From: John Price
To: kathy_nealy@msn.com
Sent: 11/25/2007 3:05:33 PM
Subject: Fwd: Re: Contract for Desktop Support
Attachments: Desktop Support Contract - Cyberdyne 111907.doc

>>> Robert Clines 11/19/2007 4:55:45 PM >>>
Linda:

My responses are below in red.

I have attached the contract in the corrected form.

At Commissioner Price's request I have added him to the distribution of this response.

Thanks,

Bob C.

>>> Linda Boles 11/19/07 11:07 AM >>>
I quickly reviewed the contract and have a few comments/questions.

Section 2 - Don't you think Exhibit C needs clearer definitions as to exactly what is required w/in the responsibilities? I'm afraid it's too vague and leaves room for "I didn't interpret it that way."

The Draft contract that I was working from had the County Responsibilities section in it noted TBD. I think that the RFP and the Responses clearly identify what our responsibilities are. I will strike that section from the contract and rely upon the RFP verbage.

Section 3 - 3 or 5 year contract?

I have changed this to the 5 year term as we discussed in the BAFO meetings.

Section 4 - If five year contract Cost of Living needs revised.
Why do we need the Value Added Service Costs?

I have added language that states - In the event that we want to purchase any of the Value Added Service, we can at the published Cost +5% as they noted in the RFP response.

Section 5 - A. contains the word Consultant. change to Contractor

I have made the change

B. what includes "out of pocket expenses"?

I added that there would be no "out of pocket" expenses other than the line item prior in the contract language. All other expenses will not be paid by the County.

Section 8 - Contractors Software - does this paragraph really need to be in this contract? What software are they providing?

I have removed the paragraph, we will not be using any of their custom software.

Section 20 - Performance Bond -
A. is the 100% based on the annual amount or the 5 year?

Legal advises that we should do the $1.718M (yearly cost) and have it renewed anually.

Delete "E" - the Court does not want to extend the vendor the ability to provide a 5% cashiers' check in lieu of a performance bond.

Complete - I deleted the item.

GOVERNMENT EXHIBIT NO.
342
3:14-CR-293-M

FYI - the court order that was passed (see attached) rendered CyberDyne susceptible for award consideration and authorized staff to enter into contract negotiations. Consequently, once all parties are in agreement with the contract, another court order will need to be done authorizing the Judge to sign the contract. We may want to notify Allen and see if we can place a court order on for the November 27 court pending the executed contract.

I will contact Allen to see if we can add an item to the Court of the 27th.

AGREEMENT BETWEEN DALLAS COUNTY AND CONTRACTOR FOR DESKTOP SUPPORT SERVICES

This Contract is entered into by and between Dallas County (hereinafter, "COUNTY"), a government entity formed and existing under the laws of the State of Texas, acting by and through the Dallas County Commissioners Court, and CyberDyne Systems, Inc. (hereinafter, "CONTRACTOR"), 2122 Country Club Drive, Suite 180, Carrollton, TX 75006, for the purpose of providing Desktop Support Services to Dallas County.

WITNESSETH:

WHEREAS, COUNTY seeks a Service Provider to provide Desktop Support Services; and

WHEREAS, CONTRACTOR has proposed and County has accepted CONTRACTOR'S offer to provide Desktop Support Services in response to County's Request for Proposal No. 2007-117-3023, issued in accordance with Chapter 262 of the Texas Local Government Code;

NOW, THEREFORE, COUNTY and CONTRACTOR, in consideration of the terms, covenants and conditions herein contained, do hereby contract as follows:

SECTION 1. SCOPE OF SERVICES

CONTRACTOR agrees to perform the services set forth in RFP No. 2007-117-3023, which is attached hereto and incorporated by reference as Exhibit A, and Contractor's Response to RFQ No. 2007-117-3023, which is attached hereto and incorporated by reference as Exhibit B.

Contractor shall provide certain applications, suites of tools, and other software as listed in CONTRACTOR'S Response to RFQ No. 2007-117-3023 (hereinafter "Software"), necessary to deliver the services under this Contract.

SECTION 2. ENGAGEMENT TERM

The initial term of this Contract is five (5) years, to commence on December 1, 2007 and extend through November 30, 2012 or five (5) years from the execution of this Contract by COUNTY.

SECTION 3. TERMS AND CONDITIONS OF PAYMENT:

COUNTY shall compensate CONTRACTOR as follows:

TRANSITION COST

The initial, all inclusive, one-time transition cost: **$100,000**

This one-time cost includes but is not limited to the transition efforts that occur over the first seven (7) days after contract award. The County agrees to provide their assigned/responsible deliverables as per a mutually agreed Implementation Project Plan.

INVENTORY COST

The CONTRACTOR's pricing for the initial, one-time asset inventory cost: **$95,000**

Included in this price is a server, software, barcode scanners and new Dallas County inventory labels that will be affixed to all inventoried equipment. The initial inventory will be completed on or before June 1, 2008 with reports and reconciled inventory being provided to Dallas County for review and approval. All subsequent asset inventories will be conducted at the CONTRACTOR's expense.

DESKTOP SUPPORT COSTS

The CONTRACTOR will provide Desktop Support to Dallas County in accordance with the response to the RFP and will invoice the County on or before the 10th of the month as follows:

- Base Fee: Monthly cost for technicians, management, expenses, insurance ($1,718,000/12) **$143,167**

  Desktop Support, Break/Fix, Asset Management/Receiving: $1,718,000/year
  - Desktop Support Technicians (15)
  - Break/Fix Support Technicians (3)
  - Asset Management/Central Receiving Personnel (3)
  - Service Coordinator (1)
  - Service Delivery Manager (1)
  - IT Director of Service (1)
  - Phone/Parking
  - Mileage/Travel
  - Insurance: Workers Comp., Liability, E&O

- Cost of Living Allowance (COLA): Monthly cost for year 3 ($85,900/12) **$7,084**
- Cost of Living Allowance (COLA): Monthly cost for year 4 ($90,195/12) **$7,517**
- Cost of Living Allowance (COLA): Monthly cost for year 5 ($94,703/12) **$7,892**
- Break Fix: **Cost +5%**

  All labor associated with break/fix is included in the annual cost mentioned above. The cost of parts to make repairs will be billed to the County at a cost plus 5% as noted in the RFP response. These expenses will be invoiced to the County in the month after the repair is completed.

- After Hours and Project (Out of Scope) Costs: All costs associated with Out of Scope services provided by the contractor will be billed at the following rates:

  a) Logistical Services (per Hour) Business Hours/Off Hours **$50.00/$75.00**
  b) Off Hours Support:

1) Trip Charge	**$40.00/Ticket**
2) Overtime	**$97.00/Hour**
c) Holiday	**$130.00/Hour**
d) Costs for Project that are out of scope of day to day operations	
1) Per PC Deployment Charge	**$65.00**
2) Project Coordination (per PC)	**$4.00**
3) Printers Deployed	**$30.00**
4) PC's Imaged/Software, Compliance/Asset Recording (New)	**$30.00**
5) Project Labor Out-of-Scope (Hourly)	**$45.00**
6) Recovered PC's Imaged/Salvaged/Software Compliance	**$45.00**
7) Process old terminals, printers for disposal (per device)	**$10.00**
8) IMACs (per Hour) Business Hours/Off Hours	**$50.00/$75.00**
9) Cabling Services Copper (per Drop)	**$90.00**
10) Cabling Services Fiber (hourly rate plus materials (cost +5%)	**$55.00**
11) Network Support Services (per Hour)	**$95.00**
12) Recovered Asset Storage Fee (+60 Days) Per Device	**$1.00**
13) Recovered PC's Imaged/Salvaged/Software Compliance	**$45.00**
14) Total Bundled Services (Deployment of 20+ Systems)	**$114.00**

- Value Added Services Costs: All purchases from CyberDyne Systems: **Cost +5%**

  Value Added Services would be used in the event that Dallas County would require the CONTRACTOR to purchase hardware or software in support of a project or initiative in support of County efforts. This would include: Hardware, Software, Accessories, Replaceable Components

Hardware Examples:	Dell, IBM, HP, Cisco, Kodak, Toshiba, Ricoh, Epson, Zebra, Xerox, Lexmark, Okidata
Software Examples:	Microsoft, Citrix, Symantec, Oracle, McAfee, Adobe, AutoCad, Paradox, Act
Accessories:	Hard Drives, Docking Stations, LCD's, CD/RW, DVD/RW, Wireless Keyboards/Mice etc.
Repair Components:	Mouse/Keyboards, Printer Components, Monitors, Motherboards, Power Supplies, etc.

SECTION 4. BILLING AND PAYMENT:

Payment/invoicing details to be determined.

A. CONTRACTOR understands and agrees that a temporary delay in making payments to CONTRACTOR because of or due to County's accounting and disbursement procedures shall not place County in default of this Contract and shall not render County liable for interest or penalties, provided such delay shall not exceed thirty (30) days after the due date. CONTRACTOR understands and agrees that any payment not made within thirty (30) days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

B. CONTRACTOR shall pay all of its own out-of-pocket expenses not included in Desktop Support Costs – Base Fee as noted above.

C. CONTRACTOR will not be paid or reimbursed for funds used or spent for any unauthorized or unallowable use under this Contract or any state and/or federal regulations.

SECTION 5. PERSONNEL:

Non-Hiring of Employees. Except as specifically provided in this Agreement, during the term of this Agreement and any extension hereof, neither party, nor any related or affiliated organization over which a party has control, shall offer to hire, hire or in any way employ or compensate, any employee of, or persons who have been employed during any term hereof by, the other party without the prior written consent of the other party. Either COUNTY or CONTRACTOR may hire or solicit for hiring any employee who is no longer employed by the other and whose employment with the other had ended for a period of six (6) months or more prior to the date of the offer of employment by such other party.

SECTION 6. CONFIDENTIALITY:

Contractor agrees to perform the services hereunder in accordance with all applicable state, federal and local laws, ordinances, rules and regulations relating to the services performed under this Contract. Contractor shall not access any information which it is not authorized to receive, and under no circumstances shall it release or divulge any confidential material, information, or documents received in the performance of services under this Contract.

SECTION 7. TERMINATION:

Either party may, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Agreement, terminate this Agreement, in whole or in part, by giving ninety (90) calendar days prior written notice thereof to the other party with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. COUNTY shall compensate CONTRACTOR in accordance with the terms of this Contract for services performed prior to the date specified in such notice. In the event of a cancellation, CONTRACTOR shall cease any and all services under this Agreement on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, CONTRACTOR shall not incur any new obligations or perform any additional services and shall cancel any outstanding obligations or services to be provided. To the extent federal funds are available and reimbursement is permitted, COUNTY will reimburse CONTRACTOR for non-canceled obligations that were incurred prior to the termination date. Upon termination of this Agreement as herein above provided, any and all COUNTY data, documents and information in CONTRACTOR's possession shall be returned to COUNTY within five (5) working days of the date of termination. In no event shall COUNTY's termination of this Agreement, for any reason, subject the COUNTY to liability.

1) Without Cause: This Contract may be terminated, in whole or in part, without cause, by either party upon ninety (90) calendar days prior written notice to the other party.

2) With Cause: County reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons:

a) Lack of, or reduction in, funding or resources;

b) Non-Performance. CONTRACTOR's non-performance of the specifications of this Contract or non-compliance with the terms of this Contract shall be a basis for termination of the Contract by the County. Termination, in whole or in part, by the County under this Section may be made at County's option and without prejudice to any other remedy to which County may be entitled to at law or in equity, or elsewhere under this Contract, by giving thirty (30) days written notice to CONTRACTOR with the understanding that all services being performed under this Contract shall cease upon the date specified in such notice. County shall not pay for work, equipment, services or supplies that are unsatisfactory or unauthorized. At County's sole discretion and with written notice by County, CONTRACTOR may be given a reasonable opportunity prior to termination to correct any deficiency in the work or services performed under this Contract. County will consider a reasonable time to be thirty (30) calendar days to cure any problems and/or deficiencies with CONTRACTOR's performance, such problems and/or deficiencies being determined by County. Nothing herein, however, shall be construed as negating the basis for termination for non-performance or shall in no way limit or waive County's right to terminate this Contract under any other provisions herein.

c) CONTRACTOR's improper, misuse or inept performance of services under this Contract;

d) CONTRACTOR's failure to comply with the terms and provisions of this Contract;

e) CONTRACTOR's submission of invoices, data, statements and/or reports that are incorrect, incomplete and/or false in any way;

f) In County's sole discretion, if termination is necessary to protect the health and safety of clients;

g) If CONTRACTOR becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or

h) CONTRACTOR's inability to perform under this Contract due to judicial order, injunction or any other court proceeding.

SECTION 8. MONETARY RESTITUTION:

In the event this Contract is prematurely terminated due to non-performance and/or withdrawal by CONTRACTOR, COUNTY shall have the right to seek monetary restitution (to include but not limited to withholding of monies owed) from CONTRACTOR to cover costs for interim services and/or to cover the difference of a higher cost (difference between termination CONTRACTOR's rate and new vendor's rate) beginning the date of CONTRACTOR's termination through the contract expiration date. In the event civil suit is filed to enforce this provision, COUNTY will seek its attorney's fees and costs of suit from CONTRACTOR.

SECTION 9. INDEMNIFICATION:

CONTRACTOR shall forever waive, release, indemnify, and hold harmless COUNTY, its assigns, officers, directors, employees, agents, representatives (referred collectively in this Section as "County"), from and against any and all losses, damages, injuries (including death), causes of action, claims, demands, liabilities, judgments, suits, losses, damages, fines, assessments, penalties, adverse awards and expenses (whether based upon tort, breach of contract, patent or copyright infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), including, without limitation, legal and related legal fees and expenses, of any kind or nature arising out of or on account of, or resulting from (1) any actual or alleged intentional or negligent act or omission of, or default in the performance of its obligations pursuant to this Agreement by CONTRACTOR, its assigns, or its subcontractors, officers, directors, employees, agents or representatives (referred collectively as "CONTRACTOR"), (2) CONTRACTOR's involvement in the specified services under this Agreement, and (3) Any terms or conditions or provisions or underlying provisions of this Agreement, including but not limited to, any premises or special defect known or unknown to County, and any injury to individuals present during CONTRACTOR's involvement under the terms and conditions of the services and Agreement, including willful acts such as assault;

AND FURTHER, CONTRACTOR, to the fullest extent allowed by law, agrees to waive, release, indemnify and hold harmless County against any and all losses, damages, injuries (including death), causes of action, claims, demands, liabilities, judgments, suits, losses, damages, fines, assessments, penalties, adverse awards and/or other expenses, of any kind or nature whatsoever (whether based upon tort, breach of contract, patent or copyright infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), including, without limitation, legal and related legal fees and expenses of any kind or nature that are incurred by or sought to be imposed on County arising out of or on account of, or resulting from injury (including death), including, but not limited to, exposure to any disease, by any manner or method whatsoever, or damage to property (whether real, personal, or inchoate), arising out of or in any way related (whether directly or indirectly, causally or otherwise) to the Agreement and/or specified services. This indemnification shall apply, whether or not any such injury

or damage has been brought on any theory of liability, intentional wrongdoing, strict product liability, County's negligence, or breach of non-delegable duty. CONTRACTOR further agrees to defend (at the election of County) at its sole costs and expense against any claim, demand, action or suit for which indemnification is provided herein.

Approval and acceptance of CONTRACTOR's services by County shall not constitute nor be deemed a release of the responsibility and liability of CONTRACTOR, its subcontractors, employees, officers, agents, invitees, licensees or assigns for the accuracy and competency of their services; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by the County for any defect, error or omission in the services performed by CONTRACTOR, its subcontractors, employees, officers, agents, invitees, licensees or assigns in this regard. CONTRACTOR shall defend, hold harmless, and indemnify the County for damages resulting from such defects, errors or omissions. These provisions shall survive termination, expiration, or cancellation of this Agreement or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

In event of claim of loss, damage or indemnity by County against Contractor, Contractor's liability, if any, in excess of its insurance coverage shall be limited to the amount of its fees actually paid under this Agreement.

SECTION 10. SOVEREIGN IMMUNITY:

This Contract is expressly made subject to County's sovereign immunity, Title 5 of the Texas Civil Practice and Remedies Code and all applicable State and federal law. The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver of any immunities from suit or from liability that the parties or the County has by operation of law. Nothing in this Contract is intended to benefit any third-party beneficiary.

SECTION 11. OWNERSHIP OF DOCUMENTS

All reports, information and other deliverable data, given to, prepared or assembled by CONTRACTOR under this Contract shall be delivered (in hard copy and electronic format) to COUNTY, without restriction on future use. COUNTY at its expense may make copies of any and all documents.

SECTION 12. INSURANCE REQUIREMENTS

CONTRACTOR ("Firm" for purposes of this Section) agrees that it will at all times during the term of this Contract maintain in full force and effect insurance as provided herein.

A. Within ten (10) calendar days after the Effective Date of this Contract, Firm shall furnish, at its sole cost and expense, the following minimum insurance coverage. Such insurance is a condition precedent to commencement of any work. Firm shall, in the stated ten (10) day period, furnish to the Dallas County Purchasing Director (at the address provided

below in this Insurance Section) verification of the insurance coverage in the type and amount required herein, meeting all conditions in this Contract, by an insurance company acceptable to County and authorized to do business in the State of Texas. Such insurance shall show COUNTY as the certificate holder (general liability insurance). Coverage dates shall be inclusive of the Contract term and each renewal period, if any. The insurance coverages, except Workers Compensation and Professional Liability, required by this Contract, shall name Dallas County and its officers, employees and elected officials as additional insured(s)(as the interest of each insured may appear).

B. Such insurance shall provide, at a minimum, the following coverages:

1) Statutory Workers' Compensation Insurance that meets the requirements of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, or, if self-insured, then Contractor must provide to County evidence of a certificate issued by the Workers' Compensation Commission approving such self-insurance. If Contractor has no employee (as defined by the Texas Workers' Compensation Act), Contractor shall provide County with a sworn Affidavit stating that there is no employee in lieu of a Certificate of Insurance, attached hereto as Exhibit B and incorporated by reference for all purposes. In the event that any work is sublet Contractor shall require the subcontractors to similarly provide Workers' Compensation Insurance for all of the subcontractors' employees, unless such employees are afforded protection by the Contractor. Contractor shall bear the burden of all workers' compensation coverage for all of its subcontractors and subcontractors' employees who do not have workers' compensation coverage. Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with an appropriate insurance carrier, or in the case of self insurance, with the Texas Department of Insurance – Division of Workers' Compensation. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

Types of Coverage	Limits of Liability
Workers' Compensation	Statutory
Employer's Liability	
Bodily injury by Accident	$500,000.00 Each Accident
Bodily injury by Disease	$500,000.00 Each Employee
Bodily injury by Disease	$500,000.00 Policy Limit

2) Professional Liability Insurance or Errors and Omissions Insurance. Contractor shall indemnify County for damages resulting from defects, errors or omissions and shall secure, pay for and maintain in full force and effect during the term of this Contract and any subsequent extensions hereto and thereafter for an additional five (5) years from the effective date of cancellation, termination or expiration of this Contract or any subsequent extensions hereto, sufficient errors and omissions insurance in a minimum amount of Five Hundred Thousand and 00/100 Dollars ($500,000.00) per occurrence with certificates of insurance evidencing such coverage to be provided to the County.

3) Commercial General Liability Insurance, including Contractual Liability Insurance. Commercial General Liability Insurance coverage for the following: (a) Premises Operations; (b) Independent contractors or consultants; (c) Products/Completed operations; (d) Personal injury; (e) Contractual liability; (f) Explosion, collapse and underground; (g) Broad form property damage, to include fire legal liability. Such insurance shall carry limits of Five Hundred Thousand and 00/100 Dollars ($500,000.00) for bodily injury and property damage per occurrence with a general aggregate of Five Hundred Thousand and 00/100 Dollars ($500,000.00) and products and completed operations aggregate of Five Hundred Thousand and 00/100 Dollars ($500,000.00). There shall not be any policy exclusion or limitations for personal injury, advertising liability, medical payments, fire damage, legal liability, broad form property damage, and/or liability for independent contractors or such additional coverage or increase in limits specifically contained within the bid specifications.

4) Commercial Automobile Liability Insurance. Prior to using or causing to be used a motor vehicle other than a vehicle for hire (i.e. cab), Contractor shall furnish to the County a certificate showing commercial automobile liability insurance covering all owned, hired and non-owned vehicles (excluding cabs) used in connection with the services performed under this Contract, with the minimum limits of One Hundred Thousand and 00/100 Dollars ($100,000.00) each person and Three Hundred Thousand and 00/100 Dollars ($300,000.00) each accident for bodily injury and One Hundred Thousand and 00/100 Dollars ($100,000.00) each occurrence for property damage or a combined single limit for bodily injury and property damage liability in a minimum amount of Four Hundred Thousand and 00/100 Dollars ($400,000.00).

C. Firm agrees that, with respect to the above referenced insurance, all insurance contracts/policies will contain the following required provisions:

1) This insurance shall not be canceled, limited in scope or coverage or non-for non-payment of premium, has been given by the insurance company to the COUNTY.
2) Provide that the inclusion of one or more persons, corporations, organizations, firms or entities as insureds under this policy shall not in any way affect the right of any such person, corporation, organization, firm or entity with respect to any claim, demand, suit, or judgment made, brought or recovered in favor of any other insured.
3) Provide that this policy shall protect each person, corporation, organization, firm or entity in the same as though a separate policy had been issued to each, provided that its endorsement shall not operate to increase the insurance company's limits of liability as set forth elsewhere in the policy.
4) Provide for an endorsement that the other insurance clause shall not apply to the COUNTY where COUNTY is an additional insured on the policy.

5) Provide for notice to the COUNTY Purchasing Director at the address shown in this Contract by registered mail, return receipt requested, and full postage paid, sent to:

Records Building, 6th Floor
509 Main Street, Room 103
Dallas, Texas 75202-5799

D. Firm agrees to waive subrogation, and each applicable policy of insurance shall state a waiver of subrogation, against COUNTY, its elected officials, officers, employees, agents and representatives for injuries, including death, property damage and/or any other loss.

E. Firm shall provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.

F. It is agreed that the Firm's insurance shall be deemed primary with respect to any insurance or self-insurance carried by COUNTY for liability arising out of operations under this Contract with the COUNTY.

G. Firm shall be solely responsible for all cost of any insurance as required here, any and all deductible amount, which in no event shall exceed ten percent (10%) of the amount insured an in the event that an insurance company should deny coverage. All insurance coverage shall be on an occurrence basis or a claims basis if Firm provides for three (3) year tail coverage, unless specifically approved in writing and executed by County Risk Manager.

H. It is the intent of these requirements and provisions that insurance covers all cost and expense so that COUNTY will not sustain any expense, cost, liability, or financial risk as a result of the performance of services under this Contract.

I. Except as otherwise expressly specified, Firm shall agree that all policies of insurance shall be endorsed, waiving the issuing insurance company's right of recovery against COUNTY, whether by way of subrogation or otherwise.

J. Insurance certificates. The certificates of insurance shall list COUNTY as the certificate holder. All insurance policies or duly executed certificates for the same required to be carried by Firm under this Contract, together with satisfactory evidence of the payment of the premium thereof, shall be delivered to the Dallas County Purchasing Director located at the Dallas County Records Building, 509 Main Street, 6th Floor, Dallas, Texas 75202 within ten (10) calendar days of execution and/or renewal of this Contract and upon renewals and/or material changes of such policies, but not less than fifteen (15) calendar days prior to the expiration of the term of such coverage, or such non-delivery shall constitute a default of this Contract subject to immediate termination at COUNTY's sole discretion.

L. If Firm and/or its subcontractors fail to comply with any of the requirements relating to insurance, COUNTY, in addition to all other remedies allowed by this Contract or in law, may, at its sole discretion and without waiving any rights that it may have, and in addition to all other remedies allowed by this Contract, obtain such insurance and deduct from the payments to Firm the expense of obtaining such insurance and the cost of insurance premiums. However, neither Firm nor any third party shall have any recourse against the COUNTY for payment of any premiums or assessment for any deductibles, or payment of any amount that would have been payable by any such insurance, as all such

liability, cost, expense, premiums and deductibles are the sole responsibility and risk of the Firm.

M. In the event Firm fails to maintain insurance as required herein, Firm shall immediately cure such lapse in insurance coverage at Firm's sole expense, and pay County in full for all costs and expenses incurred by COUNTY under this contract as a result of such failure to maintain insurance by Firm, including costs and reasonable attorney's fees relating to COUNTY's attempt to cure such lapse in coverage. Such costs as attorney's fees, not to exceed fifteen hundred and 00/100 dollars ($1,500.00), shall be automatically deducted from monies or payments owed to FIRM by COUNTY. Moreover, COUNTY shall retain five percent (5%) of the value of the Contract that shall be placed into an account from monies or payments owed to Firm by COUNTY to cover COUNTY's potential exposure to liability during the period of such lapse. The retainage shall be held by County until six (6) months after the term of the contract has ended or has otherwise been terminated, cancelled or expired and shall be released if no claims are received or lawsuits filed against COUNTY for any matter that should have been covered by the required insurance.

FIRM FURTHER AGREES TO INDEMNIFY COUNTY FOR ANY PENALTIES, FINES, JURY AWARDS, COURT COSTS, LITIGATION EXPENSES, AND ATTORNEY'S FEES INCURRED BY COUNTY DUE TO FIRM'S FAILURE TO MAINATIN THE REQUIRED INSURANCE AT ALL TIMES DURING THE TERM OF THIS CONTRACT. FIRM, AT ITS OWN EXPENSE WITH COUNSEL OF COUNTY'S CHOICE, WILL DEFEND AND HOLD COUNTY HARMLESS IN ANY CLAIM OR ACTION AGAINST COUNTY THAT OCCURRED AS A DIRECT OR INDIRECT RESULT OF FIRM'S FAILURE TO MAINTAIN INSURANCE AL ALL TIMES DURING THE TERM OF THIS CONTRACT. WITHOUT WAIVING ANY RIGHTS UNDER SOVEREIGN IMMUNITY, THE COUNTY SHALL COOPERATE WITH AND MAY MONITOR FIRM IN THE DEFENSE OF ANY CLAIM, ACTION, OR PROCEEDING AND WILL, IF APPROPRIATE, MAKE EMPLOYEES AVAILABLE AS FIRM MAY REAASAONBLY REQUEST WITH REGARD TO SUCH DEFENSE, SUBJECT TO THE REIMBURSEMENT BY FIRM OF ALL COSTS AND EXPENSES OCCASIONED BY THE COUNTY'S COOPERATION IN SUCH DEFENSE. FIRM AGREES NOT TO SETTLE ANY SUCH CLAIM WITHOUT COUNTY'S CONSENT, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD OR DELAYED.

N. Approval, disapproval or failure to act by COUNTY regarding any insurance supplied by Firm shall not relieve Firm of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Firm from liability.

O. Minimum insurance is a condition precedent to any work performed under this Contract and for the entire term of this Contract, including any renewals or extensions. In addition to any and all other remedies COUNTY may have upon Firm's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, COUNTY shall have the right to:

1) Order Firm to stop work hereunder, which shall not constitute a Suspension of Work;

2) Withhold any payment(s) which become due to Firm hereunder until Firm demonstrates compliance with the requirements hereof and assurance and proof acceptable to COUNTY that there is no liability to COUNTY for failure to provide such required insurance;

3) At its sole discretion, declare a material breach of this Contract, which, at COUNTY's discretion, may result in:

   a) termination of this Contract;
   b) demand on any bond, as applicable;
   c) the right of COUNTY to complete this Contract by contracting with the "next low proposal." Firm will be fully liable for the difference between the original Contract price and the actual price paid, which amount is payable to COUNTY by Firm on demand; or
   d) any combination of the above;

P. Firm shall advise COUNTY in writing within twenty-four (24) hours of any claim or demand, against COUNTY or Firm, known to Firm related to or arising out of Firm's activities under this Contract.

Q. Acceptance of the services by COUNTY shall not constitute nor be deemed a release of the responsibility and liability of Firm, its employees, associates, agents or subcontractors for the accuracy and competency of their services; nor shall such acceptance be deemed an assumption of responsibility or liability by COUNTY for any defect in the services performed by Firm, its employees, subcontractors, and agents.

R. Nothing herein contained shall be construed as limiting in any way the extent to which Firm may be held responsible for payments of damages to persons or property resulting from Firm's or its subcontractor's performance of the work covered under this Contract.

S. Firm shall notify COUNTY in the event of any change in coverage and shall give such notices not less than thirty days prior to the change, which notice must be accompanied by a replacement certificate of insurance.

T. Standard of Care: Services provided by Firm under this Contract will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar Contracts.

U. The provisions of this Section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

V. The provisions of this Section shall survive termination or expiration of this Contract or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

SECTION 13. RIGHT OF REVIEW AND AUDIT

COUNTY may review any and all of the services performed by CONTRACTOR under this Contract. COUNTY is hereby granted the right to audit, at COUNTY's expense and election, all of Firm's records and billings relating to the performance of this Contract. Firm agrees to retain such records for a minimum of three (3) years following completion of this Contract.

SECTION 14. PREVENTION OF FRAUD AND ABUSE

CONTRACTOR shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Contract. Any known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately by the COUNTY to the Office of the Inspector General for appropriate action. Moreover, CONTRACTOR warrants to be not listed on a local, county, State or federal consolidated list of debarred, suspended and ineligible contractors and grantees. CONTRACTOR and COUNTY agree that any persons who, as part of their employment, receive, disburse, handle or have access to funds collected pursuant to this Contract do not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. CONTRACTOR shall, upon notice by COUNTY, refund expenditures of the CONTRACTOR that are contrary to this Contract and deemed inappropriate by the COUNTY.

SECTION 15. TRANSITION SERVICES REQUIRED OF CONTRACTOR

Upon notice of termination and/or expiration of this Contract, COUNTY shall immediately have the right to audit any and all records of CONTRACTOR relating to this Contract. Moreover, upon termination and/or expiration date of this Contract, CONTRACTOR agrees to transition the services provided herein in a cooperative manner and provide anything requested from the COUNTY at no additional cost, including, but not limited to the following, upon date of termination and/or expiration: (i) All Contract and services documentation identified in a complete, neat and orderly manner; (ii) Good faith pledge to cooperate with County upon transition of services to another contractor or County department providing the same or similar services; (iii) Final accounting of all income from the Contract; (iv) Downloading and removal of all County information from the CONTRACTOR's equipment and software; (v) Removal of CONTRACTOR services without affecting the integrity of COUNTY's systems; and (vi) All Records and County property. This provision shall survive Contract termination.

SECTION 16. CONFIDENTIAL OR PROPRIETARY MARKING

Any information or documents the CONTRACTOR uses in the performance of the services provided under this Contract that CONTRACTOR considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the documents or information under the Texas Open Records Act or otherwise required by law.

SECTION 17. TAX

Dallas County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Loc. Gov't Code § 151.309, and shall therefore not be liable or responsible to the CONTRACTOR for the payment of such taxes under this Contract.

The fees paid to CONTRACTOR pursuant to this Contract are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Contract and based upon or measured by CONTRACTOR's cost in acquiring or providing products and/or services and related materials and supplies furnished or used by CONTRACTOR in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by CONTRACTOR.

CONTRACTOR accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by CONTRACTOR for work performed under the terms of this Contract and **agrees to indemnify and save harmless the County from any such contribution or taxes or liability.**

SECTION 18. SECURITY FOR FAITHFUL PERFORMANCE

With the execution and delivery of the Contract, CONTRACTOR shall furnish and file with Dallas County within thirty (30) calendar days of award and in the amounts herein required, the following Surety Bonds. Such Surety Bonds shall be in accordance with the provisions of Section 2253.01 of the Texas Local Government Code and/or as amended.

A. A good and sufficient Bond in an amount equal to one hundred percent (100%) of the approximate total annual amount of the Contract, as evidenced by the RFP No. 2007-117-3023, or otherwise guaranteeing the full and faithful execution of the work and performance of the Contract in accordance with the plans, specifications and Contract documents, including any extensions thereof, for the protection of the County. This bond amount will be renewed annually for the duration of the contract and it will be CONTRACTOR's responsibility to have the surety company provide to County confirmation of the renewal of the bond. Should COUNTY exercise any Contract extension option for additional Contract terms, it will be CONTRACTOR's responsibility to have the surety company provide to County confirmation of the existing bond or provide a new bond, if applicable. Bond shall provide for the repair and for maintenance attendant thereto, of all defects due to faulty materials, workmanship, defects, and failures that may appear within a period of one year from the date of completion and acceptance of the Work by Commissioners Court.

B. Bonds shall be executed by a duly authorized surety company satisfactory to the County. The County will accept only those bonds executed by those surety companies listed in Circular 570 "Surety Companies Acceptable on Federal Bonds published in the Federal Register, U.S. Department of the Treasury."

C. No sureties will be accepted by the County who are now in default or delinquent on any bonds or who are interested in any litigation against the County. All bonds shall be executed by corporate surety authorized to do business in the State of Texas.

D. Each bond shall be executed by Contractor and the surety. Each surety shall designate an agent resident in the State of Texas to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such surety.

E. In the event the Contract is prematurely terminated due to non-performance and/or Contractor's request, County reserves the right to act on the performance bond and/or seek monetary restitution. In the event civil suit is filed to enforce this provision, County will seek its attorney's fees and costs of suit from Contractor, which amount Contractor shall immediately pay.

F. All bonds shall be delivered to the ***Dallas County Purchasing Department, c/o Linda Boles, 509 Main Street, 6th Floor Dallas, Texas 75202***, within thirty (30) calendar days after award of the Contract.

G. County will disburse no payment for goods or services provided unless a good and sufficient bond is on file with the County.

SECTION 19. CONFIDENTIALITY AND OPEN RECORDS ACT

A. CONTRACTOR shall not disclose privileged or confidential communications or information acquired in the course of the performance of the services under this Contract, unless authorized by law. CONTRACTOR agrees to adhere to all confidentiality requirements, as applicable, for work conducted for COUNTY under this Contract.

B. Open Records or Public Information Act. The parties acknowledge and agree that County is subject, as a matter of law, to TEX. GOV'T CODE ANN. § 552 (Vernon 1994), also known as the "Texas Open Records Act" or the "Texas Public Information Act" (hereinafter "Open Records Act"). Notwithstanding any other provision, including exemptions or exceptions to the Open Records Act, the parties agree that in the event that any provision of this Contract, or other documents related to this Contract, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, is in conflict with the Open Records Act, such provision shall be of no force or effect. Furthermore, it is expressly acknowledged and agreed that the County, County Commissioners Court, County Judge, Elected County Officials, County Department Heads and County Employees (hereinafter "County Requestors") may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Open Records Act to any software, hardware, firmware, or any part thereof, or other equipment or item, data or information furnished to or in the possession or knowledge of County. It is further acknowledged and agreed that the County Requestors have the right and obligation by law to rely on the advice, decisions and opinions of the Texas Attorney General. CONTRACTOR hereby releases the County Requestors from any and all liability or obligation of any type, kind or nature regarding any disclosure of any software, hardware, firmware, or any part thereof, or other equipment or item, data or information furnished by CONTRACTOR or in the possession or knowledge of the County that is determined by County or in reliance on any advice, decision or opinion of the Texas Attorney General to be available to the public or any persons.

C. Notwithstanding the foregoing, COUNTY agrees, to the extent permitted by the Open Records Act, to keep confidential (and store in a secure area with limited access) and will

not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to County, or any information related to this Contract, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, for any purposes other than performing County's obligations under this Contract, unless prior written notification is given by County that such specified item will be released under the Open Records Act.

D. Confidential or Proprietary Marking. Any information or documents the CONTRACTOR uses in the performance of the services provided under this Contract that CONTRACTOR considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the documents or information under the Texas Open Records Act or otherwise required by law.

SECTION 20. INDEPENDENT CONTRACTOR

CONTRACTOR, including its agent, student or employee, is an independent CONTRACTOR and not an agent, servant, joint enterpriser, joint venturer, or employee of COUNTY, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work covered under this Contract.

SECTION 21. SUBCONTRACTING

Firm may not enter into Contracts with subcontractors for delivery of the designated services outlined in this Contract without prior written consent of the COUNTY. The costs of all subcontracted services are included in the fees paid herein. Subcontracts, if any, entered into by CONTRACTOR will be in writing and subject to all requirements herein. CONTRACTOR agrees that it will solely be responsible to COUNTY for the performance of this Contract. Firm shall pay all subcontractors in a timely manner. COUNTY shall have the right to prohibit Firm from using any subcontractor.

SECTION 22. ASSIGNMENT

During the term of this Contract, CONTRACTOR may not sell, assign, transfer or convey this Contract without the written consent of Dallas County Commissioners Court. Should COUNTY authorize CONTRACTOR to subcontract (assign) any portion of this Contract, CONTRACTOR will maintain the ultimate legal responsibility for all services according to contract specifications. In the event of a subcontract, CONTRACTOR shall maintain a continuous effective business relationship with the subcontractor(s) including, but not limited to, regular payments of all monies owed to any subcontractor(s). In the event of failure by CONTRACTOR to comply with these requirements, COUNTY may, at its option, terminate this Contract. Should County authorize the CONTRACTOR to transfer this contract, in whole or in part, the secondary contractor will maintain all the legal responsibilities set forth in the context of this contract; and CONTRACTOR will continue to be responsible for the performance of the secondary contractor.

CONTRACTOR understands and agrees that in the event that all or substantially all of CONTRACTOR's assets are acquired by another entity, CONTRACTOR is still obligated to fulfill the terms and conditions of this Contract. However, in the event of the assignment or sale of CONTRACTOR's assets, COUNTY, at its option, may terminate or renegotiate the terms of this Contract.

SECTION 23. INVALIDITY

If any provision of this Contract shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Contract with legal terms and conditions approximating the original intent of the parties.

SECTION 24. GOVERNMENT FUNDED PROJECT

If Contract is funded in part by either the State of Texas or the federal government, CONTRACTOR agrees to timely comply without additional cost or expense to COUNTY, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other State or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered under the terms of this Contract.

SECTION 25. FISCAL FUNDING

Notwithstanding any provisions contained in this Contract, the obligations of the COUNTY under this Contract are expressly contingent upon the availability of funding for each item and obligation for the term of the Contract and any pertinent extensions. CONTRACTOR shall have no right of action against COUNTY in the event COUNTY is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event that COUNTY is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding, or if funds become unavailable, COUNTY, at its sole discretion, may provide funds from a separate source or may terminate this Contract by written notice to CONTRACTOR at the earliest possible time prior to the end of its fiscal year.

SECTION 26. WRITTEN NOTICE

Any notice or certification required or permitted to be delivered under this Contract shall be deemed to have been given when personally delivered, or if mailed, seventy-two (72) hours after deposit of the same in the United States Mail, postage prepaid, certified, or registered, return receipt requested, properly addressed to the contact person shown at the respective addresses set forth below, or at such other addresses as shall be specified by written notice delivered in accordance herewith:

To COUNTY: Shannon Brown
Director of Purchasing
411 Elm Street, 6th Floor
Dallas, Texas 75202

To CONTRACTOR: CONTRACTOR
ADDRESS

SECTION 27. ENTIRE CONTRACT

It is understood that this Contract contains the entire Contract between the parties and supersedes any and all prior Contracts, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Contract exist. This Contract cannot be changed or terminated orally. No verbal Contract or conversation with any officer, agent or employee of COUNTY, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations hereunder.

SECTION 28. AMENDMENTS AND CHANGE IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Contract shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Contract which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Contract and shall be effective on the date designated by said law.

SECTION 29. COMPLIANCE WITH LAWS AND VENUE

In providing services required by this Contract, CONTRACTOR must observe and comply with all licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable federal, State, and local statutes, ordinances, rules, and regulations. Texas Law shall govern this Contract and exclusive venue shall lie in Dallas County, Texas.

SECTION 30. PROMPT PAYMENT ACT

CONTRACTOR agrees that a temporary delay in making payments due to COUNTY's accounting and disbursement procedures shall not place COUNTY in default of this Contract and shall not render COUNTY liable for interest or penalties, provided such delay shall not exceed thirty (30) calendar days after its due date. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

SECTION 31. WAIVER

Failure of any party, at any time, to enforce a provision of this Contract, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Contract, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Contract shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

SECTION 32. BINDING EFFECT

This Contract and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as well as the parties themselves.

SECTION 33. SEVERABILITY

If any provision of this Contract shall be held invalid, void or unenforceable, remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

SECTION 34. RIGHTS AND REMEDIES CUMULATIVE

The rights and remedies provided by this Contract are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. CONTRACTOR has a duty to mitigate damages.

SECTION 35. HEADINGS

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Contract.

SECTION 36. NUMBER GENDER

Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise.

SECTION 37. COUNTERPARTS

This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SECTION 38. SIGNATORY WARRANTY

The parties represent that each has the full right, power and authority to enter and perform this Contract in accordance with all of the terms and conditions, and that the execution and delivery of this Contract has been made by authorized representatives of the parties to validly and legally bind the parties to all terms, performances and provisions set forth in this Contract.

EXECUTED THIS _____ DAY OF _____ 2007.

DALLAS COUNTY

By:_____
Jim Foster
Dallas County Judge

CONTRACTOR NAME

By:_____

Approved as to form:

By:_____
Bob Schell
Chief, Civil Division