

VERSATERM PUBLIC SAFETY INC

Warren Loomis

Printed Name of Authorized Person

DocuSigned by:
Warren Loomis
0158A71D7714C1...

Signature/Date

President & CEO

Title

CITY OF AUSTIN

Sai Xoomsai Purcell

Printed Name of Authorized Person

Sai Purcell Digitally signed by Sai Purcell
Date: 2021.10.01 08:58:03 -05'00'

Signature/Date

Procurement Manager

Title

VERSATERM PUBLIC SAFETY INC

DocuSigned by:
Terri Rosales
37FC0B113F0446A...

Printed Name of Authorized Person

Terri Rosales

Signature/Date

VP Finance and Administration

Title

CITY OF AUSTIN TERMS AND CONDITIONS

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

1 GENERAL

1.1 TERM OF CONTRACT:

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

1.2 INDEFINITE QUANTITY:

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

1.3 INVOICES:

- A. The Contractor shall submit separate, proper Invoices for each payment it seeks from the City under this Contract. Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, 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 according to pricing structure in the Contract. 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 vendor.
- B. **Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all** Subcontracting and other authorized expenses at actual cost without markup.
- C. 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.

1.4 PAYMENT:

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the deliverables or of the Invoice, whichever is later.

- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §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 10 calendar days after the grounds for withholding payment have been resolved.
- C. 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:
 - i. Delivery of defective or non-conforming deliverables by the Contractor;
 - ii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iii. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
 - iv. Failure of the Contractor to comply with any material provision of the Contract Documents.
- D. Notice is hereby given of Article VIII, §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.
- E. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- F. 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 inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. 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 notice of non-appropriation.

1.5 FINAL PAYMENT AND CLOSE OUT:

- A. The making and acceptance of final payment will constitute:
 - i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from 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
 - ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

1.6 AUDITS AND RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or

reproduce, any and all records of the Contractor related to the performance under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.

B. Records Retention:

- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
- ii. The Contractor shall retain all records for a period of three 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.

1.7 FINANCIAL DISCLOSURES AND ASSURANCE:

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

1.8 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. If 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.

1.9 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.

1.10 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, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

1.11 TERMINATION FOR CAUSE:

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 30 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office

Probation, Suspension and Debarment Rules for Vendors.” In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of either party’s default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law.

1.12 ATTORNEY’S FEES:

In consideration of the award and execution of this Contract and in consideration of the City’s waiver of its right to attorney’s fees, the Contractor knowingly and intentionally waives its right to attorney’s fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

1.13 TERMINATION WITHOUT CAUSE:

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 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.

1.14 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.

1.15 DELAYS:

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

1.16 FORCE MAJEURE:

Contractor shall be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor’s control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject

to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

1.17 INDEMNITY:

Indemnity. FOR PURPOSES OF THE SERVICES PERFORMED BY CONTRACTOR UNDER THIS CONTRACT, CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS EMPLOYEES ITS AGENTS, AND ITS ELECTED OFFICIALS FROM ANY DAMAGE, LOSS, LIABILITY, CLAIM, EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS) AND CAUSE OF ACTION ARISING OUT OF INJURY, LOSS OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY, OR ARISING FROM PERSONAL INJURY OR DEATH, WHERE SUCH DAMAGE, LOSS, LIABILITY, CLAIM AND CAUSE OF ACTION IS CAUSED OR INCURRED IN WHOLE OR IN PART AS A RESULT OF THE NEGLIGENCE OR OTHER ACTIONABLE FAULT OF CONTRACTOR, ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES, AGENTS AND ASSIGNS. THE CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION INCLUDE CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT ARISING FROM THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. CONTRACTOR'S OBLIGATIONS ARE CONTINGENT UPON THE CITY GIVING CONTRACTOR PROMPT WRITTEN NOTICE OF ANY SUCH CLAIM OR LOSS OR DAMAGE AND THE CITY SHALL FULLY COOPERATE WITH CONTRACTOR IN THE DEFENSE AND ALL RELATED SETTLEMENT NEGOTIATIONS . 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. THE CITY MAY PARTICIPATE IN THE ABOVE MENTIONED DEFENSE AT ITS OWN EXPENSE.

Limitation of Liability. Contractor's maximum liability to the City for damages, losses, liabilities, claims, and causes of action shall not exceed, if the claim is covered by insurance, the limits of such insurance. or, if the claim is not covered by such insurance, the license fees for the purchased Application Software Licenses (see Exhibit A) with the exception of damages, losses, liabilities, claims, and causes of action arising out of gross negligence, willful misconduct or infringement of copyright or patent rights for which there shall be no limitation on the amount of damages recoverable.

1.18 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 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. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.19 CONFIDENTIALITY:

The Contractor may be granted access to certain of the City's or its licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the deliverables to the City. The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of 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 a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information 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 in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the Contractor in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.
- B. The Contractor agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the deliverables, (iii) to promptly notify City of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit City reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are 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.
- C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of City, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of City, the Contractor shall promptly return to City all tangible items of Confidential Information furnished by City and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.
- E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive

relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

1.20 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract 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.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
 - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
 - iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.21 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.

1.22 ADVERTISING:

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

1.23 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.

1.24 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.

1.25 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.

1.26 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.

1.27 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure 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.

1.28 WAIVER:

The 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.

1.29 MODIFICATIONS:

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

1.30 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.

1.31 DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 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 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 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 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 consider 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 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 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.

1.32 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, 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.

PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ('UN CONVENTION'), THE PARTIES AGREE THAT THE UN CONVENTION AND ANY AND ALL IMPLEMENTING LEGISLATION THEREOF, SHALL NOT APPLY TO THIS AGREEMENT

1.33 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.

1.34 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.

1.35 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.

1.36 COOPERATIVE CONTRACT:

A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative

contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.

- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

1.37 NON-DEBARMENT CERTIFICATION:

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently 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 Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

1.38 EQUAL OPPORTUNITY:

- A. **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 Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.
- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.39 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a "company", then the Contractor verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this Contract.

C. The Contractor's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

1.40 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

1.41 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P.O. Box 1088
Austin, Texas 78767
OR
PURInsuranceCompliance@austinTexas.gov
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City 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.
- ix. 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 exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.
- ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;

- b. Independent Contractors coverage (Contractor/Subcontracted work);
 - c. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
- (2) The policy shall also include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - b. 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- iii. **Business Automobile Liability Insurance:** Coverage for all non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
- iv. **Technology Errors and Omissions Insurance:** Coverage of not less than \$1,000,000 and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

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

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

1.42 OWNERSHIP AND USE OF DELIVERABLES: RESERVED.

2 SERVICES

2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES: Reserved.

2.2 WORKFORCE:

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

- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
 - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
 - ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

2.3 GUARANTEE – SERVICES:

The Contractor warrants and represents that all services to be provided to 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 following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. 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.
- B. 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.

2.4 DATA SECURITY:

In the course of providing services to the City, the Contractor may gain access to City-owned and City-maintained information. If so, the City and the Contractor desire to keep such information appropriately protected. The Contractor will handle information it receives from the City in compliance with this provision.

- A. Definitions. Capitalized terms used in this Section shall have the meanings set forth, below:
 “Authorized Persons” means (i) the Contractor’s employees; and (ii) the Contractor's Subcontractors and agents who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under this Contract, and who are bound in writing by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

“Highly Sensitive Personal Information” means an (i) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual’s financial account; or (iii) biometric, genetic, health, medical, or medical insurance data.

“Personal Information” means information that is not available through public information sources, or is not shared openly or publicly by the City or its staff; and that is provided to the

Contractor by or at the direction of the City, information which is created or obtained by the Contractor on behalf of the City, or information to which access was provided to the Contractor by or at the direction of the City, in the course of the Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, health, genetic, medical, or medical insurance data, answers to security questions, and other personal identifiers). "Personal Information" does not include information such as names, business e-mail addresses, business telephone numbers, business addresses, or any information in e-mails sent between City staff and Contractor staff, information that is available through public records such as court documents or other sources, or information that is made public or distributed by City staff, such as press releases or mass communications. Information included in an email will be treated as general business correspondence between the Parties without the need for special handling, treatment, or other (e.g. encryption, disposal, etc.)

"Security Breach" any act or omission by the Contractor's Authorized Persons that compromises either the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by the Contractor that relate to the protection of the security, confidentiality, or integrity of Personal Information.

Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Personal Information.

B. Standard of Care

- i. The Contractor acknowledges and agrees that, during the term of this Contract, the Contractor may create, receive, or have access to Personal Information. For any Personal Information, the Contractor shall comply with this Section in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such Personal Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession by all Authorized Persons. The Contractor shall be responsible for, and remain liable to, the City for the actions and omissions of all Authorized Persons concerning the treatment of Personal Information.
- ii. Personal Information is deemed to be Confidential Information of the City and is not Confidential Information of the Contractor. In the event of a conflict or inconsistency between this Section and any other Section of this Contract, the terms and conditions of this Section shall govern and control.
- iii. The Contractor agrees and covenants that it shall:
- iv. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
 - a. Not create, collect, receive, access, or use Personal Information in violation of law;

- b. Use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Contractor's own purposes or for the benefit of anyone other than the City, in each case, without the City's prior written consent; and
 - c. Not directly or indirectly, disclose Personal Information to any person other than Authorized Persons, without the City's prior written consent.
- v. The Contractor represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- vi. The Contractor shall implement and maintain a written information security program, including appropriate policies, procedures, and risk assessments that are reviewed and updated at least annually.
- vii. Without limiting the Contractor's obligations under this Section, the Contractor shall implement administrative, physical, and technical safeguards on its own internal infrastructure to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than the National Institute of Standards and Technology ("NIST") Cybersecurity Framework and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract. This section does not apply to the Contractor for any systems that are owned, controlled, hosted, or managed by the City.
- viii. If the Contractor has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, the Contractor shall, at all times, remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.
- ix. At a minimum, the Contractor's safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Highly Sensitive Personal Information stored on any media; (vii) encrypting Highly Sensitive Personal Information transmitted over public or wireless networks; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at the Contractor's sole cost and expense, a corrective action plan to correct any critical issues that are reported as a result

of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Authorized Persons.

- x. The Contractor shall, at all times, cause Authorized Persons to abide strictly by the Contractor's obligations under this Contract. The Contractor further agrees that it shall maintain a disciplinary/sanctions process to address any unauthorized access, use, or disclosure of Personal Information by any Authorized Person. Upon the City's written request, the Contractor shall promptly identify for the City, in writing, all Authorized Employees as of the date of such request. Upon the City's written request, and agreed to by the Contractor, the Contractor shall provide the City with a network diagram that outlines the Contractor's information technology network infrastructure and all equipment used in relation to fulfilling its obligations under this Contract, including, without limitation: (i) connectivity to the City and all third parties who may access the Contractor's network to the extent the network contains Personal Information; (ii) all network connections, including remote access services and wireless connectivity; (iii) all access control measures (for example, firewalls, packet filters, intrusion detection and prevention services, and access-list-controlled routers); (iv) all backup or redundant servers; and (v) permitted access through each network connection.

C. Security Breach Procedures:

- i. The Contractor shall:
 - a. Provide the City with the name and contact information for an employee of the Contractor who shall serve as the City's primary security contact and shall be available to assist the City 24 hours per day, seven days per week as a contact in resolving obligations associated with a Security Breach;
 - b. Notify the City of a Security Breach as soon as practicable, but no later than 24 hours after the Contractor becomes aware of it; and
 - c. Notify the City of any Security Breaches by telephone at 512-974-4357 and email at cybersecurity@austintexas.gov.
- ii. Immediately following the Contractor's notification to the City of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the City in the City's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the City with physical access to the facilities and operations affected; (iii) facilitating interviews with the Contractor's employees, Authorized Persons, and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise required by the City.
- iii. The Contractor shall, at its own expense, use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. The Contractor shall reimburse the City for all actual costs incurred by the City in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.

- iv. The Contractor agrees that it shall not inform any third party of any Security Breach without first obtaining the City's prior written consent, other than to inform a complainant that the matter has been forwarded to the City's Attorney. Further, the Contractor agrees that the City shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in the City's discretion; and (ii) the contents of such notice, whether any type of remediation may be Offered to affected persons, and the nature and extent of any such remediation.
- v. The Contractor agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- vi. The Contractor agrees to fully cooperate, at its own expense, with the City in any litigation, investigation, or other action deemed necessary by the City to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.
- vii. In the event of any Security Breach, the Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

D. Oversight of Security Compliance

Upon the City's written request to confirm the Contractor's compliance with this Contract, as well as any applicable laws, regulations, and industry standards, the Contractor grants the City or, upon the City's election, a third party on the City's behalf, as approved by the Contractor, permission to perform an assessment, audit, examination, or review of all controls in the Contractor's physical and/or technical environment in relation to all Personal Information being handled and/or services being provided to the City under this Contract. The Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transports Personal Information for the City pursuant to this Contract.

In addition, upon the City's written request, the Contractor shall provide the City with the results of any audit performed by or on behalf of the Contractor that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information shared during the course of this Contract.

- i. Return or Destruction of Personal Information. At any time during the term of this Contract, at the City's written request or upon the termination or expiration of this Contract for any reason, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the City all copies, whether in written, electronic, or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to the City that such Personal Information has been returned to the City or disposed of securely. The Contractor shall comply with all directions provided by the City with respect to the return or disposal of Personal Information. The above excludes Personal Information contained within a support log that is stored within the Contractor's Issue/Support Tracking System.
- ii. Equitable Relief. The Contractor acknowledges that any breach of its covenants or obligations set forth in this Section may cause the City irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event

of such breach or threatened breach, the City is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, notwithstanding to any exclusions or limitations in this Contract to the contrary.

- iii. **Material Breach.** The Contractor's failure to comply with any of the provisions of this Section is a material breach of this Contract. In such event, the City may terminate the Contract effective immediately upon written notice to the Contractor without further liability or obligation to the Contractor.
- iv. **INDEMNIFICATION.** SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN SECTION 1.17 "INDEMNITY", THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS (EACH, A "CITY INDEMNITEE") FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, ACTIONS, JUDGMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS, OR EXPENSES OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES, THE COST OF ENFORCING ANY RIGHT TO INDEMNIFICATION HEREUNDER, AND THE COST OF PURSUING ANY INSURANCE PROVIDERS, ARISING OUT OF OR RESULTING FROM ANY THIRD-PARTY CLAIM AGAINST ANY CITY INDEMNITEE ARISING OUT OF OR RESULTING FROM SERVICE PROVIDER'S OR AUTHORIZED PERSON'S FAILURE TO COMPLY WITH ANY OF THE OBLIGATIONS OF THIS SECTION.

2.5 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 Solicitation will be reviewed against the current United States General Services Administration Domestic Per Diem rates as published and maintained online at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

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

2.6 PLACE AND CONDITION OF WORK:

The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and Specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of

the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

2.7 COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:

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

2.8 NON-SOLICITATION:

- A. During the term of the Contract, and for a period of 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.
- B. During the term of the Contract, and for a period of six 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 approval.
- C. Notwithstanding the foregoing, this provision shall be waived in the event an employee initiates an unsolicited action public advertisements such as in websites, newspapers, trade publications, or electronic job boards.

Exhibit A

APPLICATION SOFTWARE LICENSE AGREEMENT

FOR VERSATERM LICENSED-PRODUCTS

This License Agreement is made in consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration,

B E T W E E N:

Versaterm Public Safety Inc., a corporation duly incorporated under the laws of the province of British Columbia and having its office located at 2300 Carling Avenue, Ottawa, Ontario, Canada

(hereinafter referred to as “Versaterm”)

AND:

The City of Austin, a municipality incorporated by the State of Texas

(hereinafter referred to as the “Customer”)

WHEREAS the Parties entered into an agreement dated December 1, 2001 and numbered 74001000557 with respect to, among other things, the supply of an RMS System for the City of Austin Police Department (the “RMS Agreement”); and

WHEREAS the Parties wish to replace, in its entirety, Exhibit A “Software License Agreement” of the RMS Agreement with this License Agreement;

Now therefore, the Parties hereby agree as follows:

1. DESCRIPTION OF THE LICENSED PROGRAM MATERIALS

Versaterm owns the collection of computer programs and materials, particularly described in Annex A attached hereto and hereinafter collectively referred to as the “Licensed Program”.

The Licensed Program and the manuals, listings and other documentation and media supplied by Versaterm relating thereto are hereinafter collectively referred to as the “Licensed Program Materials”.

2. LICENSE

Subject to the terms and conditions of this License Agreement and payment of the applicable license fee, Versaterm hereby grants to the Customer, and the Customer hereby accepts, a non-exclusive license (the "License") to:

- (a) use the Licensed Program Materials in source machine readable form on the server environment designated in Annex B attached hereto and in conjunction therewith to store the Licensed Program Materials in, transmit them through, or display them on units associated with such server environment;
- (b) utilize the Licensed Program Materials in print and/or electronic form in support of the use of the Licensed Program; and
- (c) copy or translate the Licensed Program Materials in machine readable form into any machine readable or printed form to provide sufficient copies to support the Customer's use of the Licensed Program as authorized under this License Agreement.

The License is non-exclusive and extends only to use in conjunction with City of Austin Police Department's operations. The Licensed Program Materials may only be used on the configuration of machines and at the location designated in Annex B unless the Customer obtains Versaterm's written consent, except as otherwise provided herein. The Customer cannot exceed the maximum number of workstations, simultaneous users and/or supported users, as the case may be, designated in Annex A without Versaterm's written consent, which consent may be subject to payment of additional license fees.

The Customer shall not use, print, copy, translate or display the Licensed Program Materials in whole or part unless expressly authorized in this License Agreement.

Apart from the rights enumerated in this License Agreement, the License does not include a grant to the Customer of any right to use, nor any ownership right, title or other interest, in or relating to the Licensed Program Materials, nor in any copy of any part of the Licensed Program Materials.

3. TERM AND TERMINATION OF LICENSE

The License shall be perpetual unless terminated as provided herein. Versaterm may terminate the License or this License Agreement upon written notice if the Customer fails to comply with any of the terms and conditions of this License Agreement. Upon termination for any reason, the Customer shall immediately cease all use of the Licensed Program Materials except as otherwise specifically provided herein.

In the event of termination by either party, the terminating party in its sole discretion may terminate one or more License rights divisibly without terminating other License rights.

4. THIRD PARTY SOFTWARE / FREE SOFTWARE COMPONENTS

The Customer acknowledges that the License does not include any right to use nor any interest in third party software ("Third Party Software") that may include, but is not limited to, operating systems, end-

user reporting tools, programming language, radio middleware, database management systems and related software.

The Customer also acknowledges that the License does not include any right to use nor any interest in “Free Software Components”, that may include, but is not limited to, software programs, libraries, or distributables (commonly known as “public”, “open source” or “free” software), made publicly available by the copyright holders (collectively, “Free Software Components”).

Notwithstanding anything else in this Agreement, the Third Party Software and the Free Software Components are subject only to those licenses applicable to the particular Third Party Software and/or Free Software Component and any warranties and limitations of liability for such Third Party Software and Free Software Components are contained therein. Customer acknowledges and agrees that Customer is solely responsible and liable to review such licenses. Such licenses may appear within the license, copying, help and/or readme files of the Third Party Software and/or Free Software Components.

5. TEMPORARY LICENSE TRANSFER

The Customer is authorized to use the Licensed Program Materials on:

- (a) a back-up configuration of machines when the designated configuration of machines is temporarily inoperable until operable status is restored and processing on the back-up configuration of machines is completed; or
- (b) another machine for compilation of the Licensed Program Materials if the designated configuration of machines does not provide the configuration required for compilation.

6. PERMISSION TO MODIFY

The Customer may modify the Licensed Program Materials provided in source machine readable form, or extend it into other program material to form an up-dated work for the Customer's own use; provided that, within one hundred twenty (120) days of the date of termination of the License, the Licensed Program Materials shall be completely removed from the up-dated work and dealt with under this License Agreement as if permission to modify or extend had never been granted. Any portion of the Licensed Program Materials included in such an up-dated work will continue to be subject to all terms and conditions of this License Agreement; and provided further that any such modifications may affect the rights and obligations of Customer and Versaterm under the Application Software Support Agreement (Exhibit G), as provided therein.

7. PROTECTION AND SECURITY OF THE LICENSED PROGRAM MATERIALS

The Customer will take appropriate action, by instruction, License Agreement or otherwise, with any persons permitted access to the Licensed Program Materials so as to ensure that the Customer satisfies its obligations under this License Agreement.

All copies of the Licensed Program Materials (excluding the Third Party Software and the Free Software Components) provided by Versaterm or made by the Customer including translations or compilations or partial copies within modifications, derivative works and up-dated works are the property and information

of Versaterm and may not be distributed or disclosed by the Customer to any person, including other licensees of the Licensed Program, without Versaterm's prior written consent. The Customer will reproduce and include the copyright notice on any such copies made by the Customer in accordance with Versaterm's copyright instructions.

The Customer will maintain records of the number and location of all copies of the Licensed Program Materials and notify Versaterm in writing if the original or any copy of the Licensed Program Materials will be kept at a location other than that of the configuration of machines designated in this License Agreement.

The Customer will ensure, prior to disposing of any media, that any Licensed Program Materials contained thereon have been erased or otherwise destroyed.

The Customer will not provide or otherwise make available any Licensed Program Materials in any form without Versaterm's prior written consent except to Customer employees, Versaterm employees, or to other persons during the period such other persons are on the Customer's premises, for purposes specifically related to the Customer's authorized use of the Licensed Program Materials. It is further agreed that the Customer, its employees and agents, will not disclose the information to third parties without Versaterm's prior written consent with the sole exception that the Customer is permitted to demonstrate the Licensed Program to other Public Safety personnel who are potential licensees of the Licensed Program.

8. INFRINGEMENT REMEDIES

8.1 Subject to Sections 8.3 and 8.4, in the event of a claim that Customer's authorized use of the Licensed Program Materials infringes upon any copyright, patent or other intellectual property right of any third party under the laws of Canada or the United States, Versaterm agrees that it will defend and indemnify the Customer from and against all damages and costs awarded in a final judgment (from which no further appeal is taken or possible) against Customer in such proceeding, provided that:

- (a) the Customer notifies Versaterm in writing within 30 days of the claim;
- (b) Versaterm has sole control of the defense and all related settlement negotiations; and
- (c) the Customer provides Versaterm with the assistance, information, and authority necessary to perform Versaterm's obligations under this section.

8.2 Subject to Sections 8.3 and 8.4, but without limiting Versaterm's obligations under Section 8.1, in the event of a claim that the Customer's authorized use of the Licensed Program Materials infringes upon any copyright, patent or other intellectual property right of any third party under the laws of the United States or Canada, and such claim is sustained in a final judgment from which no further appeal is taken or possible, and such final judgment includes an injunction prohibiting the Customer from continued use of the Licensed Program Materials or portions thereof, then Versaterm shall, at its option and expense, either:

- (a) procure for the Customer the right to continue the use of the Licensed Program Materials; or
- (b) replace or modify the Licensed Program Materials to make its use non-infringing, or
- (c) direct the Customer to cease use of the Licensed Program Materials or of the specific portion(s) thereof that resulted in the final judgment.

8.3 If Versaterm directs the Customer to cease use of the Licensed Program Materials or of specific portion(s) thereof, then the Customer, to the exclusion of all other remedies available to the Customer (except as set forth in Section 8.1), may terminate the License for that portion of the Licensed Program Materials which Versaterm directed the Customer to cease use and Versaterm shall pay the Customer (and/or credit against any amounts owed, or becoming owed, to Versaterm by the Customer) a declining percentage of the license fee paid by the Customer for that portion of the Licensed Program Materials namely, 100% of the license fee during the first year of the term of this License Agreement; 80%, 60%, 40% and 20% of the license fee in the second, third, fourth and fifth years, respectively, of the term of this License Agreement; and 0% thereafter.

8.4 Notwithstanding Sections 8.1 and 8.2, Versaterm shall have no obligation for any claim based upon:

- (a) use of other than a current unaltered release of the Licensed Program if such infringement would have been avoided by the use of a current unaltered release of the Licensed Program; or
- (b) the combination, operation, or use of any Licensed Program Materials furnished hereunder with non-Versaterm programs or data if such infringement would have been avoided by the combination, operation or use of the Licensed Program Materials with other programs or data.

This Section 8 states the entire obligation of Versaterm with respect to any claim that the Licensed Program Materials infringe upon any copyright, patent or other intellectual property right of any third party .

9. DISCLAIMER ON USE

The Automatic Vehicle Routing Recommendation component ("AVRR Component"), if licensed at any time under this Agreement, is intended for use as one factor in determining the best vehicle routing for the Customer, but is not intended to be used as the sole source for determining routing and which vehicles to deploy to address any emergency situation. The AVRR Component is heavily dependent on the quality of the source mapping information inputted by or on behalf of Customer and Versaterm will have no responsibility or liability for any routing errors and/or delays and resultant damage or loss arising as a result of the mapping data or for any damages or loss caused by any decision made or action taken in reliance on the AVRR Component.

10. DISCLAIMER OF ALL OTHER WARRANTIES AND REPRESENTATIONS

The express warranties and express representations set forth in this License Agreement are in lieu of, and **VERSATERM DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LICENSED PROGRAM MATERIALS OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT VERSATERM KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, VERSATERM EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN THE CUSTOMER WITH RESPECT TO THE LICENSED PROGRAM MATERIALS OR ANY PART THEREOF.**

11. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES

INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS LICENSE AGREEMENT, NOTWITHSTANDING ANY OTHER PROVISION HEREIN, VERSATERM WILL NOT BE LIABLE TO THE CUSTOMER (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE CUSTOMER'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND - INCLUDING LOST PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC DAMAGE, AND FURTHER INCLUDING INJURY TO PROPERTY (BUT SPECIFICALLY EXCLUDING THE INFRINGEMENT REMEDIES SET FORTH IN SECTION 8) - AS A RESULT OF BREACH OF ANY WARRANTY OR OTHER TERM OF THIS LICENSE AGREEMENT, REGARDLESS IF VERSATERM WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

12. MAXIMUM AGGREGATE LIABILITY

Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this License Agreement, **NOTWITHSTANDING ANY OTHER PROVISION HEREIN, EXCEPT AS DESCRIBED IN SUBSECTION 8.1 IN NO EVENT SHALL VERSATERM'S AGGREGATE LIABILITY TO CUSTOMER (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY CUSTOMER), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM, OR RELATED TO, THE SUBJECT MATTER OF THIS LICENSE AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE LICENSE FEE PAID BY THE CUSTOMER FOR THE SPECIFIC PROGRAM(S). THE THIRD PARTY SOFTWARE AND THE FREE SOFTWARE COMPONENTS ARE PROVIDED SUBJECT TO THE LIMITATION OF LIABILITY PROVISIONS CONTAINED WITHIN THE APPLICABLE LICENSE AGREEMENT AND VERSATERM ASSUMES NO LIABILITY WITH RESPECT THERETO.**

13. GENERAL

13.1 This License Agreement shall be binding upon the successors and assigns of both parties, provided, however, that no assignment, delegation or other transfer (except to a third party acquiring all or substantially all of Versaterm's assets or by merger of Versaterm with a third party) shall be made by either party without the prior written approval of the other party, which approval shall not be unreasonably withheld.

- 13.2 Every notice required or contemplated by this License Agreement to be given by either party shall be in writing and delivered to the party for whom it is intended, at the address specified in this License Agreement. Either party may change its address for notice by giving notice to the other party of the change.
- 13.3 No modification or amendment of this License Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound.
- 13.4 Neither party is responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control. However, this clause does not extend to payment obligations.
- 13.5 No action, regardless of form, arising out of this License Agreement may be brought by either party more than five (5) years after the cause of action has arisen for breach of provisions of the section entitled "PROTECTION AND SECURITY OF THE LICENSED PROGRAM MATERIALS" or more than four (4) years after the cause of action has arisen for a breach of any other provision of this License Agreement.
- 13.6 The License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas.
- 13.7 PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ("UN CONVENTION"), THE PARTIES AGREE THAT THE UN CONVENTION SHALL NOT APPLY TO THIS LICENSE AGREEMENT.
- 13.8 The failure of either party at any time to require performance by the other party of any provision of this License Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this License Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this License Agreement.
- 13.9 Any provision of this License Agreement or part thereof found to be illegal or unenforceable shall be deemed severed and the balance of this License Agreement shall remain in full force and effect.
- 13.10 This License Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages, any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photocopy of an executed original will be admissible in evidence for all purposes in any proceeding as between the parties.
- 13.11 This License Agreement including all annexes attached hereto, all documents incorporated by reference herein and all instruments supplemental hereto or in amendment or confirmation hereof or thereof, constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, proposals, or agreements, oral or otherwise, between the parties, with reference thereto, will be of any force or affect except as may be expressly set forth herein or therein.

13.12 The following Annexes attached hereto are incorporated into this License Agreement by reference and deemed to be a part hereof:

- (a) Annex A - List of Licensed Program(s)
- (b) Annex B - Server Environment

13.13 Each person signing below represents that he or she has read this License Agreement; understands its terms; is duly authorized to execute this License Agreement on behalf of the party indicated below by his or her name; and agrees on behalf of such party that such party will be bound by those terms.

Executed the dates written below, to be effective as of October 1st of 2021.

VERSATERM PUBLIC SAFETY INC.

City of Austin

Signature:  DocuSigned by:
Warren Loomis
0158A711D714C1...

Signature: **Sai Purcell**  Digitally signed by Sai Purcell
Date: 2021.10.01 09:01:15
-05'00'

Warren Loomis

Name

Name

President & CEO

Title

Title

July 8, 2021

Date

Date

Signature:  DocuSigned by:
Terri Rosales
37FC0B113F541EA...

Signature: _____

Terri Rosales

Name

Name

VP Finance and Administration

Title

Title

July 8, 2021

Date

Date

APPLICATION SOFTWARE LICENSE AGREEMENT

Annex A – List of Licensed Program(s)

1. DEFINITIONS

In this Exhibit,

- 1.1 “Concurrent User(s)” means the unique combination of one login on one display device with no more than five processes running or, in the case of mobile devices, the number of concurrent users running the Application Software at any one time.
- 1.2 “Site” means it may be used across the entire Customer site in a Single Jurisdiction.
- 1.3 “Install(s)” means the installation of the software on a designated PC, server or device.

2. Licenses

<u>Licensed Program/Function</u>	<u>License Description</u>
<u>Versaterm vRMS</u>	
3	
Versadex RMS	550 Concurrent Users
Versadex Property	Site
Versadex Property Bar-Code Support	Site
Versadex Property Bar-Coding Mobile Scanning Support	Site
DB-Lexicon Data Dictionary	Site
Versadex Mugshot RMS Desktop Viewer	Site
NCIC Batch Pawn Check	Site
VGI GIS Maintenance Tool	1 Install
Versaterm Message Controller (VMC)	1 Install
<u>Versaterm vMRE</u>	
Mobile Report Entry Integration License	Site
Mobile Report Entry Licenses	Site
<u>Versaterm vMDT (RMS only)</u>	
Police MDT Licenses	Site
MDT RMS Link Licenses	Site
MDT NCIC I/F Licenses	Site
<u>Interfaces</u>	
DPS TLETS/NLETS System (TCIC/NCIC)	
Identix Response File (SID#) Interface	
Tritech CAD Call Transfer	
Tritech MDT to vMRE Prefill	
Tritech CAD Warrant Query to RMS	
Mugshot Interface	

Beast LIMS to vRMS
Regional Warrant Database Query
Electronic Pawn Slip Interface
NDEX Interface

APPLICATION SOFTWARE LICENSE AGREEMENT

Annex B – Server Environment

The Licensed Program will reside in a virtualized configuration using VMware technology. The VMware appliances will be managed across multiple hardware servers. The hardware configuration includes a cluster of servers at the primary location.

The Customer is licensed to install the Licensed Program on any existing or replacement hardware equipment owned, operated or leased by the Customer, whether at the Customer's facilities or at a facility within the United States or Canada provided by the Customer's IT solutions provider.

Exhibit B

**APPLICATION SOFTWARE SUPPORT AGREEMENT
FOR VERSATERM-LICENSED PRODUCTS**

This Agreement is made in consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration,

B E T W E E N:

Versaterm Public Safety Inc., a corporation duly incorporated under the laws of the province of British Columbia and having its office located at 2300 Carling Avenue, Ottawa, Ontario, Canada

(hereinafter referred to as “Versaterm”)

AND:

The City of Austin, a municipality incorporated by the State of Texas

(hereinafter referred to as the “Customer”)

WHEREAS the Parties entered into an agreement dated December 1, 2001 and numbered 74001000557 with respect to, among other things, the supply of an RMS System for the City of Austin Police Department (the “RMS Agreement”); and

WHEREAS the Parties wish to replace, in its entirety, Exhibit E “Maintenance and Support Service Agreement” of the RMS Agreement with this Support Agreement;

Now therefore, the Parties hereby agree as follows:

1. DEFINITIONS

In this Support Agreement,

- 1.1 “Application Software License Agreement” means the Application Software License Agreement between Versaterm and the Customer concerning the license of the Product.
- 1.2 “Critical Priority Error” means complete system failure where the Product is not available for use.
- 1.3 “High Priority Error” means a serious problem that materially affects the operational use of the Product.

- 1.4 “License” means the license in respect of the Product granted by Versaterm pursuant to the Application Software License Agreement executed in Agreement No.MA 8700 NS210000053 as between Versaterm and the Customer.
- 1.5 “Product” means the computer programs and documentation provided by Versaterm and which the Customer is authorized under the Application Software License Agreement to use in the course of their normal operations, including Product Update(s) and Product Upgrade(s) used by the Customer.
- 1.6 “Product Update” means a change or new release of the Product then in use by the Customer designed to correct Problem(s).
- 1.7 “Product Upgrade” means a change or new release of the Product then in use by the Customer containing new functions, features and enhancements that have become part of the standard system and which are made available to Versaterm customers who have a current support agreement in place for such Products.
- 1.8 “Problem” means defective Product distribution media and/or failure of the Product to function substantially in accordance with the documentation but does not include compatibility problems on hardware components and other systems software components or new releases that Versaterm has not supplied and/or has not pronounced “acceptable” or “supported”.
- 1.9 “Support” means services which are provided by Versaterm to the Customer, as described herein, regarding Problem(s) encountered with standard, unmodified Product, and with Versaterm’s modifications to or interfaces with the Products, and which are necessary to:
 - i. resolve Problems and provide temporary “work around” solutions, if necessary;
 - ii. assist with data manipulation, duplication or restoration where data has been affected by defects under paragraph (i) immediately above but not by hardware defects or operator error or misuse of any of the software or hardware;
 - iii. periodically review all Products to identify and resolve Problems on a preventative basis; and
 - iv. provide, in a timely manner, all Product Updates and Product Upgrades.
- 1.10 “Support Agreement” means this maintenance and support service agreement, all annexes attached hereto, all documents incorporated by reference herein and all instruments supplemental hereto or in amendment or confirmation hereof.
- 1.11 “Support Authority” means the Customer’s designated employee (or employees) authorized to approve additional, separately billable time & materials support work, beyond that included within this Support Agreement.
- 1.12 “Support Contact” means Customer’s designated employee, a consultant providing services directly to the Customer or another designated Customer representative with whom Versaterm will communicate when providing Support. The Support Contact must be knowledgeable about how the Product is being used and the language in which it is written and be competent to do system administration of the operating system under which it is being used.
- 1.13 “Support Period” has the meaning set forth in Section 4.

Other terms are defined in the Sections in which they are used.

2. VERSATERM SUPPORT OBLIGATIONS

- 2.1 **Product Support.** During the Support Period, Versaterm may make Support available through newsletter(s), access to Versaterm's website, and direct contact with the Customer. Such Support may consist of the periodic review of current outstanding questions and usage issues, new and upcoming releases of Product Update(s) and Product Upgrade(s) and the periodic review of potential environment changes that could impact the use of the Product.
- 2.2 **Regular Telephone Support.** During the Support Period, Versaterm will make Support available by telephone to the Support Contact at substantially all times from 7:30 a.m. (Eastern time) until 5:30 p.m. (Customer local time) each day except Saturdays, Sundays, and legal holidays in the jurisdiction of the Customer. To the extent possible by telephone, email and remote communication, Versaterm will attempt to identify and provide a workaround for the Problem and will use reasonable efforts to provide a final solution for the Problem, if that applies. Versaterm will normally respond to a telephone request for High Priority Error or Critical Priority Error Support within thirty (30) minutes of receipt of the call.
- 2.3 **7x24 Emergency Telephone Support.** Versaterm will provide 7x24 Telephone Support that extends Support for problems identified as High Priority Error and Critical Priority Error to include all hours not already provided for within Regular Telephone Support.
- 7x24 Telephone Support allows the Customer's internal support staff that are technically capable and who first troubleshoot the problem, to authorize Versaterm to provide 7x24 Telephone Support.
- 2.4 **On-Site Emergency Support.** During the Support Period, in the extreme event of a complete system failure (Critical Priority Error) and a determination that telephone and/or remote support cannot identify the Problem or provide a workaround, then a Versaterm representative will be dispatched to the Customer's site within a reasonable period of time. Such period of time will depend, among other things, upon the proximity of the Customer and the availability of transport. The Customer shall reimburse Versaterm for reasonable travel and living expenses incurred as a result of any such declared Emergency site visit.
- 2.5 **Termination of Corrective Action.** Versaterm may, but need not, terminate its corrective efforts under this Section 2 at any time if, in its business judgment:
- a. the Customer fails to perform its obligations under this Support Agreement; or
 - b. the Customer is not using the then current unmodified version of the Product or other versions of the Product then supported by Versaterm; or
 - c. Versaterm and/or the Customer is not able to reproduce the Problem in the applicable operating environment and verify that the Problem is in fact in the Product and not elsewhere; or
 - d. the Problem is not material; or
 - e. further corrective efforts are not appropriate because the Problem has been identified and is caused by an external factor (e.g. bug in system software such as database management system, MS Windows, etc.) not within Versaterm's control; or

- f. Versaterm has declared the problem as being caused by something external to the supplied software, such as aberrations within the client's network (LAN and/or WAN and/or related network equipment). Versaterm will terminate work on this problem unless the Customer authorizes further diagnosis effort that may be billable separately under this Support Agreement when and if the suspected external problem source is confirmed. If confirmed as being caused by an external source, then such work will be billed on a time and materials basis at the then prevailing hourly rates for support (whether within or outside normal support hours) and can be authorized by FAX or E-mail by the designated Support Authority or other as designated in writing to Versaterm as having that authority.
- 2.6 During the Support Period, Versaterm will offer copies of Product Update(s) and/or Product Upgrade(s), if any, to the Customer at no additional charge.
- 2.7 Product Update(s) and Product Upgrade(s) are provided subject to and in accordance with the license rights, restrictions, terms, covenants, conditions, warranties, limitations, exclusions and other provisions set forth in the Application Software License Agreement.
- 2.8 **Third Party Software Support.** For the Third Party Software that Versaterm collects support for, Versaterm agrees to remit, on behalf of the Customer, the appropriate amounts to the Third Party, thereby ensuring the corresponding Third Party support agreement does not lapse. Versaterm also agrees to provide first line support for those Third Party Software products that Versaterm has supplied and collects support amounts on. During the Support Period, Versaterm will ensure that the Product is available on a supported version of the operating system, database management system and programming language. That is, if a supplier of the aforementioned Third Party Software discontinues the version currently in production use by the Customer, Versaterm will make available a version of the Product, with equivalent functionality. In the event that the Customer upgrades the operating system, Versaterm shall provide necessary assistance, which may be at additional cost, for the migration to the upgraded operating system.
- 2.9 **Open Source Software Components Support.** For the Open Source Software Components provided by Versaterm, Versaterm will provide first line support for those Open Source Software Components. During the Support Period, Versaterm will ensure that the Product functions on the Open Source Software Components and if the supplier of the aforementioned Open Source Software Component discontinues the version currently in production use by the Customer, Versaterm will make available a version of the Product with equivalent functionality.
- 2.10 **Integration Support.** Versaterm is responsible for maintaining compliance with all state and federal requirements and data standards related to the integrations that are implemented as part of the Agreement using the regular Product Update schedule. If a change is requested outside of the normal cycle, additional costs may apply. Versaterm is responsible for supporting the integrations that are licensed from Versaterm. If external factors necessitate a change to an integration, additional costs may apply.
- 2.11 **Server Migration.** Versaterm will typically provide all professional services relating to the migration of the System in a virtualized environment at no additional charge, assuming a environment similar to that proposed by Versaterm or an environment certified as a Versaterm standard.
- 2.12 **Database Support.** Versaterm shall support the database (e.g. Informix), if supplied by Versaterm, in the production, development and disaster recovery environments, if applicable. Such support shall include: installation, configuration, tuning, space management, monitoring, and opening and managing support tickets with the applicable Third Party Software vendor..

- 2.13 Versaterm reserves the right to alter its support policies and procedures in future years to adapt to changes in technologies and circumstances. Versaterm will provide notice of any change in support policies and procedures at least 6 months before the renewal of any support period.

3. CUSTOMER SUPPORT OBLIGATIONS

- 3.1 By notice to Versaterm, the Customer shall designate Support Contact(s) to provide routine end user support for the Customer personnel concerning the Product. The Support Contact(s) will be adequately trained to fulfill the duties identified.
- 3.2 By notice to Versaterm, the Customer is obligated to identify the Support Authority. The Customer may designate substitutes for such individual from time to time by notice to Versaterm.
- 3.3 The Customer is responsible to have staff, trained in accordance with Versaterm's training material, on-site to assist Versaterm's remote staff to diagnose and correct or circumvent reported software problems; Versaterm's support staff shall request and guide the Customer's staff to execute physical tasks and actions on-site in support of Versaterm's remote diagnostic and corrective or circumventive activities.
- 3.4 The Customer shall take appropriate steps to educate its end users about the appropriate process for reporting problems, including the need to contact internal support rather than Versaterm.
- 3.5 As a matter of policy, Versaterm will ordinarily still attempt to respond promptly and courteously to Support requests from any end user, but it shall always have the right to require the caller to work through the designated Support Contact(s) instead of directly with Versaterm.
- 3.6 Customer agrees:
- a. to limit use of Support to occasions when the Product fails to function as described in the documentation or the Customer requires clarification of the documentation,
 - b. to furnish descriptions of Problem(s) in the form reasonably requested by Versaterm's Support representatives,
 - c. to reproduce the Problem and/or assist Versaterm's efforts to reproduce the Problem in the applicable operating environment
 - d. to create adequate backups of any Versaterm software and/or documentation, and Customer data.
 - e. to provide remote access to the Customer's server environment, with appropriate "access rights", to enable Versaterm's Support representatives to remotely analyze and diagnose reported Problem(s); and
 - f. to ensure Product Updates are installed in the production environment in a timely manner. Versaterm reserves the right to charge a per call fee at its then prevailing rate to Customer for Regular and 7x24 Support calls in regards to an issue where Customer has been supplied with a Product Update but has not implemented said Product Update due to internal procedural requirements or processes. Customer's Support Contact will be informed in advance of any charge.
 - g. to install any Product Upgrade at its own expense. Unless paid for in the Support Fee, Versaterm will, *at the request and expense of the Customer*, install any such Product Update or Product Upgrade in which event the Customer shall pay Versaterm its then prevailing per diem rates plus travel and living expenses.

4. SUPPORT PERIOD

- 4.1 The Initial Support Period will commence on October 1, 2021 and continue for a period of one year. Automatic one-year extensions (each a “Support Period”), shall continue thereafter for two (2) years. After which, extensions of the Support Period will be subject to Section 4.2 and 4.3 for an additional two (2) Support Periods. The Support Period will end automatically upon termination of the License, if that event occurs.
- 4.2 Within or after the sixty (60) day period prior to the expiration of the Support Period, Versaterm, or its designated reseller, may send the Customer an invoice for a renewal support fee (“Support Fee”). The sending of any such invoice will constitute an irrevocable offer to extend the Support Period for the period and fees set forth in the invoice, which may be accepted by the Customer in its sole discretion as hereinafter set forth.
- 4.3 The Customer’s payment of a Support Fee in response to an invoice by its due date, that is, by the (i) the expiration date of the Support Period, or (ii) thirty (30) days after the date of Versaterm’s invoice, whichever is later, will extend the Support Period for:
 - a. one year from its previous expiration date, or
 - b. if the invoice specifies that the invoice is for a prorated Support Fee to cover an interim period (e.g., to adjust subsequent expirations dates of the Support Period), then until the new expiration date indicated in the invoice.
- 4.4 The Customer’s failure to pay a Support Fee, in response to an invoice from Versaterm, shall constitute the Customer’s election to allow the Support Period to expire without further notice from Versaterm.
- 4.5 If the Support Period is allowed to expire, Versaterm may condition any subsequent reinstatement of the Support Period on payment by the Customer of an additional fee set by Versaterm in its sole discretion but not to exceed Versaterm’s then-current license fee for the Product. Such reinstatement will be effective as of its date and will not be retroactive.
- 4.6 Termination and Suspension of Service
 - 4.6.1 During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.
 - 4.6.2 In the even of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data in accordance with state and federal retention laws. After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control. Notwithstanding the foregoing, Contractor reserves the right to retain City data in support tickets, support requests, and direct communications with Versaterm.

5. SUPPORT FEE AND PAYMENT TERMS

- 5.1 The Support Fee shall be subject to a 3% increase over the previous year’s Support Fee. The Support Fee for the initial Support Period is set out in the attached Annex A. Payment is due prior to the commencement of the Support Period.

- 5.2 In addition to all other amounts required by this Support Agreement, the Customer shall pay or reimburse Versaterm for all federal, state, provincial and local sales, excise, use or similar taxes based on payments to be made hereunder or provide a tax exemption certificate. The Customer will not be required to pay or reimburse Versaterm for taxes based upon the net worth, capital, net income, or franchise of Versaterm, nor taxes imposed upon Versaterm solely by reason of Versaterm's doing business in or being incorporated in the jurisdiction imposing such taxes.
- 5.3 Any payment required hereunder that is made late (including unpaid portions of incomplete payments) will bear interest, compounded monthly, from the date due until the date paid, at the lesser of eighteen percent (18%) per annum or the highest interest rate permitted to be charged of the Customer by applicable law.
- a. Any payment received more than ten (10) days after becoming due will be deemed late for purposes of this Support Agreement.
 - b. Any interest charged or paid in excess of the maximum rate permitted by applicable law will be deemed the result of mistake and will be credited or refunded to the Customer, together with interest as set forth above from the date charged until the date credited or refunded.
 - c. The Customer shall reimburse Versaterm for all costs reasonably incurred in collecting late payments, including, but not limited to, attorney's fees.

6. DISCLAIMER OF ALL OTHER WARRANTIES AND REPRESENTATIONS

- 6.1 The express warranties and representations set forth in this Support Agreement or otherwise agreed to in writing by Versaterm and the Customer in connection with the provision of support are in lieu of, and **VERSATERM DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE PRODUCT AND SUPPORT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT VERSATERM KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, VERSATERM EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER WITH RESPECT TO THE PRODUCT OR SUPPORT OR ANY PART THEREOF.**

7. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES

- 7.1 Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Support Agreement, **NOTWITHSTANDING ANY OTHER PROVISION HEREIN, VERSATERM WILL NOT BE LIABLE TO THE CUSTOMER (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE CUSTOMER'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND - INCLUDING LOST PROFITS, LOSS OF BUSINESS, LOSS OF DATA, OR OTHER ECONOMIC DAMAGE, AND FURTHER INCLUDING INJURY TO PROPERTY OR PERSONS - AS A RESULT OF BREACH OF ANY WARRANTY OR OTHER TERM OF THIS SUPPORT AGREEMENT, REGARDLESS IF VERSATERM WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.**

8. MAXIMUM AGGREGATE LIABILITY

- 8.1 Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Support Agreement, **NOTWITHSTANDING ANY OTHER PROVISION HEREIN, IN NO EVENT SHALL VERSATERM'S AGGREGATE LIABILITY TO CUSTOMER**

(INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY CUSTOMER), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM, OR RELATED TO, THE SUBJECT MATTER OF THIS SUPPORT AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE MOST RECENT SUPPORT FEE PAID BY THE CUSTOMER TO VERSATERM.

9. CONFIDENTIALITY

- 9.1 Versaterm shall hold all data received from the Customer confidential and shall use all reasonable efforts to prevent disclosure thereof and to protect the data from use for any purpose other than for the benefit of the Customer.

The obligation of confidentiality shall not apply to the data, information or materials or portions thereof furnished to Versaterm or its representatives which:

- a. are generally available to the public other than as a result of disclosure by Versaterm or its representatives;
- b. become available to Versaterm on a non-confidential basis from a source other than the Customer which source is not prohibited from disclosing such information by a legal, contractual or fiduciary duty to the Customer;
- c. is independently developed by Versaterm without the use of the Customer's information
- d. is information received by Versaterm which is approved in writing by the Customer for release or disclosure; or
- e. is legally required to be disclosed by Versaterm in whole or in part provided that Versaterm gives prompt notice of such requirement to the Customer so that the Customer may seek a protective order or other appropriate remedy and provided that if such protective order or other remedy is not obtained prior to the time disclosure is legally required, Versaterm or its representatives will disclose, unless otherwise required, only that portion of the confidential data which Versaterm or its representatives are advised by opinion of counsel is legally required to be disclosed.
- f. The vendor agrees to abide by and be bound by the rules, regulations, and laws set forth within and by the FBI CJIS Security Policy, 28 Code of Federal Regulations Part 20, Federal Bureau of Investigation (FBI), Texas Department of Public Safety (DPS), and the Austin Police Department (APD).

10. NOTICE

- 10.1 Every notice required or contemplated by this Support Agreement to be given by either party shall be in writing and delivered to the party for whom it is intended, at the address specified in this Support Agreement. Either party may change its address for notice by giving notice to the other party of the change.

11. GENERAL

- 11.1 This Support Agreement shall be binding upon the successors and assigns of both parties, provided, however, that no assignment, delegation or other transfer (except to a third party acquiring all or substantially all of Versaterm's assets or by merger of Versaterm with a third party) shall be made by either party without the prior written approval of the other party, which approval shall not be unreasonably withheld.

- 11.2 No modification or amendment of this Support Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound.
- 11.3 Neither party is responsible for failure to fulfill its obligations under this Support Agreement due to causes beyond its control. However, this clause does not extend to payment obligations.
- 11.4 No action, regardless of form, arising out of this Support Agreement may be brought by either party more than four (4) years after the cause of action has arisen.
- 11.5 The Support Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas.
- 11.6 PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ("UN CONVENTION"), THE PARTIES AGREE THAT THE UN CONVENTION AND ANY AND ALL IMPLEMENTING LEGISLATION THEREOF, SHALL NOT APPLY TO THIS SUPPORT AGREEMENT.
- 11.7 The failure of either party at any time to require performance by the other party of any provision of this Support Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Support Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Support Agreement.
- 11.8 This Support Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages, any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photocopy of an executed original will be admissible in evidence for all purposes in any proceeding as between the parties.
- 11.9 This Support Agreement including all annexes attached hereto, all documents incorporated by reference herein or in amendment or confirmation hereof, constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, proposals, or agreements, oral or otherwise, between the parties, with reference thereto, will be of any force or affect except as may be expressly set forth herein and therein. The following are incorporated into this Support Agreement by reference and deemed to be a part hereof:
 - a. Annex A attached hereto - Initial Support Fee
 - b. Application Software License Agreement between the parties concerning the Product as executed in Agreement No. MA 8700 NS210000053.
- 11.10 Any provision of this Support Agreement or part thereof found to be illegal or unenforceable shall be deemed severed, and the balance of the Support Agreement shall remain in full force and effect.

Each person signing below represents that he or she has read this Support Agreement; understands its terms; is duly authorized to execute this Support Agreement on behalf of the party indicated below by his or her name; and agrees on behalf of such party that such party will be bound by those terms.

VERSATERM PUBLIC SAFETY INC.

CITY OF AUSTIN

Signature:  _____

Signature: _____

Warren Loomis

Name

Name

President & CEO


Title

Title

July 8, 2021

Date

Date

Signature:  _____

Signature: _____

Terri Rosales

Name

Name

VP Finance and Administration

Title

Title

July 8, 2021

Date

Date

APPLICATION SOFTWARE SUPPORT AGREEMENT

Annex A – Initial Support Fee

The Support Fee for the Initial Support Period from October 1, 2021 to September 30, 2022 is \$475,785.



February 27, 2021

Mr. Brandon Gilstrap
Administrative Manager-Central Records
Austin Police Department

Re: Sole source letter for the Versaterm Records Management System and Field Reporting (vRMS/vMRE) Product annual support.

Dear: Mr. Gilstrap,

The City of Austin has requested a budgetary quote to provide annual support for the Versaterm Records Management System and Field Reporting (vRMS/vMRE) products that are installed in Austin Police Department.

This letter also serves to inform that all versions of the Versaterm system are proprietary and Versaterm is the only experienced and authorized party to work on upgrading, extending, migrating, and supporting Versaterm's application code and data. No vendor is authorized to provide these licenses for proprietary Versaterm code.

Best Regards,

BrendaLee Kelly
Austin PD Account Manager
Versaterm Inc.