Amendment No. 3
of
Contract No. NC140000007
for
a Hosted Public Information Request System
between
Lockheed Martin Desktop Solutions, Inc.
and the
City of Austin

The above referenced contract is amended as follows:

1.0 The City hereby amends this Contract to include Escalated Help Desk Support - Remote, per attached Quote Number CB-11132014-COA-1, at a total additional cost of $4,033.61.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 12/03/13 – 12/02/16	$305,924.00	$305,924.00
Amendment No. 1: Modify Payment Schedule to include Contingency Amount	$0.00	$305,924.00
Amendment No. 2: Additional Users at $53,884.80	$53,884.80	$359,808.80
Amendment No.3: Escalated Help Desk Support - Remote	$4,033.61	$363,842.41

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 signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature:_____

Printed Name:_Lawrence A. Vittori_____

Date: November 24, 2014_____
Lockheed Martin Desktop Solutions, Inc.

Signature:_____

Printed Name: _____

Date: _____
City of Austin

Amendment No. 2
of
Contract No. NC140000007
for
a Hosted Public Information Request System
between
Lockheed Martin Desktop Solutions, Inc.
and the
City of Austin

The above referenced contract is amended as follows:

1.0 The City hereby amends this Contract to include thirty (30) additional users, per attached Quote Number CB-08282014-COA, at a total additional cost of $53,884.80.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 12/03/13 – 12/02/16	$305,924.00	$305,924.00
Amendment No. 1: Modify Payment Schedule to include Contingency Amount	$0.00	$305,924.00
Amendment No. 2: Additional Users at $53,884.80	$53,884.80	$359,808.80

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 signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature:_____

Printed Name: **Lawrence A. Vittori**_____
Date: **September 19, 2014**
Lockheed Martin Desktop Solutions, Inc.

Signature:_____

Printed Name: _Jonathun Hauril_
Date: _9-19-14_
City of Austin

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Amendment No. 1
of
Contract No. NC140000007
for
a Hosted Public Information Request System
between
Lockheed Martin Desktop Solutions, Inc.
and the
City of Austin

The above referenced contract is amended as follows:

1.0 Exhibit A, Payment Schedule, is hereby modified to include:

Lockheed Martin Total Cost Proposal:	$250,924.00
*City of Austin Contingency Amount:	$55,000.00
Total Not-To-Exceed Contract Amount:	$305,924.00

*City of Austin Contingency Amount of $55,000.00 was included for the purpose of purchasing additional storage and licenses, if needed, over the life of the contract.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 12/03/13 – 12/02/16	$305,924.00	$305,924.00
Amendment No. 1: Modify Payment Schedule to include Contingency Amount	$0.00	$305,924.00

3.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature:_____   Signature:_____

Printed Name: Eileen Van   Printed Name: Teresa Redley

Date: 1/7/14   Date: 1/7/14
Lockheed Martin Desktop Solutions, Inc.   City of Austin

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City of Austin

Founded by Congress, Republic of Texas, 1839

P.O. Box 1088, Austin, Texas 78767-1088

Financial and Administrative Services Department

December 3, 2013

Ms. Eileen Van
Lockheed Martin Desktop Solutions Inc.
2700 Prosperity Ave.
Fairfax, VA 22031

Dear Ms. Van:

The Purchasing Office has approved the execution of a contract with your company for the above-referenced item as follows:

Responsible Department:	Law Department
Department Contact Person:	Deborah Jennings
Department Contact Email Address:	Deborah.Jennings@austintexas.gov
Department Contact Telephone:	512 974-1304
Project Name:	Hosted Public Information Request System
Contractor Name:	Lockheed Martin Desktop Solutions Inc.
Contract Number:	NC140000007
Contract Period:	12/03/13-12/02/16 (36 months)
Dollar Amount	NTE $305,924.00
Extension Options:	N/A
Requisition Number:	RQM 5600 13120400105
Solicitation Number:	BKH0156
Agenda Item Number:	42
Council Approval Date:	08/08/13

Attached is a copy of all contract terms and conditions. Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at (512) 974-6557.

Sincerely,

Teresa Reddy, Corp Contract Compliance Manager
Purchasing Office
Finance and Administrative Services Department

CONTRACT BETWEEN THE CITY OF AUSTIN
and
LOCKHEED MARTIN DESKTOP SOLUTIONS INC.
for
a Hosted Public Information Request System

This Contract ("Contract") is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Lockheed Martin Desktop Solutions Inc. ("Contractor"), a Virginia Corporation, having offices at 2700 Prosperity Avenue, Fairfax, VA 22031. Contractor and City may be referred to individually as a "Party" and collectively as "Parties".

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services, software, training and support and maintenance for a hosted public information report system as described in this Agreement including Section 2, Scope of Work and the Scope of Work attached to this Agreement as Exhibit "B" and incorporated by reference.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, services, and other resources required for providing the hosted public information report system ("PIR System") identified in this Agreement including Section 2 and Exhibit "B" (Scope of Work). In the event that the need arises for the Contractor to provide deliverables beyond those stated in this Agreement, the Contractor and the City shall negotiate mutually agreeable terms and compensation.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in providing the deliverables. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, acceptance form signoffs,

change orders, and amendments as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.

1.4 **Designation of Key Personnel.** The Contactor's Contract Manager represents the Contractor and is the designated point of contact for the Contractor. The Contractor's Contract Manager for this engagement is Eileen Van, Phone: 703-663-5818, Email: eileen.van@lmco.com. The City's Contract Manager for the engagement is Deborah Jennings, (512) 974-1304, Email: Deborah. Jennings@austintexas.gov. The City's Contract Manager and the Contractor's Contract Manager resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK.

Contractor's Obligations. The Contractor shall fully and timely provide all deliverables described in this Contract and Exhibits, and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and Exhibits and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION:

3.1 **Contract Amount.** The Contractor will be paid an amount not-to-exceed $305,924.00 ("Total Contract Amount") as indicated in with the Payment Schedule set forth in Exhibit "A" attached to this Contract and incorporated by reference upon the successful completion of the Scope of Work (Exhibit "B") and the Implementation Plan as set forth in Exhibit "C" attached to this Contract and incorporated by reference

3.2 **Invoices**

3.2.1.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.1.2   Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized, describe the work performed, and refer to the appropriate Payment Schedule milestone. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

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

3.2.1.3   Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 Payment

3.3.1.1   The City agrees to make payment to Contractor for a proper invoice when the invoice becomes due and payable in accordance with the Payment Schedule (Exhibit A). However, no payment shall become due and payable until all work comprising the Payment Schedule milestone(s) (including without limitation the configuration, installation, testing, and acceptance of the software system) has been completed and accepted by the City, in writing, in accordance with the Acceptance Form Signoff described in Exhibit D to this Contract and incorporated by reference. All proper invoices for accepted payment milestone(s) that are received by the City will be

paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

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

3.3.1.3   The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor (up to the Total Contract Amount) to such extent as may be necessary on account of, unless due to City's negligence with regard to Section 3.3.1.7:

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

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

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

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

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

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

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

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

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

3.4 **Retainage:** The City reserves the right to withhold a 10 percent (%) retainage until completion of all work required by the Contract per calendar year commencing upon the Effective Date, and thereafter on the one year anniversary Effective Date, with the exception of the first year where 10% retainage would be paid upon City's written acceptance of the PIR System. The Contractor's invoice shall indicate the amount due, less the retainage. Upon City's written final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.

3.5 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract sixty (60) days prior end of fiscal year. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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

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

3.7 Final Payment and Close-Out

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

3.7.1.2   The making and acceptance of final payment will constitute:

3.7.1.3   a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall begin on the date the Parties have fully signed this agreement ("Effective Date") and unless

amended or terminated in accordance with the provisions of this Agreement, end thirty-six (36) months from the Effective Date.

4.1.1.1   Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in this paragraph. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

4.2 **Right To Assurance**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within ten (10) business days from the date of demand, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default**: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4   **Termination For Cause:**. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default or provides an action plan to cure such failure within ten (10) days and upon City's written acceptance of the action plan, Contractor will begin the cure actions submitted in the action plan (or more if authorized in writing by the City Contract Manager and designated City Project Manager) after receipt of the notice from the City Contract Manager specifying the failure, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time

within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate up to the Total Contract Amount. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

SECTION 5. OTHER DELIVERABLES

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

5.1.1 **General Requirements**

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

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address within 10 business days of the Effective Date and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

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

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

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

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

City of Austin
Purchasing Office
P. O. Box 1088

Austin, Texas 78767

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

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements herein, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

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

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

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

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

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

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

5.1.2.1.2   Contractor/Subcontracted Work.

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

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

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

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

5.1.2.2 **Business Automobile Liability Insurance**. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $500,000 per

occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability per accident. The policy shall contain the following endorsements:

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

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

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

5.1.2.3 **Professional Liability Insurance**

5.1.2.3.1   The Contractor shall provide coverage, at a minimum of $1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

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

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

5.2 **Right Of Inspection And Rejection**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

5.3 **Special Tools & Test Equipment**: If the price stated on the Contractor's Offer to the City's Request for Proposal BKH0156, as amended includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

5.4 **Equal Opportunity**

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

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

5.5 **Acceptance of Incomplete or Non-Conforming Deliverables**: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. Otherwise, Contractor will replace defective product if needed per the Acceptance Form Signoff.

5.6 **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 thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified. In the event of a delay caused by the City, any retainage held for work already completed will be payable as agreed in Section 3.4.

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

5.7 **Rights to Proposal and Contractual Material**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.8 **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.

SECTION 6. WARRANTIES AND LIMITATION OF LIABILITY

6.1 Warranty - Price

6.1.1 The Contractor warrants the prices quoted in the Contractor's Offer to the City's Request for Proposal BKH0156, as amended, are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

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

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

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

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

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date as defined in the Acceptance Form Signoff (Exhibit D). If during the warranty period, one

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

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

6.3 **Limitation of Liability**

6.3.1 EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS CONTRACT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE TOTAL CONTRACT AMOUNT. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LM'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 8.1 OF THE INTRANET QUORUM HOSTING SERVICES, ATTACHED HERETO AS EXHIBIT J.

6.3.2 IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO EACH OTHER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SECTION 7. MISCELLANEOUS

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

7.2 **Workforce**

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

7.2.2 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:

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

7.2.2.2 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.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or

has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 <u>Workforce Security Clearance and Identification (ID)</u>

7.3.1 Access to the City of Austin Department building by the contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the City of Austin building at least thirty (30) days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.

7.3.2 Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work on the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.

7.3.3 Contractor personnel will be required to check in at the security desk when entering or leaving the City of Austin buildings and security badges must be on display at all times when in the building. Failure to do so may be caused for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.

7.3.4 The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.

7.3.5 The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

7.4 **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.

7.5 **Significant Event:** The Contractor shall immediately notify the Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.5.1 disposal of major assets;

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

7.5.3 any significant termination or addition of provider contracts;

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

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

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

7.5.7 known or anticipated sale, merger, or acquisition;

7.5.8 known, planned or anticipated stock sales;

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

7.5.10 significant change in market share or product focus.

7.6 **Right To Audit**

7.6.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

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

7.7 **Stop Work Notice**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.8 **Indemnity:**

7.8.1 Definitions:

7.8.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional for:

7.8.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.8.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

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

7.9 **Claims**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.10 **Notices**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:	To the Contractor:
City of Austin, Purchasing Office	Contractor's Name
ATTN: Elisa Folco, Contract Administrator	ATTN: Eileen Van, Contract Manager
P O Box 1088	2700 Prosperity Ave.
Austin, TX 78767	Fairfax, VA 22031
Phone: 512.974.1421	Phone: 703-663-5818
Facsimile: 512-974-1421	Facsimile: 703-206-9889
Email: Elisa.Folco@austintexas.gov	Email: Eileen.Van@lmco.com

7.11 **Confidentiality**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City in writing before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

7.13 **No Contingent Fees**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.14 **Gratuities**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

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

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

7.17 **Assignment-Delegation**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by

the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

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

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

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

7.21 **Dispute Resolution**

7.21.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive

relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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

7.22 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program:**

7.22.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.22.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

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

7.23 **SUBCONTRACTORS**

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

and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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

> 7.23.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

> 7.23.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

> 7.23.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

> 7.23.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

> 7.23.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.23.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor,

nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

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

7.24 **Living Wages and Benefits** (applicable to procurements involving the use of labor)

7.24.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is $11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may request higher wage rates in certain contracts in order to assure quality and continuity of service.

7.24.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.

7.24.3 The City requires Contractors to provide a signed certification within five (5) calendar days of contract execution certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than $11.00 per hour and are offered a health care plan (see Exhibit "F", Living Wages and Benefits Contractor Certification). The certification shall include a list of all

employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

7.24.4 The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

7.24.4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

7.24.4.2 time and date of week when employee's workweek begins;

7.24.4.3 hours worked each day and total hours worked each workweek;

7.24.4.4 basis on which employee's wages are paid;

7.24.4.5 regular hourly pay rate;

7.24.4.6 total daily or weekly straight-time earnings;

7.24.4.7 total overtime earnings for the workweek;

7.24.4.8 all additions to or deductions from the employee's wages;

7.24.4.9 total wages paid each pay period; and

7.24.4.10 date of payment and the pay period covered by the payment.

7.24.5 The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications for all employees directly assigned to the contract

containing (see Exhibit "G", Living Wages and Benefits Employee Certification):

    7.24.5.1   the employee's name and job title;

    7.24.5.2   a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of $11.00 per hour;

    7.24.5.3   a statement certifying that the employee is offered a health care plan with optional family coverage.

7.24.6 The employee certifications shall be signed by each employee directly assigned to the contract.

7.24.7 Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Contract.

7.24.8 The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in this paragraph verify compliance with this provision.

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

7.26 **Invalidity**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract

shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

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

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

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

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

7.29 **Non-Solicitation:**

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

7.29.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision up to the Total Contract Amount.

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

7.29.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation.

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

7.31 **Incorporation of Documents: Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the

following   online   address:
http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/
standard-purchase-definitions.pdf .

Section 8 CHANGE ORDERS

8.1 CHANGE ORDER PROCEDURE

Either party may request changes within the Scope of Work for this
Contract. A change order request in the form set for as Exhibit "H" must be
completed and describe any changes in any of the deliverables required
for PIR System. Within thirty (30) days after receipt of the City's change
order request, Contractor must provide the City with a proposal describing
any changes in the deliverables, functions, timing of delivery, assignment of
personnel, price, and implementation plan given the proposed change.
City will review such proposal and contact the Contractor within ten (10)
days of receipt of proposal. If a requested change causes an increase or
decrease in the price of or time required for the performance of this
Contract, Contractor shall describe in detail, the basis for the price or time
adjustment. Before any changes are implemented and the City incurs any
additional fees, the Change Order Request Form must be signed by both
Parties and then an amendment to the Contract must be executed.

8.2 CHANGE ORDER PRICE ADJUSTMENTS

To the extent that additional price or price savings result from a change in
the required deliverables, Contractor shall reduce the Total Contract
Amount by that price savings amount and refund the amount due, if
applicable, to the City. The parties will execute an amendment to the
Contract and Payment Schedule to reflect the price reduction.

8.3 PAYMENT FOR CHANGE ORDERS

The City will not be obligated to pay for any changes to the PIR System
unless a Change Order Request Form and an Amendment have been
executed by the City and Contractor in accordance with Section 7.19. Only
that portion of the Change Order work that has been completed as part of a
Payment Schedule milestone may be included in the payment.

8.4 Order of Precedence: The Contract includes, without limitation, this Contract and Exhibits, the City's Request for Proposal <u>BKH0156, as amended ("RFP"),</u> the Contractor's Offer submitted in response to the RFP, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments; and the Contractor's Master Subscription Agreement for Intranet Quorum Hosting Services. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

> The Contract between the City of Austin and Lockheed Martin Desktop Solutions, Inc. for a Hosted Public Information Request System and Exhibits with City specifications;
>
> The City's Standard Terms and Conditions;
>
> The City's Request for Proposal BKH0156, as amended and any Supplemental Terms and Conditions;
>
> Contractor's Master Subscription Agreement for Intranet Quorum Hosting Services as attached as Exhibit "J" and incorporated by reference; provided, however, that the termination provisions set forth in Section 10 of the Contractor's Master Subscription Agreement for Intranet Quorum Hosting Services (Exhibit J) shall take precedence over the termination provisions of this Contract with regard to the Intranet Quorum Hosting Services ("Services") provided under this Contract;
>
> Contractor's Request for Proposal; and.

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

8.4.2 Agreement Drafted by Parties
This Agreement and Exhibits are the result of negotiations between the Parties. Accordingly, this Agreement shall be considered to be drafted by both Parties and any ambiguities in the Agreement shall not be construed against either Party.

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

LOCKHEED MARTIN DESKTOP SOLUTIONS INC.

CITY OF AUSTIN

By: _~Eileen Van~_
Signature

By: _~Anem Reddy~_
Signature

Name:

Eileen Van
Printed Name

Name:

Teresa Reddy
Printed Name

Title:

Contracts Negotiator

Title:

Corp. Contract Compliance Manager

Date: _12 / 3 / 2013_

Date: _12/3/13_

List of Exhibits

Exhibit A   Payment Schedule
Exhibit B   Scope of Work
Exhibit C   Reserved
Exhibit D   Acceptance Form Signoff
Exhibit E   Non-Discrimination Certification
Exhibit F   Living Wages and Benefits Contractor Certification
Exhibit G   Living Wages and Benefits Employee Certification
Exhibit H   Change Order Request Form
Exhibit I   Subscription Agreement between the City of Austin and Lockheed Martin Desktop Solutions, Inc. for Intranet Quorum Hosting Services

Exhibit A

Payment Schedule

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Exhibit B

Scope of Work

Please reference to City's 0500 Table of Contents that included scope provided by City's solicitation and reference LM Technical Proposal to the City TX RFP No BKH0156's for any scope of work related sections, including but not limited to, Tab 6 section and Assumptions section.

1.   Introduction

This Statement of Work defines the products and services required to capture business process requirements, configure the IQ application, train the users and insure the transition to a production environment is successful.

2.   Background

The City is seeking a computer-based software system that will be used as a management tool for the City-wide processing of Public Information Requests (PIRs). Through this system, City personnel will be notified of requested information; coordinate the production of responsive materials, interact with internal colleagues and external constituents; provide information via the appropriate method; as well as perform other duties outlined by internally-established public information request procedures.

3.   Scope

The scope of this project includes providing IQ in a software-as-a-service model to the City; providing on-site training and implementation services to the City; and providing certain off-site support as follows:

Software as a Service

3.1 LM will provide the City with a fully functional correspondence tracking solution capable of managing constituent contacts with the office of the Mayor. This solution will be provided to the City as Software as a Service (SaaS) subscription, with the software and data hosted by LM. Subscription pricing is based on 80 named users for a term of one year (12 months commencing on date of award). Additional discounts may be available as described in Section 2.2 of the Agreement.

3.2 LM will provide all services required to deliver the SaaS to the City, including:
   (a) Licensing of all software required for the City to fully utilize the SaaS;
   (b) All software maintenance including updates/upgrades and patches; and
   (c) End user support using services from Section 3.7.

(d) The following modules are included: People, Mail, Workflow, Documents, Calendar, IQ Connect, Archivist, Admin.

3.3 Initial Configuration and Implementation

Upon contract award, LM will provide a welcome page accessible via internet. The page includes valuable resources for the implementation process and links to eLearning. The implementation will begin with a kick off meeting to include both the City and LM resources. We will vet the schedule and the responsibilities of individual tasks. LM will create the environment in the data center, install and configure IQ.

3.4 LM will deliver a User Guide for the IQ application.

Phase I - Configuration of the System/System Set up

During this phase, LM will assign IQ Subject Matter Experts (SMEs) to conduct a review of the system functional and technical requirements for the new PIR software management system. To facilitate this review, LM will need timely access to relevant to City staff to capture the appropriate information. Upon completion of this thorough review, LM will facilitate a meeting with stakeholders to discuss the future configuration of IQ, incorporating the current process. LM will configure a single (one) business process intended to replace the legacy PIR system. During this engagement, LM will review the "to-be" description and demonstrate the "to-be" configuration in the IQ product, including:

a. A review of the system processes to include diagrams of the processes and review of the business rules.
b. Descriptions of the metadata to be captured in fields as defined by the users.
c. A "straw man" workflow template will be delivered for discussion in a working IQ system. IQ has, at its foundation, highly configurable workflow templates. Mock-ups are not necessary because LM can quickly deliver working templates.
d. Graphical descriptions of the primary workflow.
e. Descriptions of user/group/office organizations and associated role-based permissions and security restrictions.
f. A restatement of the functional and technical requirements for the system with an assigned priority for each requirement.

Once the City has accepted the straw man template, the IQ product will be configured, user accounts created and the necessary security applied. Form letters and other document templates will be created and added to the product.

Phase 2 - Training

LM recommends one (1) full day of training for each end user and two (2) days of training for the power users. Day One training includes basic IQ functionality and navigation to include workflow and mail. The content of the second day of training can be customized to include Advanced Searches and Reporting, IQ Archivist and Basic Application Administration – like creating and suspending user accounts.

LM recommends classroom training blending the content of Standard IQ Training classes listed below.

Basic User
Fundamentals: The IQ Fundamentals class covers the basic functionality of the IQ system. It discusses basic navigation and provides an overview of the various capabilities provided within IQ including entering and managing People records, adding mail to records and responding to correspondence using both form and custom letters.
Topics covered in this class include ways to manage mail using templates and batching letters for sending a response either by printing or emailing. Also included is basic searching of the system for People and Mail records, setting preferences and using the Help functions.

Workflow: The IQ Workflow class covers how to use the system to track a business process using IQ. Workflows can either be simple single tasks workflows or can be more complicated and allow for multiple tasks and users being involved in the business process. The IQ Workflow functionality is based on using a workflow template customized to your business process. The workflow course includes creating a workflow for a specific task, adding documents and attachments to a workflow, adding notes to a workflow to track progress of the work on the business process, adding people to a Workflow record for the purposes of corresponding with them, using the mail functionality to correspond with people associated with the business process, and closing the workflow upon completion of the task.
The class also includes assignment of the workflow to members of the staff or office working on the business process. The class also demonstrates how to search for workflows based on specific criteria as well as reporting functionality to determine work productivity and other metrics.

Power Users/System Administrator
System Management: The IQ System Management class covers a variety of features necessary for a customer to manage IQ. The class covers creating new IQ users, setting and maintaining user and system security, creating IQ groups and departments, creating and using codes, and deleting data. It also covers executing reports, understanding system configurations, and setting preferences.

Workflow Template Building: The IQ Workflow Template Building class demonstrates how to create and build a workflow template for use within IQ. It covers creating user defined data

fields, adding steps, adding routing options, adding roles for people in the workflow, as well as how to create and define Auto Rules, Auto Routes, and Task Forms. The use of Workflow Template Security is also covered.

Archivist: The IQ Archivist class discusses the ability to create official electronic records, as well as store and search for records created in IQ. It also covers the creation of a Workflow Template for Record Management, designating and maintaining a retention schedule for each record, and maintaining record folders.

Standard E-learning is included as part of the delivery of the IQ product. E-learning content is updated with the delivery of major releases.

LM is proposing standard product documentation for classroom training.

Phase 3 - Review Phase

As a final step to implementation, LM will review the business processes and the IQ configuration with the key stakeholders following the training classes. This insures that the configuration still meets the City's needs after the users have had training and are more familiar with the product. If it is determined that additional configuration changes are needed, they will be completed at this time. LM considers this to be "vendor-led acceptance testing." Upon completion of this phase and acceptance of IQ, the City is ready for the IQ product launch. Please note, that vendor led user acceptance testing may occur at the conclusion of Phase 2 or Phase 3.

Phase 4 – Launching of System

During Phase 4, LM will implement the City's PIR system. This will include deployment and on-site support to the City staff (up to 80 employees). LM proposes one (1) week of on-site support to follow training and immediately after product launch. At this time an IQ subject matter expert returns to the City to provide desk-side support to new users, provide additional desk-side training if needed and to work with users who are ready to learn more advanced functionality.

LM will expect written notification from the City that the users have accepted Phase 3 prior to beginning Phase 4.

Phase 5 - Steady State/Maintenance and Support

Steady State assumes continued operation of the environment developed in prior phases. In line with the Hosted IQ Solution value proposition, minimal configuration activities will occur during this phase. In addition to hosting, LM will provide help desk services and routine back-ups of the system.

Lockheed Martin DSI will provide Tier 1, 2 and 3 help desk support to users of the IQ application through continued management and staffing of the IQ Help Desk. The IQ Help Desk provides services Monday through Friday from 8 a.m. to 6 p.m. EST, excluding federal holidays. Contact during non-business hours may be made via voice mail or email. Voice mail messages and emails received during non-business hours will be responded to during the next business day. The telephone number for the Customer Service Center (CSC) 703-206-0188. Escalation of any issue that isn't addressed to the City's satisfaction may be directed to the Project Manager for her attention. If the project manager does not respond, the City may escalate to her immediate supervisor.

Additionally, Lockheed Martin DSI will provide subject matter expert (SME) support on-site following the training phase, as described above. The IQ Subject Matter expert will have reach back to Tiers 2 and 3 support as needed to ensure timely resolution of reported issues and to be sure that questions regarding configuration and training issues may be responded to with additional coaching and discussion.

The IQ Help Desk, Tier 2 support, will be available to the users via email and telephone during normal business hours listed above. The IQ Help Desk utilizes help desk software to track calls, document the process to resolve an open call and report on trends. Each caller will be assigned a unique ticket number as the call is logged. For email requests, an email response or return phone call will include the ticket number for the open ticket. Even calls resolved during the initial contact will be assigned a ticket for reporting purposes. If reported issues cannot be resolved by Tier 2 and/or subject matter experts, the calls are escalated to Tier 3 support. Tier 3 support includes software architecture and engineering resources committed to resolving issues.

Product maintenance is a key element of IQ's value. Our maintenance entitles the State to all minor upgrades of the IQ product as long as the account is in good standing. Upgrades typically include both enhancements and service patches designed to keep IQ current with evolving operating systems and desktop applications. While Lockheed Martin DSI does not guarantee a specific number of major releases per year, historically they are produced at a rate of one to two per year. We are proud of our history of creating new functionality and features. We encourage our customers to provide feedback and input as we plan future releases.

All customers under a valid software support and maintenance agreement are proactively notified of the availability of software updates and releases by their assigned project manager. Software releases and release notes are also published to our knowledge management system where customers can self-serve and review all new features and functions as well as learn how best to use any new features included in those updates.

IQ's development team keeps on top of new browser and operating system updates, and performs the necessary checks and procedures, ensuring that IQ is compatible with every new release in a timely fashion.

Application updates and operating system security patches will be applied during off hours, weekends and maintenance windows that are agreed to by the customer when possible. Normally, these will require no downtime; however, in some cases, most often Windows updates, a reboot will be required.

System Administration, Monitoring and Maintenance Services

Lockheed Martin DSI provides 24x7 system administration, monitoring and maintenance services. We will install and implement City's environment, and will provide for the maintenance, repair or replacement of all hosted components of customer's infrastructure. Our advanced monitoring and alerting technology monitors the performance, availability, network connectivity and security of the City's hosted solution around the clock.

The Lockheed Martin DSI solution is delivered from within a world-class datacenter facility which has been built against the Uptime Institute's Tier III standards. The hosting facilities provide full redundancy for power and communications and 24x7x365 monitoring and support. The integrated solution will meet or exceed 99.9% availability. If Lockheed Martin DSI does not meet the 99.9% availability, then Lockheed Martin DSI will contact the City within 1 business day to determine an action plan to restore service or retrieve the PIR data that is agreed in writing by both parties within a reasonable time.

Our current IQ Hosted offering supports implementations on scalable HYPER-V Virtual Servers. Our IQ Servers have full backups run every night with two weeks retention on-site. The Oracle database will have nightly exports run as well.

High Availability and High Performance Datacenter Infrastructure Features:
- Availability to all users 99.9% of the time.
- High Speed Redundant Connectivity to the Internet from Tier One Network Providers
- Burstable Bandwidth Capacity of up to 1Gbps, or Higher
- Backup Diesel Power Generators, Redundant N+1 UPS power
- 24x7 System, Network, & Security Monitoring
- SAS 70 Type II certified datacenter facility
- Redundant power feeds from two separate substations
- N+1 cooling system, controlled humidity

The system should be available 24 hours per day/7 days per week - exclusive of predetermined and managed down time not to exceed 4 hours weekly for maintenance. In addition, there should be system redundancy and disaster recovery capabilities.

In the event of system failure, Lockheed Martin DSI employs the following steps as part of our IQ system recovery plan:
• Lockheed Martin DSI is directly notified by the user or our automated scripts that there is something wrong with the server.
• Lockheed Martin DSI will access the server via RDP and identify the problem. If we cannot RDP into the server, our host provider (New World Apps, Inc.) will log into the server at their end and identify the problem. NWA offers 24x7 support

If there is a hardware problem, the provider will repair or replace the offending equipment. If NWA cannot fix the hardware, a new VM will be brought online, and IQ will be restored to it. If the problem is software, NWA will recover files from the Microsoft DPM backups. If the problem is with the database, Lockheed Martin DSI will recover the database from the online exports.

Maintenance windows will be used for day to day administrative upkeep such as patch management, anti-virus updates, exploit scans, data exports, backups and system snapshots.

We propose the following Service Level Agreements listed in the table below:

Severity Level	Description	Response Time (Hours)	Acceptable Percentage	Escalation Point of Contact

Severity 1	Crucial	1 hour	90%	Project Manager
Severity 2	Critical	2 hours	90%	Project Manager
Severity 3	Important	4 hours	90%	Help Desk Tier 2
Severity 4	Requests	Next business day	90%	Help Desk Tier 1

Crucial: Effects all users and stoppage of service.

Critical: Affects more than one user, however IQ system is available.

Important: A single user is affected, an individual user receives an error message; support for critical work deadline.

Request: Request for assistance with minor questions, issues or enhancements.

4. **Period of Performance**

One Year with options to renew as described in Section 10.3 of the Agreement.

5. **Place of Performance**

Government and Contractor Facilities as needed.

Exhibit C

Reserved

Exhibit D

Acceptance Form

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Deliverable Acceptance Signoff Form

Lockheed Martin Intranet Quorum Hosted Solution – Value Base Year			
Project Name: COA PIR System		**Lockheed Martin PM:**	
Task/Deliverable Name:	**Date of Completion:**	**COA Project Manager Signature:**	**COA Contract Manager Signature:**
Annual Software Subscription and Support (68.8%)	For year one, billing will be submitted at the conclusion of training. For subsequent years 2 and 3, billing will be submitted at the beginning of the performance period. This is not part of acceptance criteria.		
Setup/Termination Fees (1.1%)			
Project Management (5.4%)	Billing will be submitted at the beginning of the performance period. This is not part of acceptance criteria.		
Installation and Engineering (15.5%)	Billing will be submitted at the beginning of the performance period. This is not part of acceptance criteria.		
IQ Subject Matter Expert/Consultant (8.5%)			
Training (7.2%)	Billing at the conclusion of Phase 2 for Year One and at the Beginning of the Performance Period for Years Two and Three.		
Additional Fees Travel (4.2%)			

*reference Solicitation No. BKH0156 | Revised Cost Proposal | August 16, 2013
Acceptance Criteria and Timing of Billing

Acceptance of Value Base Year Project Completion

Project Manager Signoff: _____ Date: _____

Contract Manager Signoff:_____ Date: _____

Deliverable Acceptance Signoff Form

Lockheed Martin Intranet Quorum Hosted Solution – Value Year Two			
Project Name: COA PIR System		**Lockheed Martin PM:**	
Task/Deliverable Name:	**Date of Completion:**	**COA Project Manager Signature:**	**COA Contract Manager Signature:**
Annual Software Subscription and Support (89.3%)			
Project Management (3.9%)			
Installation and Engineering (2.6%)			
Training (5.3%)			

*reference Solicitation No. BKH0156 | Revised Cost Proposal | August 16, 2013
Acceptance Criteria and Timing of Billing

Acceptance of Value Year Two Project Completion

Project Manager Signoff: _____ Date: _____

Contract Manager Signoff: _____ Date: _____

Deliverable Acceptance Signoff Form

Lockheed Martin Intranet Quorum Hosted Solution – Value Year Three			
Project Name: **COA PIR System**		**Lockheed Martin PM:**	
Task/Deliverable Name:	**Date of Completion:**	**COA Project Manager Signature:**	**COA Contract Manager Signature:**
Annual Software Subscription and Support (88.9%)			
Project Management (4.1%)			
Installation and Engineering (2.7%)			
Training (5.4%)			

*reference Solicitation No. BKH0156 | Revised Cost Proposal | August 16, 2013
Acceptance Criteria and Timing of Billing

Acceptance of Value Year Three Project Completion

Project Manager Signoff: _____ Date: _____

Contract Manager Signoff:_____ Date: _____

Exhibit E

Non-Discrimination Certification

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Exhibit F

Living Wages and Benefits Contractor Certification

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CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

SOLICITATION NO. | BKH0156

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than $11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

(1) are compensated at wage rates equal to or greater than $11.00 per hour; and

(2) are offered a health care plan with optional family coverage.

(To add additional employees to this page, click the Add Button.)

	Employee Name	Employee Job Title
Add Delete	Jodi Hughes	Technical Trainer Sr
Add Delete	Cassandra Goodall	Prj Mgt & Plng Opns Rep Stf
Add Delete	Adam Hardy	Computer Sys Analyst
Add Delete	Tim Smith	Applications Engineering Stf
Add Delete	Lidong Yao	Programmer Analyst Stf

(3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than $11.00 per hour and offered a health care plan with optional family coverage.

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

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

Contractor's Name:	Lockheed Martin Desktop Solutions, Inc.		
Signature of Officer or Authorized Representative:	*Eileen Van*	Date:	11/21/2013
Printed Name:	Eileen Van		
Title:	Contracts Negotiator		

Exhibit G

Living Wages and Benefits Employee Certification

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CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

SOLICITATION NO. BKH0156

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

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

Contractor's Name:	Lockheed Martin Desktop Solutions, Inc.		
Signature of Officer or Authorized Representative:	*Eileen Van* (signature)	Date:	11/21/2013
Printed Name:	Eileen Van		
Title:	Contracts Negotiator		

Change Order Request Form

HOSTED PUBLIC INFORMATION REQUEST SYSTEM AGREEMENT BETWEEN CITY OF AUSTIN AND LOCKHEED MARTIN DESKTOP SOLUTIONS, INC.

CHANGE ORDER FORM

Project: Hosted Public Information Request System (RFP No. BKH0156)
Owner: City of Austin
Contractor: Lockheed Martin Desktop Solutions, Inc.
Change Order Request No.

PART I CHANGE ORDER INFORMATION

Requester:_____Title:_____

Phone no._____Department_____

DESCRIPTION OF REQUEST:
List the additions, modifications or deletions (circle those that apply) to the work
described in the Contract Documents:

ITEM 1#:   LUMP SUM AMOUNT:
_____

ADDITIONAL SERVICES REQUIRED:_____
_____

STATEMENT OF WORK MODIFICATION:_____
_____

TIME LINE MODIFICATION:_____
_____

JUSTIFICATION:_____
_____

PART II CHANGE ORDER AMOUNT:

SERVICES:_____TOTAL:_____
PAYMENT TERMS:_____
OTHER TERMS:_____

Page 1 of 2

66

Part III OVERALL CONTRACT STATUS

_____
_____
_____
_____
_____

ORIGINAL CONTRACT AMOUNT:

_____
PREVIOUS NET CHANGE IN CONTRACT AMOUNT:

_____

NET CHANGE IN CONTRACT TIME: _____
REVISED CONTRACT TIME:

_____

ORIGINAL FINAL COMPLETION DATE:

_____
REVISED FINAL COMPLETION DATE:

_____

The compensation and changes approved in this Change Order is the complete adjustment and final payment for all costs the Contractor may incur as a result of or relating to this Change Order. If the parties approve this Change Order, then an amendment to the Contract is required before the Change Order takes effect.

Approved as the last date signed below:

_____ Date _____
<Contractor> Project Manager

_____ Date: _____
<Contractor> Contract Representative and Title

_____ Date: _____
City Project Manager

_____ Date: _____
City Purchasing Office

Subscription Agreement between the City of Austin and Lockheed Martin Desktop Solutions, Inc. for Intranet Quorum Hosting Services

Master Subscription Agreement for Intranet Quorum Hosting Services

This Master Subscription Agreement (the "**Agreement**") dated as of _____, 2013, (the "**Effective Date**"), is between Lockheed Martin Desktop Solutions, Inc., a Virginia Corporation, having a place of business in Fairfax, Virginia ("**LM**"), and the City of Austin, Texas, a Texas home-rule municipal corporation, having a principal place of business in Austin, Texas ("City"). LM and City may be referred to individually as a "Party" and collectively as "Parties".

Recitals:

Pursuant to the Contract between the City of Austin and Lockheed Martin Desktop Solutions, Inc. for Hosted Public Information Request System and this Agreement, LM is providing the City with a hosted software solution and services to manage the City's public information requests city-wide.

The City desires to obtain a non-exclusive subscription to use LM's contracted Intranet Quorum hosting services and third party services.

In consideration of the mutual promises, conditions and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties mutually agree as follows:

1. DEFINITIONS

Except as expressly provided otherwise in this Agreement, the following capitalized terms apply to this Agreement.

"**Affiliate**" means any entity which directly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**City**" means the legal entity identified above.

"**PIR Contract**" is the agreement entered into between City of Austin and Lockheed Martin Desktop Solutions, Inc, for a Hosted Public Information Request System.

"**Purchase Order**" means the City's approved and signed Purchase Order that is sent to LM to request Services provided under this Agreement between LM and City.

"**Services**" means the Intranet Quorum (IQ) hosting services as described in the Scope of Work (Exhibit B to the PIR Contract), including any Third Party Services described in the Statement of Work.

"Third Party Services" means online and offline databases, software, and services provided by third parties Oracle, Layered Tech, and New World Apps, Inc. and distributed with or as part of the Services.

"User" means an individual who is authorized by the City to use the Services on behalf of the City and for whom a subscription to the Service has been purchased and a User Account issued. Users may include but are not limited to employees and owners of City, and third parties (such as consultants, contractors and agents) who use the Services exclusively for the City's benefit.

"User Guide" means the user instructions and related documentation for the Services that LM provides the City. LM may update this from time to time and provide updates to the City.

"User Account" means a unique account accessible by a user name and password and assigned to a User.

"IQ Instance" means a unique IQ database schema separate from previously created database schemas.

2. SERVICES

2.1 Provision of Services. LM shall make the Services available to City pursuant to this Agreement, the Scope of Work (Exhibit "B") to the PIR Contract and the City Purchase Order(s) issued during a subscription term for City's public information request system. City agrees that its purchases under the PIR Contract and the Agreement are not dependent on any oral or written public comments made by or on behalf of LM or any of its Affiliates regarding future functionality or features.

2.2 User Subscriptions. Where a City Purchase Order specifies a number of Users, then unless otherwise stated therein: (i) the Services may be accessed by no more than the specified number of Users; (ii) additional User Account subscriptions may be purchased during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User Account subscriptions are added, provided, however, that LM acknowledges and agrees that if, at any time during the term of this Agreement or any extension periods, City has User Account subscriptions, then, for the remainder of the term of the Agreement, including any extension periods, the price per user Account subscription will be discounted as mutually agreed by both parties in writing; and (iii) the added User Account subscriptions shall terminate on the same date as the pre-existing User Account subscriptions. User Account subscriptions are for designated Users only and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services. City shall designate at least one (1) User to act as an administrator responsible for requesting set-up and removal of User Accounts and for other administrative tasks related to City's use of the Services. If the creation of a new user account requires a new IQ instance for a new department or group which is part of the City's Contract, then the term of service for that new group shall be a minimum of twelve months, but all discounts described in this Section 2.2 will immediately apply to Users of the new instance at the same time that they apply to other Users. All reductions in previously established monthly rates to new lower monthly rates will be invoiced the first month after the subsequent user login purchases are in production, being used (and fully accepted) by the follow-on

investment funding or new Order Forms. No retroactive price reductions will apply to previously invoiced monthly use. No pro-rated partial month billing will be offered.

2.3 LM Responsibilities. LM shall: (i) provide to City a LM help desk support during regular business hours Monday through Friday, 8:00 a.m. to 6:00 p.m. Eastern Standard Time, excluding City holidays, for the Services at no additional charge; and (ii) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which LM shall give at least 72 hours written notice and which LM shall schedule to the extent practicable during the weekend hours from 11:00 p.m. Eastern Standard time Friday to 5:00 a.m. Eastern Standard time Monday); (b) any unavailability caused by circumstances beyond LM's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving LM's employees) Internet service provider failures or delays, or denial of service attacks; and (c) during the federal Columbus Day holiday, LM Help Desk agrees to monitor City voice mails during regular business hours as described above and respond to the City's voice mail messages.

2.4 City Responsibilities. City shall: (i) be responsible for compliance with this Agreement by its personnel and Users; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, Third Party Services, User passwords and User Accounts, and notify LM promptly of any such unauthorized access or use; (iii) use the Services only in accordance with the User Guide, and applicable laws and government regulations (including without limitation, anti-spam and unsolicited email laws). Notwithstanding the foregoing, LM acknowledges and agrees that City's third party information technology service provider shall have access to and use of the IQ Instance and Services solely to provide support for City's use. Except as otherwise provided in this Section 2.4, City shall not: (a) sell, license, resell, rent, lease, distribute or make available to third parties the Services; (b) use the Services to store or transmit infringing, libelous, obscene, threatening, or otherwise unlawful or tortious material, including without limitation material harmful to children or violating third party intellectual property or privacy rights; (c) use the Services to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; or (d) interfere with or disrupt the integrity or performance of the Services. **City warrants (i) that it has accurately identified itself through its User Account and will maintain the accuracy of such identification and (ii) that it is a corporation or other business entity authorized to do business pursuant to applicable law or an individual 18 years or older, (iii) shall provide us a list of all such third parties, and that the NDA provisions with each must be the same as contained in this Agreement.**

2.5 Personal Data. LM and City agree that they will each comply with all applicable federal and State of Texas data protection laws and regulations with respect to dealing with, disclosing and exchanging and Personal Data in connection with this Agreement. In addition, in the event of a breach of security of City computerized data that is hosted in the public information report system, LM agrees to comply, at expense, with the Texas Business Commerce Code Section 521.053 (Notification required following Breach of Security of Computerized Data) and provide the required notifications. For the purpose of this Agreement, "Personal Data" shall mean any information relating to an identified or identifiable natural person and an "identifiable person" is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological,

mental, economic, cultural or social identity, including but not limited to the e-mail addresses of members of the public that is provided for the purpose of communicating electronically with the City, social security numbers, government-issued identification card numbers including driver license number financial account numbers (including credit or debit card numbers and any related security codes or passwords), physical or mental health-related or medical information including payment information for treatment, health insurance identification numbers, and information in a health insurance application or claims history.

3. THIRD PARTY SERVICES

3.1 Third-Party Services. LM warrants and represents that it has the right to provide Third-Party Services to the City. LM may offer Third-Party Services under in conjunction with the Services provided pursuant to a Purchase Order(s). LM does not warrant or support Third Party Services. Any such Third Party Services are licensed from LM to the City independently of the Services and according to the terms and conditions described below. However, that there will not be an additional fee for such Third Party Services beyond any fee specifically enumerated in the PIR Contract, which is part of the Services fee, and the City will only pay fees to LM and not to Third Party Service providers, and further provided that any Third Party license terms are attached as Exhibits A and B to this Agreement and such licenses will terminate no earlier than the termination date of this Agreement. LM acknowledges and agrees that the audit right described in Exhibit "A" of this Agreement only applies to the Oracle database software used in conjunction with the Services provided under this Agreement, and does not provide audit rights for other Oracle products. City acknowledges that providers of the Third-Party Services may require access to data stored in the Services to enable the interoperation of such Third Party Services with the Services. LM shall not be responsible for City's use of the Third-Party Services. Third Party Services may include downloadable third-party software. Third-Party Services provided by LM in conjunction with the Services include the following end user agreements, with which terms the City shall comply to the extent permitted by law:

(a) Oracle® database software, which are subject to the license terms attached as **Exhibit A** to this Agreement; and

(b) New World Apps ("NWA") hosting services, which are subject to the license terms attached as **Exhibit B** to this Agreement.

In the event LM fails to pay NWA, resulting in a claim by NWA against the City, LM will indemnify, defend, and hold harmless the City from any reasonable losses, costs, claims, causes of action, damages, liabilities, and expenses actually incurred, caused by the actions or omissions of LM in connection with this Agreement, provided:

(i) the City promptly notifies LM in writing of such claim within 45 days of City's receipt of NWA's written claim;

(ii) LM has sole control of the defense, negotiations or settlement related to the claim; and

(iii) the City reasonably cooperates with LM in the defense, negotiations or settlement related to the claim.

LM shall have no obligation under this section if the City fails to comply with such requirements described above in Section 3.1(b) unless it is determined that it would be unlawful for the City to comply with such requirements, in which case the City shall be required to comply with all lawful requirements of Section 3.1(b).

3.2 Availability of Third Party Services. LM's ability to provide the Services depends on Third Party Services and these providers' continuing availability to LM for collection, aggregation, provision and/or distribution in connection with the Services. If the provider of any Third Party Service ceases to make a Third Party Service available for collection, aggregation, provision and/or distribution in connection with the Services on terms acceptable to LM, LM may cease providing such Third Party Service if LM has provided the City with written notice at least thirty (30) days before discontinuing the Third Party Services, during which 30-day time period LM shall have the option, at its own discretion and expense, and with prompt notice in writing to the City, to substitute the discontinued Third Party Service with a service having substantially similar functionality and performance. In the event that LM does not provide such substitute service within the 30-day period:

(a) LM will promptly reimburse the City for any unused prepaid fees for such discontinued Third Party Service; and

(b) the City, in its sole discretion, may terminate the Agreement for cause by providing a thirty (30) days written notice to LM, and the City shall owe no additional payments to LM from the date of discontinuation of the Third Party Service.

4. FEES AND PAYMENT

4.1 Delivery. Unless otherwise set forth on a City Purchase Order, which is defined in the PIR Contract, within fifteen (15) days after LM's receipt of the Purchase Order , LM shall provide secure access to an LM secure portal to enable City to access the Services set forth in the Purchase Order, the provision to City by LM of the information necessary to access the LM secure portal and City's successful access to the portal, and access to City's complete data represent part of LM's duties under the PIR Contract Exhibit B (Scope of Work). If the above described actions occur, the services described above are considered delivered to the City.

4.2 Fees. City shall pay all fees specified in the City's approved Purchase Orders subject to the requirements of the PIR Contract including but not limited to Section 3.1 (Contract Amount) Section 3.2 (Invoice), Section 3.3, and Exhibit A (Payment Schedule). Except as otherwise specified in a Purchase Order and Section 3.2: (i) fees are based on Services purchased and not actual usage; (ii) payment obligations are non-cancelable and fees paid are non-refundable; and (iii) the number of User Account subscriptions and the fees set forth in a Purchase Order cannot be decreased during the relevant subscription term stated in such Purchase Order. Subscription fees are based on annual periods. Fees for subscriptions added in the middle of an annual period will be pro-rated.

4.3 Taxes. Purchases of services for City use are usually exempt from City, State, and most Federal taxes. Prices should not include exempted taxes. A Tax Exemption Certificate will be provided to LM, upon request, from the City Purchasing Office.

5. PROPRIETARY RIGHTS

5.1 Reservation of Rights in Services. The Parties acknowledge and agree that the Services, any associated documentation and all Intellectual Property Rights therein are the exclusive property of LM and have been developed at LM's private expense. LM reserves all rights in and to the Services not expressly granted to the City in this Agreement. The City will not remove, alter, or obscure any proprietary notices (including copyright notices) of LM or its suppliers on the Services or associated documentation. The City acknowledges that LM asserts that the Services and their structure, organization and source code constitute valuable trade secrets of LM and its suppliers. Without limiting any of its legal, equitable or contractual rights or remedies, LM may seek immediate injunctive relief in a court of competent jurisdiction in Austin, Texas to enforce its intellectual property rights in the Services.

5.2 Restrictions. Except to the extent expressly authorized by this Agreement, the City agrees not to: (i) sublicense, assign, lend, sell, release or transfer this license to any third party; (ii) reproduce the Services in any form (except for copying incidental to the exporting of reports as part of the Services); or (iii) modify, adapt, alter, translate, reverse assemble, reverse compile, decompile, translate or otherwise attempt to derive the source code of any component of the Services; or (vii) copy the Services or use the Services in a manner that is not authorized under the PIR Contract and this Agreement. Additionally, the City shall not: (i) permit any third party to access the Services or the Third Party Services except as expressly permitted in this Agreement (ii) create derivative works based on the software, program code or user interfaces comprising the Services or Third Party Services; (iii) copy, frame or mirror the online Services or Third Party Services, other than copying or framing on City's s own intranets or otherwise for its own internal business purposes; (iv) reverse engineer or decompile the Services or Third Party Services; (v) systematically access the Services or Third Party Services using "bots" or "spiders", or attempt to gain unauthorized access to the Services, the Third Party Services, or their related systems or networks; or (vi) access the Services in order to: (a) build a competitive commercial product or service; (b) build a product using similar ideas, features, functions or graphics as the Services; (c) copy any ideas, features, functions or graphics of the Services (except for copying incidental to the exporting of reports as part of the Services); or (d) offer commercial time-sharing, application or business service hosting applications for third parties, rental, or service bureau use. In addition, the City may access the Services for purposes of monitoring their availability, performance or functionality solely to assess LM's performance under this Agreement. The restrictions set forth in this section shall survive any termination of this Agreement.

5.3 Suggestions. LM shall have a royalty-free, paid up, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by City, including Users, relating to the operation of the Services (excluding City's Confidential Information).

6. CONFIDENTIALITY

6.1 Protection of Information.

  (a) City agrees not to use any LM provided information for any purpose except as permitted under the PIR Contract and this Agreement and City agrees not to disclose such information to third parties without the prior written consent of LM, except if disclosure is required by law including the Texas Public Information Act or if disclosure is required by a subpoena issued by a court or administrative body. The City shall maintain reasonable data protection processes and systems sufficient to adequately protect LM provided information and comply with any law or regulation applicable to such information. The Services and any associated documentation licensed to City hereunder shall be protected by City as LM proprietary information. All LM information shall be returned to LM promptly upon expiration or termination of this Agreement or upon LM's written request.

  (b) LM understands that the City data and information developed, entered and processed through the Services under this Agreement is City confidential and proprietary information and City property. LM agrees to comply with all proprietary and confidential information markings and restrictive legends applied by City to any data or information provided to LM. However, the failure of City to mark proprietary, confidential, and restrictive legends on City's data or information shall not release LM from its obligation to keep City data and information confidential and proprietary. LM agrees not to use any City provided data and information for any purpose except as permitted under this Agreement and LM agrees not to disclose such information to third parties without the prior written consent of City. LM shall maintain reasonable data protection processes and systems sufficient to adequately protect City provided information from disclosure to third parties and comply with any law or regulation applicable to such information. The electronic files of all active, inactive and archived cases and all City data entered into the system throughout the performance period of the PIR Contract and this Agreement shall be returned to the City promptly upon the expiration or termination of these agreements or upon City's written request. Data format will be mutually agreed upon by both City and LM, but, at a minimum, data records will be provided in ASCII comma, separated value (CSV) format, with binary images in TIFF, JPG or PDF format.

  (c) Notwithstanding anything to the contrary in this Section or elsewhere within this Agreement, the parties shall not have any obligation to protect as proprietary or confidential any information that:

  (1) is or becomes available to the receiving party without restriction from another source; or

  (2) is or becomes generally available to the public other than by the receiving party's breach of this Agreement; or

  (3) was already known to the receiving party prior to disclosure of the information without an obligation of confidentiality, as can be substantiated by written documentation; or

  (4) is developed by the receiving party completely independent of the access to the information provided by the disclosing party, as can be substantiated by written documentation. or

6.2 Compelled Disclosure. A receiving Party may disclose proprietary or confidential information of the disclosing Party if it is compelled by law to do so, provided the receiving Party gives the disclosing

party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing Party's cost, if the disclosing Party wishes to contest the disclosure.

7. WARRANTY AND DISCLAIMERS

7.1 Limited Warranty. For ninety (90) calendar days from the date of the City's written acceptance, LM warrants that the Services shall substantially perform as described in its User Guide, the City's Specifications and Requirements set forth in the PIR Contract, and the Requirements described in the Contractor's Offer to the City's Request for Proposal BKH0156, as amended. This warranty is void where the City's use of the Services is unauthorized, in breach of this Agreement, or where nonconformity is related to inaccurate or incorrect City data. LM's sole obligation under this warranty shall be limited to using reasonable efforts to correct any reported defects as soon as reasonable after being notified of such defects. LM does NOT warrant that the Services shall be uninterrupted or error-free.

7.2 Warranty Disclaimer. EXCEPT FOR SECTION 3.1, SECTION 7.1 AND SECTION 8.1, LM PROVIDES THE SERVICES "AS-IS", "AS AVAILABLE," EXCLUSIVE OF ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. LM AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. LM DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. FURTHER, THE SOCIAL MEDIA CONTENT IS PROVIDED "AS IS," "AS AVAILABLE," WITH NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE.

7.3 Non-LM Services. Except for Sections 3.1, Section 7.1 and 8.1, LM does not provide any warranty, indemnification or support under this Agreement for any non-LM products or services, including but not limited to Third Party Services.

8. INTELLECTUAL PROPERTY INDEMNIFICATION

8.1   Intellectual Property Indemnification. LM at its sole expense, will defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from any third party claim to the extent based upon a claim that the Services infringe a third party's U.S. patent, trademark, copyright, or trade secret. The City shall (i) notify LM within thirty (30) days in writing upon City's receipt of written notice of the third party claim, and (ii) at LM's request and expense, provide reasonable assistance and information in such defense. LM's obligation to defend, indemnify, and hold the City harmless shall not apply if the City is not subject to any actions for damages to the third party. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf.

8.2   Exclusions. Notwithstanding the foregoing, LM will have no obligation under this Section 8 or otherwise with respect to any infringement claim to the extent caused by (i) any use of the Services not in accordance with the PIR Contract and this Agreement, (ii) any use of the Services in combination

with other products, equipment, software, or data not supplied or not recommended by LM, (iii) City's continued use of any non-current, unaltered version of the Services following a ten (day) written notification by LM that the non-current, unaltered version of the Services may be infringing and of the need to use a more recent version of the Services; or (iv) any unauthorized modification of the Services by or on behalf of the City other than LM.

8.4   Mitigation. In the event the Services and/or Third Party Services are held or are believed by LM to infringe a third party's rights, LM shall have the option, and at its expense, to (i) replace or modify the Services so as to provide City with Services and Third Party Services which are non-infringing, compatible and functionally equivalent to the City's specifications and requirements set forth in the PIR Contract, (ii) obtain for the City the right to continue using the Services, (iii) substitute the Services with services having substantially similar functionality and performance, or (iv) terminate this Agreement, if LM provides the City with at least five (5) days' notice, and provide City with a pro-rata refund of all current-year fees paid based on the then-remaining term for which such fees apply.

8.5   THIS SECTION 8 STATES THE ENTIRE OBLIGATION OF LM WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

9. RESERVED

10. TERMINATION AND AUDIT RIGHTS

10.1 Termination for Cause. A party may terminate this Agreement for cause upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period.

10.2 Refund or Payment upon Termination. Upon any termination for cause by City, LM shall refund City any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by LM, the City shall pay any unpaid fees covering the remainder of the term of all City approved Purchase Orders after the effective date of termination. In no event shall any termination relieve the City of the obligation to pay any fees payable to LM for the period prior to the effective date of termination.

10.3 Audit Rights. Subject to reasonable advance written notice to the City and scheduling approval of the City, City agrees that LM shall be authorized to enter its premises or to otherwise audit in any reasonable manner during regular business hours, the City's compliance with the provisions of this Agreement.

10.4 Surviving Provisions. All provisions of this Agreement that impose continuing obligations on the Parties including but not limited to "City Responsibilities," "Fees and Payment," "Restrictions," "Proprietary Rights," "Confidentiality," "Warranties and Disclaimers," "Intellectual Property Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of this Agreement.

11. GENERAL PROVISIONS

11.1 Assignment. No Party may not assign, by operation of law or otherwise, any of its rights under this Agreement (including its licenses with respect to the Services) to any third party without the other Party's prior written consent.

11.2 Compliance with Laws. City will comply with U.S. Export Control laws in regard to its use of the Services in Austin, Texas and LM will comply with this law in connection with the Services provided to the City.

11.3 Force Majeure. Neither Party will be responsible for failure of performance, other than for an obligation to pay money, due to causes beyond its control, including, without limitation, acts of God or nature; labor disputes; sovereign acts of any federal, state or foreign government; or shortage of materials.

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

11.5 Remedies. The Parties' rights and remedies under this Agreement are cumulative. City acknowledges that LM asserts that the Services contain valuable trade secrets and Confidential Information of LM and its suppliers. LM asserts that any actual or threatened breach of Sections 2, 5 or 6 will constitute immediate, irreparable harm to LM for which monetary damages would be an inadequate remedy, and that Licensor may seek injunctive relief.

11.6 Severability. If any provision of this Agreement is deemed by any court to be invalid, illegal or unenforceable, such provision will be enforced to the maximum extent possible and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired.

11.7 Waiver. All waivers must be in writing. The failure of either party to insist in any one or more instances upon the performance by the other party of any of the terms or conditions set forth herein shall not be construed as a waiver or relinquishment of the future performance of any such terms or conditions, and such other party's obligations with respect to such future performance shall continue in full force and effect.

11.8 Notices: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:	To the Contractor:
City of Austin, Purchasing Office	Contractor's Name
ATTN: Elisa Folco, Contract Administrator	ATTN: Eileen Van, Contract Manager
P O Box 1088	2700 Prosperity Ave.
Austin, TX 78767	Fairfax, VA 22031
Phone: 512.974.1421	Phone: 703-663-5818
Facsimile: 512-974-1822	Facsimile: 703-206-9889
Email: Elisa.Folco@austintexas.gov	Email: Eileen.Van@lmco.com

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective, valid, and binding upon the Parties as of the last date signed below executed by their duly authorized representatives.

LOCKHEED MARTIN DESKTOP SOLUTIONS, INC.   **CITY OF AUSTIN**

By: _Eileen Van_

Name: Eileen Van

Title: Contracts Negotiator

Date: 12 / 3 / 13

Address: 2700 Prosperity Ave.

Fairfax, VA 22031

By: _Teresa Reddy_

Name Teresa Reddy

Title: Corp Contract Compliance Mgr

Date: 12 3 13

Address: P.O. Box 1088

Austin TX 78767

Exhibit A – Oracle End User License Terms

Exhibit B – New World Apps Inc. Terms and Conditions

EXHIBIT A

Oracle® End User License Terms

By accessing, downloading, installing or otherwise using the Oracle database software ("Programs"), the City of Austin ("City") agrees to be bound by the following terms and conditions in its use of the Programs to the extent permitted by law:

(1) City's use of the Programs is limited to use by the legal entity that executed this Agreement.

(2) City may only use the Programs in conjunction with the Services and only for City's internal business operations. City may permit its agents and contractors to use the Programs on City's behalf solely for the same purposes, subject to the terms of the Agreement and this Exhibit A. City shall be responsible for its contractor's, outsourcer's, City's and supplier's use of the Programs and compliance with the terms of this Agreement and this Exhibit A.

(3) Oracle or its licensor retains all ownership of and intellectual property rights in the Programs.

(4) City **shall not**:
   a. Transfer any of the Programs except for temporary transfer in the event of a malfunction;
   b. Assign, give or transfer the Products or any interest in the Programs to another individual or entity. In the event the City grants a security interest in the Products, the secured party has no right to use or transfer the Programs.
   c. Use the Programs for rental, timesharing, subscription service, hosting, or outsourcing.
   d. Remove from the Programs or modify any markings or notices of Oracle's or its licensor's intellectual property rights.
   e. Make the Programs available in any manner to any third party for use in the third party's business operations unless such access is expressly permitted for the specific Programs license.
   f. Pass title in the Programs to City or any third party.
   g. Reverse engineer (unless required by law for interoperability), disassemble or decompile the Programs. The foregoing includes but is not limited to review of data structures or similar materials produced by programs).
   h. Duplicate the Programs except for a sufficient number of copies of each program for City's licensed use and one copy of each program media.

(5) To the extent permitted by law, Oracle disclaims all liability for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential and (b) any loss of profits, revenue, data or data use arising from use of the Programs.

(6) At the termination of the Agreement, City shall discontinue use of the Programs and return to LM all copies of the Programs and documentation.

(7) City shall comply with all applicable export control laws and regulations of the United States and other applicable export and import laws to ensure that neither the Programs nor any direct product thereof are exported, directly or indirectly, in violation of applicable laws.

(8) The Programs are subject to a restricted license and can only be used in conjunction with the Services provided under the Agreement. City shall not modify the Programs.

(9) Oracle shall not perform any obligations or incur any liability not previously agreed to between LM and Oracle.

(10)   LM shall be permitted to audit City's use of the Programs, and City shall provide reasonable assistance and access to information in the course of such audit. LM shall be permitted to report the audit results to Oracle or assign LM's right to audit City's use of the Programs to Oracle. In the event that LM assigns its right to audit to Oracle, Oracle shall not be responsible for City's costs incurred in cooperating with the audit.

(11)   Oracle is a third party beneficiary to this Exhibit A.

(12)   The Uniform Computer Information Transactions Act shall not apply to this Exhibit A.

(13)   City acknowledges that the programs included in the Programs may include source code provided by Oracle as part of its standard shipment of such programs, which source code shall be governed by the terms of this Exhibit A.

(14)   Third party technology that may be appropriate or necessary for use with the Oracle Programs is specified in this Agreement and its accompanying Exhibits or as otherwise notified by LM. Such third party technology is licensed to City only for use with the Services under the terms specified in the Agreement and its accompanying Exhibits or as otherwise notified by LM and not under the terms of this Exhibit A.

EXHIBIT B

New World Apps Inc. Terms and Conditions

By accessing, downloading, installing or otherwise using the New World Apps hosting services ("Services"), the City of Austin ("City") agrees to be bound by the following terms and conditions in its use of the Services to the extent permitted by law:

1. WARRANTIES OF CITY.

(a) General. City represents and warrants that (i) it has the legal right and authority, and will continue to own or maintain the legal right and authority, during the term of the Agreement, to place and use any City equipment as contemplated under the Agreement; (ii) the performance of its obligations and use of the Services (by City, its Citys and users) will not violate any applicable laws, regulations, or any NEW WORLD APPS' rules and regulations; cause a breach of any agreements with any third parties; or unreasonably interfere with other NEW WORLD APPS Citys' use of NEW WORLD APPS Services; and (iii) all equipment, materials and other tangible items placed by City at NEW WORLD APPS premises will be used in compliance with all applicable manufacturer specifications.

(b) Compliance with Law and Rules and Regulations. City agrees that it will use the Service(s) only for lawful purposes and in accordance with the Agreement. City will comply at all times with all applicable laws and regulations and the Rules and Regulations of NEW WORLD APPS and its partner data center provider as updated by NEW WORLD APPS and its partner data center provider from time to time. NEW WORLD APPS and its partner data center may change the Rules and Regulations upon fifteen (15) days' notice to City, which notice may be provided by posting such new Rules and Regulations at the NEW WORLD APPS or its partner data center's website. City agrees that it has received, read and understands the current version of the Rules and Regulations. The Rules and Regulations contain restrictions on City's and City's users' online conduct (including prohibitions against unsolicited commercial email and pornography) and contain financial penalties for violations of such restrictions. City agrees to comply with such restrictions. City acknowledges that NEW WORLD APPS exercises no control whatsoever over the content of the information passing through City's site(s) and that it is the sole responsibility of City to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and the Rules and Regulations.

(c) Restrictions on Use of Services. City shall not, without the prior written consent of NEW WORLD APPS (which may be withheld in its sole discretion), resell the Services to any third parties or connect City equipment directly to anything other than the NEW WORLD APPS network, equipment and facilities.

2. CONFIDENTIAL INFORMATION.

(a) Nondisclosure of Confidential Information. Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, Citys, technology, and products, and other information held in confidence by the other party (*"Confidential Information"*). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Each party agrees that it will not use any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's

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attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information. Each party will take reasonable precautions to protect the confidentiality of the Confidential Information that are at least as stringent as it takes to protect its own Confidential Information but which shall be no less than a reasonable standard of care.

Exceptions. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

3. DISCLAIMER; LIMITATION OF LIABILITY.

(a) DISCLAIMER. EXCEPT AS PROVIDED IN SECTION 8 BELOW, THE SERVICES AND NEW WORLD APPS' PREMISES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. IN THE EVENT THAT NEW WORLD APPS PROVIDES CITY WITH PRODUCTS IN CONJUNCTION WITH THE SERVICES, SUCH AS THIRD PARTY SOFTWARE PRODUCTS OR EQUIPMENT, NEW WORLD APPS ALSO PROVIDES SUCH PRODUCTS OR EQUIPMENT "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESSED OR IMPLIED. NEITHER NEW WORLD APPS NOR ITS AFFILIATES WARRANTS THAT ANY INFORMATION, SOFTWARE OR OTHER MATERIAL ACCESSIBLE ON THE INTERNET IS FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER HARMFUL COMPONENTS. NEW WORLD APPS MAKES NO WARRANTY THAT THE SERVICES WILL MEET CITY REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. NEW WORLD APPS MAKES NO WARRANTY AS TO THE (A) RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR THE EQUIPMENT, (B) ACCURACY OR RELIABILITY OF ANY COMMUNICATIONS OR TRANSMISSIONS, (C) ACCURACY OF ANY TRANSLATION OR ALTERATION OF CITY TRANSMISSIONS OR DATA, OR (D) ACCURACY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES. NEW WORLD APPS MAKES NO WARRANTY THAT DEFECTS IN THE SERVICES OR EQUIPMENT WILL BE CORRECTED. CITY UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES ARE DONE AT CITY'S OWN DISCRETION AND RISK, SUBJECT TO THE RESTRICTIONS SET FORTH HEREIN, AND THAT CITY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CITY'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CITY FROM NEW WORLD APPS OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

(b) LIMITATION OF LIABILITY. IN NO EVENT SHALL NEW WORLD APPS OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES OR CLAIMS FOR LOSS OF

PROFITS, LOSS OR CORRUPTION OF DATA, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, LOSS OF RIGHTS OR SERVICES, OR INTERRUPTION OR LOSS OF USE OF SERVICE, OR DAMAGE TO, OR LOSS OF, ANY EQUIPMENT OR OTHER INTANGIBLE LOSSES. NEW WORLD APPS SHALL HAVE NO LIABILITY FOR FAILURE OF ANY PRODUCT RESIDING ON CITY'S EQUIPMENT OR TRANSMITTED THROUGH NEW WORLD APPS'S FACILITIES. USE OF ANY INFORMATION OBTAINED VIA NEW WORLD APPS SERVICES IS AT CITY'S OWN RISK.

NEW WORLD APPS DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM NEW WORLD APPS' NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CITY'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEW WORLD APPS WILL USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEW WORLD APPS CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEW WORLD APPS DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

EACH CITY REPRESENTATIVE AND OTHER PERSONS VISITING NEW WORLD APPS PREMISES DOES AT HIS OR HER OWN RISK. NEW WORLD APPS ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM TO SUCH PERSONS RESULTING FROM ANY CAUSE.

The cumulative liability of NEW WORLD APPS to City for all claims arising from or relating to the Agreement or the Services, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount paid by City to NEW WORLD APPS hereunder for the two-month period prior to the event or events giving rise to such liability. This limitation of liability is intended to apply without regard to whether other provisions of the Agreement have been breached or have proven ineffective.

(c) **Basis of the Bargain; Failure of Essential Purpose.** The parties acknowledge that NEW WORLD APPS has set its prices and entered into the Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in the Agreement will survive and apply even if found to have failed of their essential purpose.

4. INDEMNIFICATION.

(a) **Indemnification.** City will indemnify, defend and hold NEW WORLD APPS harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) resulting from any claim, suit, action, or proceeding (each, an "*Action*") brought by any third party against NEW WORLD APPS or its affiliates alleging (i) the infringement or misappropriation of any intellectual property right relating to the delivery or use of the Service(s); (ii) personal injury caused by the negligence or willful misconduct of City, its representative(s) or designees; (iii) any violation of or failure by City to comply with the Agreement, or (iv) damage or destruction to the NEW WORLD APPS' premises, NEW WORLD APPS' network, City's equipment, NEW WORLD APPS' equipment, or other City equipment caused by City, its representative(s) or designees.

(b) Notice. City's indemnification obligations hereunder shall be subject to: (i) receiving prompt written notice of the existence of any Action; (ii) being able to, at its option, control the defense of such Action; (iii) permitting NEW WORLD APPS to participate in the defense of any Action; and (iv) receiving full cooperation of the NEW WORLD APPS in the defense thereof.

5. TERMINATION

(a) Termination for Cause. Either party may terminate this Agreement if, (i) the other party breaches any material term or condition of this Agreement and fails to cure such breach within twenty (20) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five (5) days after receipt of written notice from NEW WORLD APPS; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within thirty (30) days of filing.

6. RESERVED.

7. RESERVED

8. WARRANTIES OF NEW WORLD APPS

NEW WORLD APPS warrants and represents to City that all work performed to fulfill its obligations under this Agreement shall be performed by qualified personnel in a professional and competent manner, consistent with all applicable law and the prevailing standards of the industry. NEW WORLD APPS warrants and represents to City that the underlying datacenter facility in which City equipment is housed, has been successfully audited against SSAE 16 internal control standards and has been issued a Statement on Standards for Attestation Engagements No. 16 Type II Report on management's description of a service organization's system and the suitability of the design and operating effectiveness of controls as developed by the American Institute of Certified Public Accountants (AICPA).