TARRANT COUNTY HOSPITAL DISTRICT d/b/a

JPS HEALTH NETWORK

REQUEST FOR PROPOSAL #LH-0555 PBX AND ANCILLARY VOICE SYSTEMS MAINTENANCE RENEWAL

The Tarrant County Hospital District dba JPS Health Network (hereinafter referred to as the “District”) is seeking to solicit proposals for the provision of PBX and Ancillary Voice Systems Maintenance Renewal for the District.

**The District will reject any proposal that fails to comply in all respects with the instructions set forth herein for responding to this RFP/RFB. NO EXCEPTIONS WILL BE MADE, even if you are a current or prior vendor for the District. The contract awarded, if any, under and pursuant to this RFP/RFB shall supersede any previous contract, bid or GPO agreement for the products or services described herein.**

Released Date: 02-07- 2019

Response Deadline: 03-01-2019, 2:00 p.m. CST

**I. INTRODUCTION AND OVERVIEW**

The District desires to award a contract or contracts based upon vendor proposals (“RFP Response(s)”) to this Request for Proposal (“RFP”). The District is soliciting Vendor Proposals from vendors capable of supplying the District with PBX and Ancillary Voice Systems Maintenance Renewal (the “Product(s)”), as set forth and specified herein (See Exhibit “A”, Products Specifications, attached hereto and incorporated herein for all purposes). All RFP Responses must be delivered to the District at the address specified herein by the date and time, and in the manner specified in Section II hereof in order to be considered an RFP Response by the District. It is the sole responsibility of the vendor submitting an RFP Response (“Respondent”) to ensure that its RFP Response is delivered to the proper location on time and in the manner set forth herein.

An RFP Response does not commit the District to accept such RFP Response or to award a contract based on any RFP Response (“Contract Award”) merely because an RFP Response may propose the lowest price for the Product(s). The District expressly reserves the right to base any Contract Award hereunder upon its evaluation of all relevant factors regarding the vendor, including, but not limited to, Product pricing and terms, management experience and expertise, industry reputation and profile, performance history, support services, location and accessibility, and any other information relevant to its evaluation. This RFP is not an order and does not commit the District to pay for any costs incurred by the prospective vendor in the preparation or submission of the RFP or in the procurement of the Products. Product quantity estimates used herein may or may not reflect actual quantities needed or used by the District in the future, and do not commit the District to order specific Product quantities. Any RFP Response accompanied by terms and conditions that are in conflict with this RFP may be rejected by the District.

The District reserves the right to reject any or all RFP Responses and to issue a Contract Award or not to issue a Contract Award based solely on the RFP Responses received by the District in response to this RFP. However, prior to making any award hereunder, the District also reserves the right to engage in additional discussions with one or more of the vendors responding to this RFP.

Any prospective Respondent may request an explanation or interpretation of any portion of this RFP by complying with the request procedure described in Section III B below. The responses, if any, of the District to such requests are subject to and will be in the form of amendment to the RFP and will comply with the provisions of Section III B below. The District may elect not to respond to any or all of such requests received from prospective Respondents.

**DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

The District maintains a policy of encouraging and engaging in business transactions with vendors who qualify and are certified under applicable law as Historically Underutilized Businesses (“HUBs”), Small Minority and Women Owned Business Enterprises (“SMWBEs”), and Individuals with Disabilities and Service-Disabled Veterans Owned Business Enterprises (“DOBEs”). HUBs, SMWBEs, and DOBEs are referred to herein as Disadvantaged Business Enterprises (“DBEs”). The District also encourages its vendors to utilize subcontractors and vendors who qualify and are certified under applicable law as DBEs. Prior to the District’s consideration of a Respondent’s RFP Response each Respondent is required to and shall register as a Vendor in the District’s online “JPS Procurement System” (located on the District’s Website at: <https://jpshealth.gob2g.com/>). Prior to the Contract Award a Respondent’s good faith efforts to utilize DBE subcontractors and vendors in its business transactions shall be part of the criteria under which the Vendor Proposals will be considered. Each Respondent will be required to show in its Vendor Proposal its historical efforts to utilize DBE subcontractors and vendors in its business transactions (See Article II, Section A.2 herein).

**COMPLIANCE WITH TEXAS GOVERNMENT CODE SECTION 2252.908**

Texas Government Code Section 2252.908 (“Section 2252.908”) states that a governmental entity or state agency ***may not*** enter into certain contracts with a business entity unless the business entity submits Form 1295, a disclosure of interested parties, to the governmental entity or state agency ***at the time the business entity submits the signed contract to the governmental entity or state agency***.  Section 2252.908 applies to all contracts entered into from and after January 1, 2016 between business entities and Texas governmental entities and state agencies which meet either one of the following criteria:

1. the contract requires a vote of the governing body of the Texas governmental entity, or

2. the contract has a contractual value of at least $1 Million.

The Texas Ethics Commission has adopted a Certificate of Interested Parties form (“Form 1295”) and has made it available on the TEC website.

In 2017 Section 2252.908 was amended to provide that the requirements of Section 2252.908 do not apply to the following contracts entered into or amended after January 1, 2018:

1. a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;

2. a contract with an electric utility, as that term is defined by Section 31.002, Texas Utilities Code; or

3. a contract with a gas utility, as that term is defined by Section 121.001, Texas Utilities Code.

In the event a Contract Award is issued pursuant to this RFP, the Respondent receiving the Contract Award shall be required to comply with the provisions of Section 2252.908, Texas Government Code, and the Chapter 46 Rules of the TEC, prior to entry into a contract with the District for the sale of the Products to the District. The TEC has posted a video tutorial to its website for business entity filings of Form 1295. The TEC video provides step-by-step tutorials for creating login accounts for the business entity for completing and filing Form 1295. The TEC video tutorials can be viewed on its website at:

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

The TEC’s FAQs are posted on its website at:

<https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html>

**COMPLIANCE WITH TEXAS GOVERNMENT CODE SECTION 2270.001 et seq.**

In 2017 Texas Government Code Section 2270.001 et seq. was enacted to provide that a Texas governmental entity is prohibited from entering into a contract with a company unless the contract contains a written verification by the company that (i) the company does not boycott Israel, and (ii) the company will not boycott Israel during the term of the contract. For the purposes of this RFP and any Contract Award pursuant to this RFP, and in compliance with the Texas Government Code, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict harm on, or limit commercial relationships specifically with Israel, or with a person or entity doing business in Israel or in an Israel-controlled territory, but does not include an action made for ordinary business purposes. Respondents are hereby notified that respect to any Contract Award the vendor shall comply with the Texas Government Code Section 2270.001 et seq. verification requirements, the failure or refusal of which shall result in the withdrawal of the Contract Award.

**COMPLIANCE WITH TEXAS GOVERNMENT CODE SECTIONS 2252.151 et seq.**

In 2017 Texas Government Code Chapter 2252 was amended by adding Sections 2252.151 et seq. to provide that a Texas governmental entity is prohibited from entering into a contract with a company that engages in certain scrutinized business operations in Sudan, Iran, or with foreign terrorist organizations. For the purposes of this RFP and any Contract Award: (i) “scrutinized business operations in Sudan” shall have the meaning ascribed to that term as set forth in Section 2270.0001 et seq. of the Texas Government Code; (ii) “scrutinized business operations in Iran” shall have the meaning ascribed to that term as set forth in Section 2270.0101 et seq. of the Texas Government Code; and (iii) “scrutinized business operations with designated foreign terrorist organizations” shall have the meaning ascribed to that term as set forth in Section 2270.0151 et seq. of the Texas Government Code. Respondent’s signature affixed to the attached Exhibit “B” shall be deemed to be the Respondent’s certification to the District that the Respondent does not engage in scrutinized business operations in Sudan, Iran or with foreign terrorist organizations.

**EACH RESPONDENT ACKNOWLEDGES THAT THE DISTRICT IS A GOVERNMENTAL BODY OPERATING UNDER AND SUBJECT TO THE PROVISIONS OF THE TEXAS PUBLIC INFORMATION ACT (“TPIA”) (CHAPTER 552 OF THE TEXAS GOVERNMENT CODE) AND THEREBY ACKNOWLEDGES THAT INFORMATION THAT IS COLLECTED, ASSEMBLED, OR MAINTAINED IN CONNECTION WITH THE TRANSACTION OF OFFICIAL BUSINESS BY A GOVERNMENTAL BODY IS CONSIDERED PUBLIC INFORMATION POTENTIALLY SUBJECT TO DISCLOSURE PURSUANT TO A VALID TPIA REQUEST AND HEREBY ASSUMES FULL RESPONSIBILITY AND ALL COSTS FOR CHALLENGING ANY REQUESTS FOR INFORMATION IT CONSIDERS CONFIDENTIAL UNDER THE TPIA.**  **RESPONDENTS SHOULD CONSULT THE ATTORNEY GENERAL’S WEB SITE (**[**WWW.OAG.STATE.TX.US**](http://www.oag.state.tx.us)**) FOR INFORMATION CONCERNING THE APPLICATION OF THE PROVISIONS OF THE TPIA TO PROPOSALS AND PROPRIETARY VENDOR INFORMATION.** **FOR FURTHER INFORMATION AND INSTRUCTION REGARDING TPIA MATTERS. SEE SECTION \_\_OF EXHIBIT “C”.**

**II. RFP RESPONSE REQUIREMENTS, CONDITIONS AND RELATED INFORMATION**

**A. Preparation of RFP Response.**

### **1.** Each Respondent should carefullyexamine and familiarize itself with this RFP and all exhibits, drawings, specifications, and instructions regarding the Products included in this RFP (collectively, the “RFP Documents”). Each Respondent, by submitting an RFP Proposal, represents that Respondent has read and understands this RFP and the drawings, exhibits attached to this RFP.

### **2.** Each RFP Response shall be fully completed, shall contain all the information required from the Respondent by this RFP, including the Vendor Certification Form attached hereto as **Exhibit “D”** (“Required Information”), and shall be signed and executed, on the Signature Form attached hereto as **Exhibit “B”** by an officer or other authorized representative of the Respondent. Each page of an RFP Response shall contain the company name of the Respondent. A Respondent’s failure to provide any of the Required Information in its RFP Response, or the failure of the RFP Response to contain the signature of Respondent’s officer or other duly authorized representative, may result in the District’s disqualification of such RFP Response. The Required Information shall include detailed information regarding the Respondent’s historical efforts (for the last 1 year (s) to utilize DBE subcontractors and vendors in its prior business transactions and shall include such detailed information in its RFP Response.

### **3.** Each Respondent shall be responsible for and shall bear all costs for the preparation and presentation of its RFP Response. Unless otherwise designated by Respondent and agreed by the District, the RFP Response and all drawings, materials, supporting documentation, manuals, etc. submitted with any RFP Response (“Submitted Materials”) will, immediately upon submission, become the property of the District. After the date upon which the Final Vendor is selected (See Section III.A hereof) Respondents may request the return of the Submitted Materials. However, all costs associated with returning the Submitted Materials to a Respondent shall be born and paid in advance by the Respondent.

### **4.** The District does not guarantee the confidentiality of any Submitted Materials. Each Respondent, by submitting an RFP Response, acknowledges and agrees that any and all Submitted Materials will be distributed or made available to appropriate District personnel and consultants involved in this RFP process, and further understand that the Submitted Materials may be subject to disclosure pursuant to the TPIA. Information considered proprietary by a Respondent should be clearly marked “Proprietary” when submitted with an RFP Response.

### **5.** The District reserves the right to modify and/or supplement this RFP by amendment issued by the District prior to the date and time of the Response Deadline (defined herein). Any such amendments will be posted on-line prior to the Response Deadline at the same District internet site where this RFP is kept available for solicitation of RFP Responses. It is the responsibility of each Respondent to check that internet site frequently to determine if any amendments have been issued.

### **6**. The District reserves the right to withdraw this RFP, at its sole discretion, from any or all prospective vendors and Respondents at any time, before or after the Response Deadline. The withdrawal, if ever, of this RFP shall be effective upon the District’s issuance of written notice posted on-line at the same District internet site where this RFP is kept available for solicitation of RFP Responses, which notice may also be sent by the District to the prospective Respondents in any manner deemed reasonable by the District.

**B. Form of Contract.**

### Any Respondent awarded a contract with the District for the purchase and sale of the products and/or services pursuant to this RFP shall be required to execute a purchase agreement between the Respondent and the District which shall in all material respects contain the terms and conditions and be identical in substance and in form to the draft purchase agreement set forth in **Exhibit “C”** (the “**Contract Form**”), which is attached hereto and incorporated herein for all purposes. The District will not agree to change the Contract Form except under unusual circumstances approved in the sole discretion of the District and its General Counsel. The District will entertain changes to the Contract Form to the limited extent required to conform the unique terms of the Response to the Contract Form (e.g., unique product payment provisions, terms and conditions). The District reserves the right to approve or reject any proposed changes to the Contract Form submitted by Respondents.

### **IF ANY RESPONDENT PROPOSES CHANGES TO THE CONTRACT FORM THE RESPONDENT MUST DO SO BY COMPLETING THE “VENDOR’S PROPOSED AMENDMENT” SET FORTH ON EXHIBIT “F” TO THIS RFP SHOWING ALL OF THE RESPONDENT-PROPOSED EXCEPTIONS, ADDITIONS, DELETIONS AND/OR REVISIONS TO THE CONTRACT FORM. A RESPONDENT’S ATTEMPT TO PROVIDE ITS PROPOSED EXCEPTIONS, ADDITIONS, DELETIONS AND/OR REVISIONS IN ANY MANNER OTHER THAN ON THE VENDOR’S PROPOSED AMENDMENT MAY RESULT IN THE DISTRICT’S REJECTION OF THE RESPONSE WITHOUT FURTHER EXAMINATION.**

**Respondents may not request additional changes to the Contract Form after the RFP Response has been submitted to the District, nor will the District agree to negotiate any requested changes to the Contract Form which are not included with the RFP Response in the manner and form set forth above in this section II.B and in Exhibit “F”.**

**C**. **Submission of RFP Responses.**

### **1.** All RFP Responses shall be submitted to the District as follows:

**a**. One (1) original RFP Response and 6 paper copies, and one (1) electronic copy of the RFP Response. The electronic copy must be an accurate replication of the Respondent’s original RFP Response, including any signatures and color copied photos, if applicable. The electronic copy must be submitted, at the District’s instruction, in one of the following formats: (i) electronically in a portable document format (pdf) or other digital image format that is widely recognizable on PC computers without additional software, via email or other electronic submission tool as directed by the District, or (ii) stored on a universally recognizable removable storage drive, such as a flash drive. Please mark the original RFP Response as “ORIGINAL”.

#### **b.** RFP Responses shall be addressed to:

#### **Purchasing Department**

**JPS Health Network**

**1500 S. Main Street**

**Fort Worth, Texas 76104**

**Attention: Lizzie Harris, Senior Request for Proposal Coordinator**

**RFP #LH-0555 PBX and Ancillary Voice Systems Maintenance Renewal**

**Response Deadline: 03-01-19, 2:00 p.m. CST**

**(The Purchasing Department is located off of 1500 South Main and Feliks Gwozdz.)**

#### **c.** RFP Responses shall be mailed via overnight expresscarrier or hand delivered to the aforementioned address to the Purchasing Department receptionist desk only. An RFP Response is invalid in the Respondent, upon award of a contract (if ever), is not registered with **JPS Vendor Credentialing System** ([*www.Symplr.com*](http://www.Symplr.com)) or is not in compliance with the District’s requirements for vendor credentialing.

#### **d.** In order to be considered, the outside face of the envelope containing the RFP Response must state the following: (i) the name and address of the Respondent, (ii) the Response Deadline, and (iii) the RFP number.

#### **e.** Unless otherwise expressly provided in this RFP or in any amendment to this RFP, no Respondent shall modify or cancel the RFP Response or any part thereof for thirty (30) days after the Response Deadline. Respondents may withdraw RFP Proposals at any time before the RFP Proposals are opened by the District, but may not resubmit them. No RFP Proposal may be withdrawn or modified after the RFP Proposals are opened by the District, except where the award of the contract on the RFP Proposal is delayed beyond thirty (30) days after the Response Deadline.

### **f.** RFP Proposals will not be considered if they show any omissions, alterations of required forms, additions or conditions not requested or irregularities of any kind. However, the District reserves the right to waive any irregularities and to make the award in the best interest of the District.

### **g.** The Respondent acknowledges the right of the District to reject any or all RFP Responses and to waive any informality or irregularity in any RFP Response received. In addition, the District reserves the right to reject any RFP Response if the Respondent failed to submit the data, information or documents required by this RFP, or if the RFP Proposal is any way incomplete or irregular.

### **h.** Failure to follow the instructions regarding the submission of RFP Responses may result in the District’s disqualification of such RFP Responses.

### **2.** RFP Responses are due on or before **03-01-19, 2:00 p.m. CST (“Response Deadline”).** The Response Deadline may be extended by the District upon amendment to this RFP issued prior to the then existing Response Deadline. RFP Responses are not scheduled for public opening. No telephone, telephonic, or FAX RFP Responses will be accepted. The District will not be responsible for missing, lost, or late deliveries. **RFP Proposals delivered after the Response Deadline will not be accepted or considered under any circumstances**.

### **3.** Each RFP Response shall contain the completed form entitled, “Vendor Certification Form” set forth on **Exhibit “D”** which is attached hereto and incorporated herein for all purposes.

**4.** Each RFP Response shall contain the completed form entitled “Conflict of Interest Questionnaire” set forth on **Exhibit “E”** which is attached hereto and incorporated herein for all purposes, and shall return the Conflict of Interest Questionnaire with its RFP Response.

**III. RFP SCHEDULE AND RELATED INFORMATION**

## A. Estimated Schedule

|  |  |
| --- | --- |
| Milestone | Date |
| Request for Proposal Issued | **2-07- 2019** |
| Questions submitted by Respondents | **02-14-2019, 2:00 p.m. CST** |
| Pre-Proposal Conference | **No Pre-Proposal Conference** |
| Response Deadline and Time for Submission of RFP Proposals | **03-01-19, 2:00 p.m. CST** |
| RFP Evaluation Period |  |
|  |  |

**1. Pre-Proposal Conference**. A Pre-Proposal Conference will be conducted at \_N/A\_\_\_CST on\_\_N/A\_\_\_, \_\_\_N/A\_\_\_\_\_, 20\_\_ in the District Purchasing Conference Room at 1500 S. Main Street, Fort Worth, TX 76104. (Please check-in at the Purchasing Department front desk.) Due to limited space only 1 representative from each Respondent may attend.

**2.** **Milestone Dates.** Milestone Dates are estimated for planning purposes only and are subject to change.

**3. Best and Final Offer.**  The District reserves the right to cancel or not issue a request for Best and Final Offer after the District determines that all requirements of the RFP have been met in the RFP Responses received, and an award can be made without additional information or clarification from the Respondents.

## B. District RFP Agent

Respondents may, in the manner prescribed herein, present requests (“Submission Questions”) for an explanation, clarification or interpretation of the (Products Specification/Service Specifications in this RFP) and/or other requirements for submission of RFP Responses to the RFP Agent identified below during the proposal submission period. All Submission Questions must be submitted in writing and emailed or faxed tothe RFP Agent, at the email address and/or fax numbers set forth below, and must reference the appropriate pages and sections number of this RFP that are the subject of such Submission Questions. The final date and time to submit Submission Questions **is 02-14-2019, 2:00 p.m. Central Time. NO PHONE CALLS PLEASE.** Confirmation of the delivery of Submission Questions to the District is the sole responsibility of the Respondent. The District may, in its sole discretion, elect not to answer or respond to any or all Submission Questions it receives, and the failure of refusal of the District to answer or respond to any Submission Question will not affect, in any way, this RFP. Submission Questions may be informally addressed during the Pre-Proposal Conference; provided, however, that no answer or response to any Submission Question by any representative of the District shall be effective unless and until it is issued by the District in writing in the form of one or more addenda to the RFP, and has been posted to the District’s RFP website link prior to the Response Deadline. It is the responsibility of each Respondent to check the website for all addenda to the RFP up to the Response Deadline. Prospective vendors are advised that no District employee other than the RFP Agent is empowered to make binding statements regarding this RFP, and no statements, clarifications, or corrections regarding this RFP are valid or binding on the District except those issued in writing by the RFP Agent as addenda to the RFP.

**Contact between Respondents and the District, other than in the manner described and set forth in this Section II.B, during the RFP proposal submission period or evaluation period is prohibited. Any attempt by a Respondent to engage in prohibited contact with the District or the RFP Agent may result in disqualification of its RFP Response.**

The name and address for the RFP Agent is:

Lizzie Harris, Senior Request for Proposal (RFP) Coordinator

Contract Management Department

JPS Health Network

1500 S. Main Street

Fort Worth, TX 76104

Email: [***Bid\_Submissions@jpshealth.org***](mailto:Bid_Submissions@jpshealth.org)

District’s RFBs/RFPs website link:

[***http://www.jpshealthnet.org/about\_jps/vendor\_opportunities/current\_bids***](http://www.jpshealthnet.org/about_jps/vendor_opportunities/current_bids)

Exhibit “A”

SCOPE OF WORK

SECTION 1: INVITATION

Tarrant County Hospital District d.b.a. JPS Health Network (hereafter, “JPS” or “District”) is requesting proposals for PBX and Ancillary Voice Systems Maintenance Renewal.

**SECTION 2: PROJECT SCOPE MINIMUM REQUIREMENTS**

The vendor shall provide a renewal of our existing NEC RESOLVE maintenance agreement for the JPS voice network.

The Vendor shall provide evidence and site experience of its capability to provide RESOLVE maintenance agreements from NEC as an authorized channel partner for that purpose. This agreement is essential to JPS in order to ensure timely software assurance and minimal system down time. Vendor shall handle all logistical coordination with NEC to ensure our RESOLVE maintenance remains comprehensive and current.

All equipment covered under RESOLVE is located at: **JPS Health Network 1500 S Main St, Fort Worth, TX 76104.**

**SECTION 2.1: CONFORMANCE STANDARDS:**

All services provided under this agreement must be performed in conformance with the NEC RESOLVE maintenance program.

Hours of Work:

1. Business hours are defined as Monday through Friday from 7:00 a.m. to 6:00 p.m., excluding federal holidays or as otherwise arranged with the assigned Hospital NEC Project Representative*.*
2. JPS is a 24x7x365 operation and, while we recognize federal/state holidays, operations never cease at the JPS main campus.

**SECTION 2.2: VENDOR QUALIFATIONS:**

1. The prospective Vendor must be able to provide proof that they are a channel partner with NEC and are authorized to sell RESOLVE maintenance agreements from NEC.
2. The vendor must have experience scoping and writing RESOLVE order agreements for a voice network the size of JPS.
3. The Vendor must be an NEC Triple Diamond Partner possessing NEC product certifications capable of providing and supporting all NEC equipment at JPS. Products include but not limited to; SV9500/UMG, ACD, call accounting, IP-Trunking CCIS, UM8700 AVST Voice Mail, QueworX IVR, UC700, OW5000, UA5200 Attendant Consoles, Encore Call Recording, SV9300 and GNAV ACD management.
4. The Vendor shall have a local office within the greater Dallas/Fort Worth Metroplex to provide expertise in “right-sizing” the RESOLVE agreement to ensure appropriate coverage for the technical environment and level of response required for JPS.
5. The Vendor shall have a local servicing office, parts warehouse and an NEC Certified service technician within 45 miles of our facility located at: John Peter Smith Hospital 1500 S Main St, Fort Worth, TX 76104

**SECTION 2.3: VENDOR SERVICE AND SUPPORT REQUIREMENTS**

On a time-and-materials or Service Level Agreement basis, the Vendor (or the appropriate NEC support organization) must provide local service and support as follows:

1. Remote Diagnostics Response Time 24/7/365
2. On-Site Response Time 24/7/365
3. Remote access service support and telephone support, 24/7/365.
4. After hours service and support 24/7/365
5. Provide routine License keys, Software Patches, Updates & Upgrades as per the RESOLVE agreement.
6. The Vendor shall maintain an inventory of all JPS covered equipment to ensure minimum downtime of the NEC phone system.

**SECTION 3: PRICE SHEET**

Parts and Installation Required Bid Items - Please contact the NEC SWA department for PBX Hardware Key Codes to provide an accurate RFP quote.

**SECTION 4: PROPOSED PRICE QUOTES**

Price quotes shall remain active for 90 – 180 days.

**SECTION 5: CONTRACT TERM**

The proposed term of the **contract is 3 years.** The contract will be subject to cancellation by the District for any reason, at any time, and without penalty of any kind upon furnishing thirty (30) days advance written notification to vendor. At the end of the final renewal term of the contract the District reserves the right to extend the contract for up to 120 days to provide an opportunity to bring a new contract into place with another vendor. Prices shall remain firm for term of the contract.

**SECTION 6: SELECTION AND EVALUATION PROCESS**

**Selection Process**

The RFP Agent shall designate an evaluation committee (“Evaluation Committee”) which will be composed of employees from the District. The District reserves the right to add, delete or substitute members of the Evaluation Committee as it deems necessary. The Evaluation Committee will narrow the field of submitted RFP responses to those which best meet the requirements of this RFP and which best meet the complete needs of the District. Each such RFP Response will then be evaluated according to the criteria set forth herein.

**Evaluation Criteria Specific to This RFP**

The Evaluation Committee will conduct a comprehensive, fair, and impartial evaluation of all proposals received in response to this Request for Proposals. The evaluation of RFP Responses will involve scoring each RFP Response in the areas listed and set forth in Exhibit A. The District’s evaluation of the RFP Responses will be based upon each Respondent’s response to the evaluation factors stated in this RFP. Any Respondent’s failure to provide complete and full responses to the requested information may lead to disqualification of such RFP Response.

**SECTION 7: EVALUATION FACTORS**

1. Price
2. The reputation of the vendor and of the vendor's goods or services.
3. To the extent to which the goods and or services meet the District’s needs.
4. Quality of bidder’s goods or services.
5. Diversity Enterprise Participation- the utilization of historically under-utilized businesses.

**SECTION 8: RFP CONTENT**

Tab 1**. Executive Summary**

Provide a synopsis of the highlights of the proposal and overall benefits of the proposal to JPS. This synopsis should not exceed two pages in length and should be easily understood. The overall RFP response shall not exceed 25 pages total.

Tab 2. **To the extent to which the goods/services meet the District needs.**

a. Minimum requirements and Project Scope

Tab 3.  **Quality of bidder’s goods and or services.**

a. **Project Team Qualifications and Experiences**

Responses shall include a complete list of resumes for all key personnel associated with the RFP. This list must include all key personnel who will provide services. You should include an overview of any planned subcontractors you may use to provide services in this section if applicable.

For each person on the list, the following information shall be included:

1. The person’s relationship with firm, including job title and years of employment with firm;
2. The role that the person will play in connection with the RFP;
3. Address, telephone, fax numbers, and e-mail address;
4. The person’s relevant experience;

Tab 4. **Price**

Tab 5**. Reputation of the vendor and of the vendor’s goods or services**

References. JPS reserves the right to contact any of the references provided in order to determine proposer’s performance record on work similar to that described in this request.

Tab 6. **Diversity Enterprise Participation**

JPS strongly encourages the utilization of historically under-utilized businesses. If the Respondent is a Certified HUB/SMWVBE skip (B and C) if not (complete B and C).

A. Certified HUB/SMWVBE **(please do not submit an expired certificate).**

**OR**

B. Communication Outreach – Attach the written notification of the subcontracting opportunity and list of three agencies and /or organizations notified regarding the interest in HUB/SMWVBE participation in this contract.

C. Plan of Action – List the subcontractors selected for participation, their certification, and approximate dollar value of the work to be subcontracted and the expected percentage of the total contract amount.

Tab 7**. Forms**

a. Exhibit “A” Signature Form

b. Exhibit “D” Vendor Certification

c. Exhibit “E” Conflict of Interest Questionnaire

d. Exhibit “F” Vendor Proposed Amendment **(Attention Respondents: New form please read!)**

**SECTION 9: EVALUATION CRITERIA SCORE SHEET**

| **EVALUATION CRITERIA’S** | | | **Max Points** | **Vendor**  **Score** |
| --- | --- | --- | --- | --- |
| 1. Price – Best Value  Pricing will be scored according to the pricing formula by Purchasing personnel.  Proposer Lowest Fee X Possible Points = Points Awarded  Fee of Proposal Being Evaluated | | | **15** |  |
| **THIS SECTION WILL BE SCORED BY THE EVALUATION COMMITTEE** | | | | |
| 2. To the extent to which the goods and or services meet the District’s needs.  a. Minimum requirements and project scope | | | **35** |  |
| 3. Quality of bidder’s goods or services.  a. Project Team Qualifications and Experiences | | | **20** |  |
| 4. The reputation of the vendor and or the vendors’ goods or services.  a). References | | | **10** |  |
| 5. Responsiveness- Requested information is included and thoroughness of response. Brevity and clarity of RFP response | | | **5** |  |
| **THIS SECTION WILL BE SCORED BY DIVERSITY AND INCLUSION DEPARTMENT** | | | | |
| 5. Disadvantage Business Enterprise Participation. This will be applied to your HUB/SMWVBE Participation and is worth **15 points**.  **If the Respondent is a Certified HUB/SMWVBE** skip (B and C) **if not** (complete B and C)**.** The breakdown is as follows: | | | | |
| A. Certified HUB/SMWVBE | | **15** | |  |
| **OR** | | | | |
| B. Communication Outreach – Attach the written notification of the subcontracting opportunity and list of three agencies and /or organizations notified regarding the interest in HUB/SMWVBE participation in this contract | | | **5** |  |
| C. Plan of Action – List the subcontractors selected for participation, their certification, and approximate dollar value of the work to be subcontracted and the expected percentage of the total contract amount. | | | **10** |  |
| **MAXIMUM TOTAL POSSIBLE POINTS** | | | **100** |  |
| **Company Name:** |  | | | |
| **Evaluator ID:** |  | | | |
| **RFP #LH- 0555 PBX AND ANCILLARY VOICE SYSTEM RENEWAL** | | | | |

**Exhibit “B”**

**Signature Form**

Respondent shall signify Respondent’s acceptance of and compliance with the requirements, terms, and conditions of this RFP # LH-0555 PBX and Ancillary Voice System Maintenance Renewal by signing in the signature space set forth below.

Respondent warrants that Respondent has examined and is familiar with this RFP and its terms and conditions.

Respondent warrants that it has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily finance and complete the products and services in its RFP Response.

Respondent certifies that the individual signing this RFP Response is authorized to sign such documents on behalf of the Respondent entity and to bind Respondent and is authorized to bind the Respondent in this RFP Response.

RESPONDENT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE DISTRICT AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FORM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABLITIES, ARISING OUT OF CONNECTED WITH, OR RESULTING FROM ANY ACTS OF OMISSIONS OF RESPONDENT OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF RESPONDENT IN THE EXECUTION OR PERFORMANCE OF ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS WHICH MAY RESULT FROM THE SUBMISSION OF THE RFP RESPONSE AND/OR THE AWARD OF A CONTRACT THEREON BY THE DISTRICT.

|  |  |
| --- | --- |
| **RFP # LH-0555 PBX AND ANCILLARY VOICE SYSTEM MAINTENANCE RENEWAL** | |
| RESPONDENT (COMPANY) NAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

**Exhibit “C”**

**Purchase Agreement and**

**Terms and Conditions**

**Required Terms and Conditions**

**For Services Contracts**

1. Services and Purchase Price. Vendor has offered to provide Customer with services and related products, if any, which are particularly described on **Exhibit “A”** (the “Quotation”) which is attached hereto and incorporated herein for all purposes (“Services”). The purchase price (“Price”) for Services shall be as shown and set forth on the Quotation. Such Price assumes that Vendor delivers the Services to Customer timely and according to the provisions of the Quotation and this Contract, but in no event less than six (6) months. Prices do not include any: (i) taxes, shipping or insurance, or (ii) handling, rigging, uncrating, storage or other services incidental to shipping, all of which are the responsibility of Customer. Vendor shall deliver and perform all the Services free and clear of all liens, security interests, encumbrances and other claims and in good condition and working order as specified by the provisions of this Contract and the Services and in compliance with all laws and regulations applicable to such Services for the use intended by this Contract. All Services shall be delivered to Customer with all licenses and other rights required to use and to operate the Services for their intended use, including but not limited to the Software License Terms set forth on **Exhibit “C”** which is attached hereto are incorporated herein for all purposes.

2. Term and Termination. The Services shall be delivered in accordance with the provisions of this Contract for the period of time set forth in the Quotation (“Term”), commencing on the Effective Date. Either Party may terminate this Contract for cause upon a material breach by the other Party of its obligations hereunder, which breach is not cured within fifteen (15) days after the breaching Party is given a Notice of Material Breach (defined below). A "Notice of Material Breach" means written notice that includes in all capital letters "NOTICE OF MATERIAL BREACH" and also includes: (i) specific details identifying the material breach; and, (ii) the notifying Party's specific recommendations of actions to be (or if appropriate, not to be) taken by the other Party in order for it to cure the breach. Customer shall have the right to terminate this Contract without cause at any time prior to such end of the Term of the Contract by giving Vendor thirty (30) days prior written notice of such termination (hereinafter referred to as "Early Termination"). In the event of Early Termination, Customer agrees that it will pay all amounts due and owing Vendor for all Services provided by Vendor up to and including the date of termination. Customer also shall reimburse Vendor for all expenses incurred by Vendor in the performance of its obligations hereunder and which are or would be due to Vendor if Early Termination had not occurred. Customer acknowledges and agrees that in the event of such Early Termination, Vendor will not provide or otherwise perform any unnecessary part of the Services nor will it incur any unreasonable expenses, but it will perform only those obligations and incur only those expenses necessary to fulfill its obligations under this Contract. Nothing set forth herein shall limit the Customer's rights or remedies.

3. Shipping and Delivery Terms. All Services are F.O.B. at the delivery destination, freight prepaid and allowed and all maintenance and service to be provided by Vendor under this Contract shall be rendered on site at the location of the Equipment on Customer’s property, except as otherwise expressly provided in the Quotation. Title and risk of loss will pass to Customer upon delivery to the destination on Customer’s property and Customer will provide insurance against such risk. All Services will be deliverable and performable at the location of Customer’s property, except as otherwise expressly set forth in the Quotation.

4. Payment Terms. Invoices for Services are due and payable after the Services have been delivered and/or performed in accordance with the provisions of this Contract. Invoices for the Services reflecting amounts not subject to bona-fide dispute are payable after Customer’s receipt of the same Services no later than thirty (30) days after the same becomes due and payable in accordance with the provisions set forth above in this Section.

5. Patent Indemnity

(a) VENDOR AGREES TO, AND SHALL, INDEMNIFY AND HOLD CUSTOMER HARMLESS AGAINST ANY CLAIMS, DAMAGES, AND EXPENSES TO THE EXTENT THE SAME ARISE OUT OF OR ARE ASSERTED AGAINST CUSTOMER ALLEGING THAT THE SERVICES INFRINGE ANY UNITED STATES PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD-PARTY, PROVIDED THAT (1) CUSTOMER GIVES VENDOR WRITTEN NOTICE WITHIN FIFTEEN (15) DAYS AFTER CUSTOMER’S ACTUAL KNOWLEDGE OF THE EXISTENCE THEREOF, OF ANY SUCH CLAIMS, DAMAGES, OR EXPENSES, AND (2) CUSTOMER AGREES TO COOPERATE REASONABLY WITH VENDOR AS REASONABLY NECESSARY TO DEFEND, SETTLE, REIMBURSE, OR AVOID ANY SUCH CLAIMS, DAMAGES AND EXPENSES.

(b) Upon timely receipt of Customer’s written notice, Vendor will assume the defense of any claims against Customer. Customer agrees to cooperate with Vendor in the defense or settlement of all such claims.

(c) Vendor shall not be bound by the terms of any compromise or settlement agreement negotiated or concluded by Customer without the prior written consent of a duly authorized officer or employee of Vendor.

(d) Vendor has not authorized any employee or agent to offer any patent indemnity terms other than those appearing above.

6. General Indemnity.

(a) EXCEPT TO THE EXTENT OF ANY OTHER INDEMNITIES EXPRESSLY PROVIDED ELSEWHERE IN THIS CONTRACT WHICH SHALL TAKE PRECEDENCE AND CONTROL OVER THIS INDEMNITY TO THE EXTENT OF THE MATTERS COVERED BY SUCH OTHER EXPRESSLY PROVIDED INDEMNITY(IES), VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE CUSTOMER, CUSTOMER’S MANAGERS, OFFICERS, AGENTS, EMPLOYEES, STAFF, REPRESENTATIVES, AND DIRECTORS (COLLECTIVELY, THE “CUSTOMER INDEMNITEES”) FROM ALL LOSSES (DEFINED BELOW) AND SHALL DEFEND THE CUSTOMER AND CUSTOMER INDEMNITEES AGAINST ALL CLAIMS AND CAUSES OF ACTION OF THIRD PARTIES ARISING OUT OF OR RELATED TO ANY OF THE FOLLOWING, EXCEPT TO THE EXTENT CAUSED BY THE INTENTIONAL MISCONDUCT OF OR MISUSE OF THE SERVICES BY CUSTOMER OR ANY OF CUSTOMER INDEMNITEES OR A BREACH OF THIS CONTRACT BY THE CUSTOMER: (1) A VIOLATION OF ANY FEDERAL, STATE, LOCAL OR FOREIGN LAW, RULE, REGULATION OR ORDER APPLICABLE TO VENDOR AND/OR ITS EMPLOYEES OR REPRESENTATIVES; (2) ANY VIOLATION OR BREACH BY VENDOR OF ITS REPRESENTATIONS AND WARRANTIES TO THE CUSTOMER IN THE CONTRACT; OR, THE FACT THAT ANY OF SUCH REPRESENTATIONS AND WARRANTIES CEASES TO BE TRUE DURING THE TERM; (3) THE FAILURE OF VENDOR TO OBTAIN, OR CAUSE TO BE OBTAINED, ANY REQUIRED LICENSES, PERMITS OR CONSENTS FOR THE CUSTOMER TO RECEIVE AND USE THE SERVICES, OR ANY COMPONENT THEREOF, TO THE FULL EXTENT PROVIDED IN THIS CONTRACT, EXCLUDING ANY REQUIRED CONSENT THAT IS NOT OBTAINED DUE TO THE CUSTOMER’S FAILURE TO PAY FOR SAME; AND (4) PERSONAL INJURIES, DEATH OR DAMAGE TO TANGIBLE PERSONAL OR REAL PROPERTY TO THE EXTENT CAUSED BY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF VENDOR OR ANY VENDOR EMPLOYEE OR VENDOR REPRESENTATIVE. FOR PURPOSES OF THIS SECTION 6, THE WORD “LOSSES” MEANS ALL ASSESSMENTS, LOSSES, DAMAGES, COSTS, EXPENSES, LIABILITIES, JUDGMENTS, AWARDS, FINES, SANCTIONS, PENALTIES, CHARGES, AND AMOUNTS RESULTING FROM, OR AGREED TO BE PAID IN SETTLEMENT OF, ANY THIRD PARTY CLAIM OR ALLEGATION INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY AND OTHER LEGAL FEES AND COSTS AND EXPENSES OF INVESTIGATING OR DEFENDING AGAINST SUCH CLAIM OR ALLEGATION.

(b) Upon timely receipt of Customer’s written notice, Vendor will assume the defense of any claims against Customer. Customer agrees to cooperate with Vendor in the defense or settlement of all such claims.

(c) Vendor shall not be bound by the terms of any compromise or settlement agreement negotiated or concluded by Customer without the prior written consent of the President or any Vice President of Vendor.

(d) Vendor has not authorized any employee or agent to offer any general indemnity terms other than those appearing in this Contract.

7. Software and License. All software provided by the Vendor as a part of, with, or for use in connection with the Services (collectively, “Services Software”) is and shall remain the sole property of Vendor. No license or other right is granted to Customer or to any other party except as specifically set forth in this Contract on **Exhibit “C”**, and Vendor has not authorized any employee or agent to grant any licenses or other rights with respect to or under any patent application, patent, copyright, trademark, trade secret, or proprietary right of Vendor or any of Vendor’s suppliers.

8. Terms of Agreement. No supplement, modification, purchase order or amendment of any term, provision, or condition of this Contract shall be binding or enforceable on either party hereto unless in writing signed by both parties.

9. Customer Reporting. Customer agrees to properly report and disclose any discounts or other price reductions (collectively referred to herein as “discounts”) granted by the Vendor to Customer on the purchase of Services, to the extent required by applicable state or federal law. When applicable, any discounts granted by Vendor to Customer are intended to reflect discounts or other reductions in price within the meaning set forth in the Social Security Act of 1935, as amended, (42 U.S.C. §1320a-7b(b)(3)(A)) and the regulations promulgated thereunder, and may reflect a bundled discount pricing arrangement. With regard to any bundled discount pricing arrangement, Vendor will, where appropriate, timely provide Customer (either herein or by separate statement) further detail pertaining to such discounts and the allocation of total net purchase dollars for equipment, service and products, as applicable. Customer may have an obligation to report such discounts to any state or federal program that provides reimbursement to the Customer for the items to which the discount applies, and, if so, Customer will fully and accurately report such discounts. Further, Customer will retain invoices and other price documentation and will make them available to federal or state officials when requested in accordance with applicable law.

10. Confidentiality. Subject to the requirements of the limitations stated in Section 29 below, each party agrees to keep the other party’s proprietary information, including all information relating to any Product Software, confidential and not to use such proprietary information except as necessary to perform under this Contract. Upon cancellation of this Contract or return of the Services, each party will return to the other party all such proprietary information. All information relating to patients and employees of Customer is confidential.

11. Liability. NEITHER PARTY, NOR ANY THIRD PARTY AUTHOR OF SERVICES SOFTWARE, SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS CONTRACT OR IN CONNECTION WITH THE USE OF THE SERVICES.

12. Intellectual Property Rights. The Vendor grants Customer a perpetual, nontransferable and nonexclusive license to install and use the Services Software (if any), including firmware and Product Software documentation included in or with the Services, in machine readable executable object code on the equipment for which it was designated by the Vendor in accord with the Product Software's documentation. This grant includes a license to use such documentation. Customer shall not take any action in violation of the Vendor's or third party author's copyright or other intellectual property rights in the Services; provided, however, that nothing in this sentence shall limit Customer’s right to use, or Vendor’s obligation to deliver, the Services for their intended purposes as contemplated by this Contract.

13. Warranties. Except as to extended warranties expressly reflected on the Quotation and purchased by Customer, Vendor provides no specific express warranties with respect to the Services. The only express warranties applicable to the Services are those expressly set forth in **Exhibit “B”** attached hereto and incorporated herein and the extended warranties expressly reflected on the Quotation and purchased by Customer.. No other express warranties are offered by Vendor with respect to the Services, and Vendor has not authorized any employee or agent to offer any warranties except those referenced above. SUCH WARRANTIES REFERENCED IN THIS SECTION ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND IN LIEU OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF VENDOR. VENDOR NEITHER ASSUMES (NOR HAS AUTHORIZED ANY PERSON TO ASSUME FOR IT) ANY OTHER WARRANTY OR LIABILITY IN CONNECTION WITH THE SERVICES.

14. Export Controls. Services and Services Software reflected in this Contract are sold or licensed to Customer subject to the U.S. export control laws and regulations (the “Export Control Laws”). Customer shall not export Services or Services Software in contravention of such Export Control Laws.

15. Governing Law; Jurisdiction. THE CONTRACT BETWEEN THE PARTIES REGARDING THE SERVICES SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, USA, WITHOUT REFERENCE TO ITS LAWS RELATING TO CONFLICTS OF LAW. Any legal action arising out of or relating to the sale of Services shall be brought only in the state or federal courts located in Tarrant County, Texas, and the parties irrevocably consent to the jurisdiction and venue of such courts.

16. Binding Agreement. The parties hereto warrant and represent that upon execution hereof, this Contract shall be a legal, valid and binding obligation on them and shall be enforceable against them in accordance with its terms. The individuals signing this Contract warrant and represent that they are duly authorized to sign this Contract on behalf of the parties hereto.

17. Waiver. The failure to comply with or to enforce any term, provision, or condition of this Contract, whether by conduct or otherwise, shall not constitute or be deemed a waiver of any other provision hereof; nor shall such failure to comply with or to enforce any term, provision, or condition hereof constitute or be deemed a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

18. Parties Affected. Nothing in this Contract, whether express or implied, is intended to confer upon any individual or entity, other than the parties hereto (and their respective heirs, representatives, successors, and permitted assigns), any rights or remedies hereunder or otherwise. Nothing in this Contract is intended to relieve or discharge any liability of any party hereto or any third party. No provision in this Contract shall give any individual or entity any right of subrogation against any party hereto.

19. Notices. All notices, requests, demands, and other communications required, provided for, and permitted by this Contract shall be made in writing either (a) by actual delivery (e.g., personally, by commercial courier service, or by confirmed telefacsimile) of the notice, or (b) by the mailing of the notice by United States Postal Service certified or registered mail, return receipt requested, and addressed to the party to be notified at the address set forth on the execution page below (or at such other address as may be given by notice by a party). The notice shall be deemed to be received (i) if by actual delivery, on the date of its receipt by the party, or (ii) if by mail, on the second day on which mail is delivered following the date of deposit in the United States Postal Service.

20. Severability. Should any part, term, or provision of this Contract be declared to be invalid, void, or unenforceable, all remaining parts, terms, and provisions hereof shall remain in full force and effect, and shall in no way be invalidated, impaired, or affected thereby.

21. Assignment. No party to this Contract may assign this Contract without the prior written consent of the other party.

22. Subject Headings. The subject headings of the sections, paragraphs, and subparagraphs of this Contract are included herein solely for the purposes of convenience and reference, and shall not be deemed to explain, modify, limit, amplify, or aid in the meaning, construction, or interpretation of any of the provisions of this Contract.

23. Attorney's Fees and Court Costs. If either party brings an action against the other to enforce any condition or covenant of this Contract, each party shall be individually responsible for its own court costs and attorney's fees.

24. Relationship of the Parties. None of the provisions of this Contract are intended to create, and none shall be deemed or construed to create, any relationship between the parties, other than that of independent contractors. This Contract shall not create the relationship of employer-employee, agency, partnership, or joint venture. Neither party shall have the right or power in any manner to unilaterally obligate the other to any third party, whether or not related to the purpose of this Contract.

25. Entire Agreement. This Contract contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supersedes all prior written or oral agreements or communications between the parties.

26. Force Majeure. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, labor disputes, shortages of suitable parts, or any similar cause beyond the reasonable control of the parties.

27. Budgetary Limitations. Vendor acknowledges and agrees that Customer is a governmental entity and, as such, is subject to an annual budgetary process and the limitation and restrictions of fiscal funding. Notwithstanding any other provision herein, if and to the extent the obligations of this Contract, either in its initial Term or in any automatically or otherwise renewed Term, should continue over into the Customer's subsequent fiscal years following that fiscal year when this Contract was executed and funds are not appropriated or budgeted for this Contract and completion of the Term in question, the Customer may terminate this Contract without penalty and shall have no further obligation or liabilities hereunder. However, if the Contract is terminated pursuant to the terms above, Customer agrees to pay for fees and charges incurred as of the termination date.

28. Tax Exemption. Vendor recognizes that Customer qualifies as a tax-exempt governmental agency pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code and Section 151.309 of the Texas Sales, Excise, and Use Tax Code, and is not responsible for payment of any amounts accountable or equal to any federal, state or local sales, use, excise, personal property, or other taxes levied on any transaction or article provided for by this Contract.

29. Texas Public Information Act (“TPIA”). Vendor acknowledges that Customer is a governmental body under Chapter 552 of the Texas Government Code and thereby acknowledges that information that is collected, assembled, or maintained in connection with the transaction of official business by a governmental body is considered public information potentially subject to disclosure pursuant to a valid TPIA request and hereby assumes full responsibility for challenging any requests for information it considers confidential under Chapter 552. Customer agrees to notify Vendor of any Public Information Act requests that seek disclosure of what Customer reasonably determines to potentially constitute confidential information of Vendor under this Contract; however failure to notify by Customer shall not be deemed a material breach of the Contract. Vendor’s confidential information, which may include, but is not limited to, any trade secrets, financial information, and related proprietary information, (“Confidential Information”) that is provided by Vendor to Customer under the terms of this Contract may be subject to the exception to disclosure applicable to Customer under Chapter 552 of the Texas Government Code, Subchapter C. If a TPIA request for public information is made on Customer to disclose documents or information which contain what Vendor has identified to Customer to be, or is otherwise believed by Customer to be Confidential Information, Customer agrees to (i) promptly notify Vendor of such request for disclosure, and (ii) decline any such request for disclosure of such Confidential Information and file a written request with the Texas Attorney General’s office seeking a determination as to whether such disclosure may be withheld; provided, however, failure to notify by Customer shall not be deemed a material breach of the Contract. Customer is not required to take any further action with respect to any request made for determination by the Attorney General, and after any such request is made, all responsibility for briefing, supplementing and challenging the results of any requests to the Attorney General shall be Vendor’s sole responsibility.

30. Conflicts of Interest and Ethics.

1. Vendor agrees that it will immediately report in writing to the Customer in the event, if ever, Vendor, including any of its officers, directors, employees, contractors or agents, becomes a target of any criminal investigation or any investigation that could result in debarment or exclusion Vendor or such other person from federally or state funded healthcare programs.

(b) Vendor warrants and represents to Customer that Vendor has never been:

1. convicted of a criminal offense;
2. listed by a federal agency as debarred, excluded or otherwise ineligible for federal plan participation;
3. sanctioned by any federal or state law enforcement, regulatory or licensing agency; or,
4. excluded from any state or federal healthcare program.

(c) Vendor further warrants and represents to the Customer that neither Vendor, nor any of Vendor's officers, directors, members, partners, shareholders (excluding shareholders, members and limited partners that own less than 5% of the combined voting power of Vendor), employees, contractors or agents:

1. is currently under criminal investigation or any investigation that could result in debarment or exclusion from federally or state funded healthcare programs; or
2. has ever been:

(i) convicted of a criminal offense that is a felony or a misdemeanor of moral turpitude;

(ii) listed by a federal agency as debarred, excluded or otherwise ineligible for Federal plan participation;

(iii) sanctioned by any federal or state law enforcement, regulatory or licensing agency; or,

(iv) excluded from any state or federal healthcare program.

(d) In the event that any of the foregoing representations in this Section 30(b), (c) and/or (d) ceases to be true, Vendor will immediately report same in writing to the Customer.

(e) Upon receipt of any report required by Vendor hereunder or in the event of a failure to report by Vendor, the Customer may without penalty terminate this Contract and other than the payment of any amounts due and owing through the date of termination, the Customer shall have no further obligations or liabilities hereunder.

31. HIPAA.The Parties acknowledge the existence of applicable legal requirements pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”). Attached to and incorporated in this Contract as **Exhibit "D"** is Customer’s standard Business Associate Insert for Services Agreement ("BAISA"). Vendor acknowledges that for all purposes under the BAISA and this Contract, the Customer is a "Covered Entity" and Vendor is a "Business Associate". Furthermore, Vendor agrees to comply with and satisfy all of the terms and conditions of the BAISA applicable to a Business Associate. Any violation of or failure to satisfy the terms and conditions of the BAISA shall be a breach of this Contract. Vendor agrees that it will negotiate in good faith an amendment to this Contract if, and to the extent required by, the provisions of HIPAA and regulations promulgated thereunder, in order to assure that this Contract is consistent therewith.

32. Prohibition on Use of Name and Logo*.* Vendor agrees that it will not, without the prior written consent of Customer, use the names, logos, symbols, trademarks or service marks of the Customer, including but not limited to those associated with JPS Health Network, for any purposes or uses (expressly including but not limited to for Vendor’s advertising, promotion or other marketing) other than those reasonably related to performing and completing the obligations under this Contract. This section titled "Prohibition on Use of Name and Logo" shall survive the termination or expiration of this Contract.

33. Insurance*.* During the term of this Contract, Vendor will maintain commercial general liability, property, and/or directors and officers insurance for the Services provided and the obligations performed under the Contract in the amounts set forth in the Quotation. Furthermore, upon the execution of this Contract and upon request any time thereafter, Vendor will furnish a then current certified certificate(s) of insurance.

34. Termination Right*.* In the event of a change-in-control (defined below), Customer may without penalty terminate this Contract and other than the payment of any amounts due and owing through the date of termination, the Customer shall have no further obligations or liabilities hereunder. A "change-in-control" means that (a) there occurs a reorganization, merger, consolidation or other corporate transaction involving Vendor (a "Transaction"), in each case with respect to which the owners of Vendor immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of Vendor or any other entity resulting from such Transaction; or, (b) all or substantially all of the assets of Vendor are sold, liquidated or distributed.

35. Compliance with Laws*.* In providing the services required by this Contract, Vendor must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and non-discrimination laws and regulations. Vendor shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits.

36. Conflicting Provisions. To the extent there is any conflict between the terms of the Contract and the terms of the Quotation and any other documents either attached to this Contract as exhibits or any other identified in writing by Vendor and Customer as a part of the Contract documents, the terms of this Contract are controlling.

VENDOR: CUSTOMER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [full legal name] Tarrant County Hospital District d/b/a JPS Health Network

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT “A”**

Consisting of the following pages \_\_ through \_\_

[Attach the Quotation or, if no Quotation, pages describing the Services,

specific warranties, if any, included]

**EXHIBIT “B”**

**LICENSE AGREEMENT FOR OPERATING SOFTWARE**

**SOFTWARE LICENSE TERMS**

Upon execution of this Contract by Customer, the following Software License Terms shall govern the use of the Software, as defined below, by the Customer identified in this Contract.

1. DEFINITIONS:

1 .1 “Customer’s Facility” means Customer’s facility at which the Software licensed hereunder is initially installed by Vendor.

1 .2 “Documentation” means the operations manual and system administration manual provided by Vendor for each Software product.

1 .3 “Operating Equipment” means the computer of Customer on which the Software is operated.

1 .4 “Software” means the Service Software as defined in Section 7 of this Contract, including without limitation all computer programs (including any replacement or additional programs or code provided by Vendor from time to time to supplement or amend previously provided software), media, documentation and other tangible or intangible information relating to a Services which is delivered or disclosed by Vendor to Customer or its employees or agents.

1 .5 “Software Installation Date” means the date that Software is installed on Operating Equipment at Customer’s facility and is ready for Customer to commence initial use.

2. SOFTWARE LICENSE: Vendor hereby grants to Customer a non-exclusive and non-transferable license to use the Software subject to the scope limitations set forth in this Contract. Customer agrees that, without the prior written consent of Vendor, which shall not be unreasonably conditioned, delayed or withheld, it will not use the Software for any purpose other than its intended use with the Operating Equipment. In the event such written consent is given by Vendor, it shall be the sole responsibility of the Customer to acquire any necessary additional equipment. THIS LICENSE DOES NOT EXTEND TO ANY MAINTENANCE OR SERVICE SOFTWARE SHIPPED TO OR LOCATED AT CUSTOMER’S FACILITY WHICH IS INTENDED TO ASSIST VENDOR EMPLOYEES IN THE INSTALLATION, TESTING, SERVICE, AND MAINTENANCE OF THE OPERATING EQUIPMENT.

3. PAYMENTS: Customer agrees to pay to Vendor a one time Software license fee, if any, which is specifically stated in the Quotation (**Exhibit “A”** attached to the Contract) pursuant to the provisions thereof, and if no Software license fee is specifically stated as such in the Quotation (**Exhibit “A”** attached to the Contract), all Software license fees shall be deemed to be included in the Price of the other Services. No other fees or charges shall be due or payable by Customer in connection with the use and operation of the Software in accordance with this Contract.

4. CONFIDENTIALITY *I* INTELLECTUAL PROPERTY RIGHTS: Customer acknowledges that the Software contains the proprietary property of Vendor and, if applicable, third parties, and Customer will take no action detrimental to such property rights. No ownership in, or title to, Software or any intellectual property rights relating thereto is transferred to Customer and Customer has no interest in or right to use the Software except in accordance with the terms of the Software Licenses granted herein. Customer agrees that, during the Term of each Software License granted herein and thereafter, it will take reasonable steps to hold the Software and Documentation in confidence not to disclose or otherwise make the Software or any part thereof available to any third party except as necessary to use or implement the Software as contemplated herein, and except as required by applicable Texas law. Customer further agrees as follows:

4.1 It will not remove or permit to be removed from any item included in the Software any proprietary, confidential or copyright notices, markings or legends placed thereon by Vendor.

4.2 Customer shall not copy, translate, modify, reverse compile, reverse assemble or otherwise reverse engineer, or create derivative works based on any of the Software, or permit another to do so, except as occurs in the course of using the Software in accordance with its documentation. However, Customer may make and maintain one copy of the Software for back up and recovery purposes.

4.3 Upon the termination of the Software License, Customer will return to Vendor all tangible portions of the Software delivered or disclosed to Customer by Vendor, together with all copies thereof and shall delete or destroy all portions of the Software that have been installed on the Operating Equipment or elsewhere.

4.4 All changes, modifications or improvements made or developed with regard to the Software by Vendor, whether or not made or developed at Customer’s request, shall remain the property of Vendor and Customer hereby assigns all its rights in such changes, modifications and improvements to Vendor. Customer shall have the right to use any such changes, modification and improvements that are delivered to Customer by Vendor pursuant to these Software License terms.

5. EXPRESS WARRANTIES AND EXCLUSION OF IMPLIED WARRANTIES:

5.1 Vendor warrants that it either owns or has the right to license the Software. Vendor further warrants that through the earlier of fourteen months from the date of delivery or twelve months from the Software Installation Date applicable to any Software product, the Software, when used on the Operating Equipment in combination with such additional equipment as may be recommended by Vendor from time to time as necessary in order to operate any changes, modifications or improvements provided by Vendor as part of Software maintenance, will perform in accordance with its Documentation. Acquisition of additional equipment required as a result of Software changes, modifications or improvements is the sole responsibility of Customer. TO THE EXTENT THAT WARRANTIES AS TO THIRD-PARTY SOFTWARE DIFFER FROM THE WARRANTIES SET FORTH IN THIS PARAGRAPH, SUCH THIRD PARTY WARRANTIES SHALL APPLY TO SUCH THIRD PARTY SOFTWARE.

5.2 THE FOREGOING WARRANTIES DO NOT APPLY TO THE SOFTWARE IF LOCATED OR USED IN WHOLE OR IN PART AT ANY PLACE OTHER THAN CUSTOMER’S FACILITY OR IF THE OPERATING EQUIPMENT IS USED IN VIOLATION OF THE PROVISIONS OF PARAGRAPH 2 OF THESE SOFTWARE LICENSE TERMS OR IF THE CUSTOMER HAS FAILED TO INSTALL ALL APPLICABLE SOFTWARE UPDATES MADE AVAILABLE TO CUSTOMER BY VENDOR DURING THE WARRANTY PERIOD. WARRANTIES ARE MADE TO AND FOR THE BENEFIT OF CUSTOMER ONLY. THE FOREGOING ARE VENDOR’ SOLE WARRANTIES. VENDOR MAKES NO OTHER WARRANTY OF ANY KIND WHATEVER, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY VENDOR AND EXCLUDED FROM THESE SOFTWARE LICENSE TERMS.

6. INDEMNIFICATION: VENDOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CUSTOMER FROM AND AGAINST ANY CLAIM MADE AGAINST CUSTOMER ALLEGING THAT ANY SOFTWARE PRODUCT INFRINGES A UNITED STATES PATENT, TRADEMARK OR COPYRIGHT OF A THIRD-PARTY, PROVIDED VENDOR IS GIVEN PROMPT WRITTEN NOTICE OF, AND FULL AND COMPLETE CONTROL OF THE DEFENSE AND ANY SETTLEMENT, AND FULL COOPERATION IN THE DEFENSE OF, SUCH CLAIM. AT ANY TIME AFTER ANY SUCH CLAIM HAS BEEN ASSERTED, VENDOR MAY, AT ITS OPTION AND EXPENSE, AND SHALL, IN THE EVENT ANY SOFTWARE PRODUCT IS HELD TO CONSTITUTE AN INFRINGEMENT, EITHER PROCURE FOR CUSTOMER THE RIGHT TO CONTINUE USING THAT PRODUCT, OR REPLACE OR MODIFY THAT PRODUCT SO THAT IT BECOMES NON-INFRINGING, OR REFUND TO CUSTOMER THE SOFTWARE LICENSE FEE PAID BY CUSTOMER TO VENDOR FOR THAT SOFTWARE PRODUCT. VENDOR SHALL NOT BE LIABLE TO CUSTOMER IF ANY INFRINGEMENT OR CLAIM IS BASED UPON: (I) THE USE OF ANY SOFTWARE PRODUCT IN VIOLATION OF THE SOFTWARE LICENSE; (II) THE USE OF THE SOFTWARE PRODUCT IN COMBINATION WITH ANY SOFTWARE OTHER THAN PROGRAMS LICENSED BY VENDOR TO CUSTOMER FOR SUCH USE; OR (III) THE MODIFICATION OF ANY SOFTWARE PRODUCT BY OTHER THAN VENDOR.

7. THE LICENSE HEREBY GRANTED TO THE CUSTOMER DOES NOT INCLUDE ANY RIGHT TO USE THE SOFTWARE (FOR PURPOSES OTHER THAN OPERATION OF THE OPERATING EQUIPMENT) OR TO COPY, REPRODUCE, SELL, ASSIGN, TRANSFER, OR SUBLICENSE THE SOFTWARE FOR ANY PURPOSE, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN PERMISSION OF THE VENDOR. If such permission is obtained, Customer agrees to apply Vendor’s copyright notice or other identifying legends to such copies or reproductions.

8. The rights herein granted to Customer shall not affect the exclusive ownership by Vendor of the Software or of any trademarks, copyrights, patents, trade secrets, proprietary rights, or other property rights of Vendor (or any of Vendor’s suppliers) pertaining to the software.

9. THIRD-PARTY SOFTWARE: The Services description in this Contract identifies any Software which is licensed from third parties and included in “Software”, as well as the number of licenses provided for such third party software. If no third party owners of the Software are specifically identified in the Services description in this Contract, Customer will be entitled to deal with the Software and act with respect to the Software as if Vendor is the owner and licensor of all thereof. Transfer of such Software to Customer from Vendor is made subject to the terms of the license granted by the original licensor. Customer hereby acknowledges and agrees to be bound by the terms of the license granted by the original licensor. If Customer intends use beyond that licensed herein, Customer must obtain additional licenses from Vendor or the third-party software vendor. Vendor reserves the right to replace or substitute any third-party software with reasonably comparable Software on substantially similar terms and conditions.

10. TERMINATION: Either party may terminate the licenses granted hereunder in the event of a material breach of the Contract by the other party, including without limitation failure to pay any amounts owed hereunder when due and the breach of any express warranty in Section 5 above, if such material breach is not cured within forty-five (45) days of receipt of written notice of such breach. The failure to exercise any right granted to either party under these Software License Terms shall not operate as a waiver of any right or remedy.

11. ASSIGNMENT: Neither party may assign any rights or duties under this Contract without the consent of the other party, except to an affiliated entity, in which case that party shall remain obligated as a guarantor of the assignee’s performance, and in no event shall such assignment expand the license granted hereunder.

12. If the Customer modifies the Software in any manner, all warranties associated with the Software and the Operating Equipment shall become null and void. If the Customer or any of its officers, employees, or agents should devise any revisions, enhancements, or improvements in the Software, Customer shall disclose such improvements to Vendor and Vendor shall have a nonexclusive royalty-free license to use such revisions, enhancements and improvements and the right to grant sub-licenses thereof.

13. Customer shall exercise reasonable efforts to cause each authorized user of the Software to abide by the terms and conditions of this License Agreement as if each were a party hereof.

14. This License shall continue for as long as the Customer continues to use the Operating Equipment, except that Vendor may terminate this license in the event of any default by the Customer. The Customer agrees to return the Software and any authorized copies thereof to Vendor immediately upon expiration or termination of this license.

**EXHIBIT "C"**

**BUSINESS ASSOCIATE INSERT FOR SERVICES AGREEMENT**

**USE AND DISCLOSURE OF PHI**

A. Acknowledgment of HIPAA Obligations and Other Regulations Implementing HIPAA. The parties acknowledge that federal regulations set forth in the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("**HITECH**") relating to the confidentiality, integrity, and accessibility of protected health information (whether created, maintained, accessed, stored or transmitted electronically or otherwise) require covered entities to comply with the privacy and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time-to-time, 45 C.F.R. parts 160 and 164, subparts A and E ("**Privacy Rule**") and 45 C.F.R. parts 160 and 164, subparts A and C ("**Security Rule**"). The Privacy Rule and Security Rule are sometimes collectively referred to herein as the"**Privacy and Security Standards**". The Privacy and Security Standards require Covered Entity to ensure that Business Associates who create, receive, maintain, access, store, or transmit confidential information in the course of providing services on behalf of Covered Entity comply with certain obligations regarding the confidentiality, integrity, and availability of health information.

B. Definitions.

1. "Breach" shall mean the acquisition, access, use or disclosure of PHI (defined below) in a manner not permitted under the 45 C.F.R. Part 164, Subpart E, which "compromises the security or privacy of the PHI" as set forth in 45 C.F.R. § 164.402; provided however, that a breach shall not include (i) any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in a further use or disclosure in a manner not permitted under 45 C.F.R. Part 164, Subpart E; (ii) any inadvertent disclosure by a person authorized to access PHI at Covered Entity or Business Associate to another person authorized to access PHI at Covered Entity or Business Associate, or an organized health care arrangement in which Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under 45 C.F.R. Part 164, Subpart E; or (iii) a disclosure of PHI where Covered Entity or Business Associate has a good faith belief that the unauthorized person to whom the disclosure was made would not have reasonably been able to retain the disclosed information.

2. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean the party set forth in the introductory paragraph to this Agreement.

3. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean Tarrant County Hospital District d/b/a JPS Health Network.

4. "Designated Record Set" shall mean a group of records maintained by or for Covered Entity that is: (i) the medical records and billing records about Individuals (defined below) maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Covered Entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.

5. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

6. “Individual” shall mean the person who is the subject of the Protected Health Information (defined below).

7. "Protected Health Information" and "PHI" shall mean protected health information defined in 45 C.F.R. § 160.103 and is limited to information created or received by Business Associate from or on behalf of Covered Entity. PHI includes in its definition individually identifiable health information that is transmitted by or maintained in electronic media, which may be separately referred to herein as Electronic Protected Health Information ("EPHI"). PHI excludes individually identifiable health information: (i) in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (iii) in employment records held by Covered Entity in its role as employer; and (iv) regarding a person who has been deceased for more than 50 years.

8. “Required by law” shall mean a mandated contained in law that compels a use or disclosure of PHI and that is enforceable in a court of law.

9. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

10. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI maintained by, or interference with system operations in an information system maintained by, Business Associate that contains PHI received from Covered Entity.

11. "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable through the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of HITECH as amended, which guidance may be available on the Department of Health and Human Services website.

12. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Data Aggregation, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Subcontractor, and Use.

C. Purposes for which Protected Health Information, including Electronic Protected Health Information, May be Used or Disclosed. In connection with the services provided by Business Associate on behalf of Covered Entity pursuant to this Business Associate Insert for Services Agreement (“BAISA”), Covered Entity may use, access, and disclose PHI to Business Associate for the purposes of Business Associate providing services to Covered Entity (“Services”), as set forth in the underlying agreement to which this BAISA is attached (“Agreement”).

D. Business Associate Obligations. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, including, but not limited to the Privacy and Security Standards published by the United States Department of Health and Human Services implementing Part C of HIPAA, including without limitation:

1. *Knowledge of HIPAA*. Business Associate agrees to review and understand HIPAA as it applies to Business Associate, and to comply with the applicable requirements of HIPAA and HITECH (including without limitation 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316), as well as any applicable amendments. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law.

2. *Use and Disclosure of PHI*.

(a) Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Agreement in providing Services to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate HIPAA if used or disclosed by Covered Entity.

(b) Business Associate may use and disclose PHI as required by law.

(c) Business Associate agrees to make uses and disclosure and requests for PHI consistent with Covered Entity’s Minimum Necessary policies and procedures, i.e., only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request may be disclosed.

(d) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except that Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out its legal responsibilities and its responsibilities under this BAISA. However, the Business Associate shall in such case:

1. provide training to members of its workforce regarding the confidentiality requirements in the Privacy and Security Standards and this BAISA;

2. obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person or entity and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached; and

3. agree to notify the designated Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this BAISA or for a purpose not expressly permitted by the Privacy and Security Standards.

3. *Disclosure to Third Parties*. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions that apply to the Business Associate under this BAISA. Business Associate shall ensure that any agent, including a subcontractor, to which the Business Associate provides PHI, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. The Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were the Business Associate's own acts, failures or omissions, to the extent permitted by law. The Business Associate further expressly warrants that its agents will be specifically advised of, and will comply in all respects with, the terms of this BAISA. Furthermore, in accordance with Section 13404 of HITECH, Business Associate shall comply with 45 C.F.R. § 164.504(e)(1)(ii).

4. *Data Aggregation*. In the event that the Business Associate works for more than one Covered Entity, Business Associate is permitted to use and disclose PHI, but only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the Privacy and Security Standards.

5. *De-Identified Information*. Use and disclosure of de-identified health information is permitted, but only if (i) the precise use is disclosed to Covered Entity and permitted by Covered Entity in its sole discretion and (ii) the de-identification is in compliance with 45 C.F.R. §164.502(d), and any such de-identified health information meets the standard and implementation specifications for de-identification under 45 C.F.R. §164.514(a) and (b), or such regulations as they may be amended from time-to-time.

6. *Notice of Privacy Practices*. Business Associate agrees that it will abide by the limitations of any Notice of Privacy Practices ("**HIPAA Notice**") published by Covered Entity of which it has knowledge. Covered Entity shall provide to Business Associate such HIPAA Notice when it is adopted. Any use or disclosure permitted by this BAISA may be amended by such HIPAA Notice. The amended HIPAA Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to such notice.

7. *Withdrawal of Consent or Authorization*. If the use or disclosure of PHI in this BAISA is based upon an Individual's specific consent or authorization for the use of his or her PHI, and the Individual revokes such consent or authorization in writing, or the effective date of such authorization has expired, or the consent or authorization is found to be defective in any manner that renders it invalid, the Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such Individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy and Security Standards expressly applies.

8. *Use or Disclosure that Would Violate HIPAA*. Business Associate is prohibited from further use or disclosure of PHI in a manner that would violate the requirements of the Privacy and Security Standards if the PHI were used or disclosed by Covered Entity, except to the extent permitted in paragraphs (1) and (3) above.

9. *Safeguards*. Business Associate is required to implement and maintain administrative, physical, and technical safeguards with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement, in accordance with Subpart C of 45 C.F.R. Part 164 that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and ensure that such PHI is not received, used, accessed, stored, transmitted, or disclosed other than as provided by this BAISA or as required by law.

10. *Securing PHI*. Business Associate shall secure any and all EPHI covered by this BAISA in accordance with the guidance issued by the Secretary entitled "Guidance Specifying the Technologies and Methodologies that Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals," as amended and updated from time to time. In addition, with respect to PHI covered by this BAISA, Business Associate shall comply with any guidance issued by the Secretary under the authority of HITECH Section 13401(c). Business Associate shall use best efforts to avoid the creation or storage of paper PHI.

11. *Records Management*. Upon termination of this BAISA or the Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form and shall comply with federal and state laws as they may be amended from time-to-time governing the maintenance or retention of PHI. If the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity of the reason thereof, and Business Associate agrees to extend the protections of this BAISA to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the information infeasible for so long as Business Associate retains the PHI.

12. *Individual Rights Regarding Designated Record Sets*. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:

(a) Correction of PHI. Business Associate agrees that it will amend PHI maintained by Business Associate as requested by Covered Entity pursuant to 45 C.F.R. § 164.526.

(b) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity under conditions and limitations required under 45 C.F.R. § 164.524 as it may be amended from time-to-time. Covered Entity is required to take action on such requests as soon as possible but not later than 30 days following receipt of the request. Under Texas law, Business Associate must take action within 15 days of receiving applicable fees for copies or, if no fees are charged or there is a medical emergency, within 15 days of receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline, to the extent the requested information is maintained by Business Associate and not Covered Entity.

The information shall be provided in the form or format requested, if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged.

(c) Individual Right to Amendment. Business Associate agrees that it will accommodate an Individual's right to have access to and amend PHI about the Individual in a Designated Record Set in accordance with the Privacy and Security Standards set forth at 45 C.F.R. § 164.526 as it may be amended from time-to-time, unless the regulation provides for a denial or exception that applies.

13. *Accounting of Disclosures*. Business Associate agrees to maintain documentation of and make available to the Individual and/or Covered Entity from whom the PHI originated, information required for an accounting of disclosures of PHI with respect to the Individual, in accordance with 45 C.F.R. §164.528 as it may be amended from time-to-time, and incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including any disclosures prior to the compliance date of the Privacy and Security Standards).

(a) Covered Entity is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. Business Associate agrees to use its best efforts to assist Covered Entity in meeting this deadline.

(b) Such accounting must be provided without cost to the Individual or Covered Entity if it is the first accounting requested by an Individual within any 12-month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Individual in advance of the fee and is afforded an opportunity to withdraw or modify the request.

(c) Such accounting shall be provided as long as the Business Associate maintains the PHI.

14. *Policies and Procedures*. The Business Associate shall implement and maintain reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of Part 164 of Title 45, Code of Federal Regulations, including, but not limited to, the provision of a process for complaints regarding Business Associate's obligations under this BAISA, HITECH, and HIPAA and imposition of sanctions against workforce members who fail to comply with the requirements of this BAISA, HITECH, and HIPAA.

15. *Security Incident*. The Business Associate agrees to immediately report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any Security Incident of which the Business Associate becomes aware.

16. *Notification in Case of Breach*.

(a) The parties acknowledge and agree that the express statutory language of HITECH including, but not limited to, the breach notification requirements under Section 13402 of HITECH (the “Breach Notification Rule”) is directly applicable to Business Associate and is hereby incorporated into this BAISA.

(b) The Business Associate shall, following the discovery of any breach of unsecured PHI:

(i) initially notify Covered Entity without unreasonable delay and in no case later than three (3) calendar days after discovery of a breach;

(ii) notify each Individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed as a result of such breach; and

(iii) notify Covered Entity of such breach in accordance with 45 C.F.R. § 164.410. Such notice shall include:

1. the identification of each Individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed as a result of such breach;

2. a brief description of what happened, including the date of breach and date of discovery;

3. a description of the types of unsecured health information involved in the breach (i.e., whether the full name, social security number, etc. was disclosed);

4. the steps the Individual should take to protect themselves from potential harm resulting from the breach;

5. a brief description of what the Business Associate involved is doing to investigate the breach, to mitigate losses, and to protect against further breaches; and

6. contact procedures for Covered Entity or Individuals to ask questions or learn additional information, which shall include a toll free number, an email address, Web site, or postal address.

(c) All notifications under this Section 16 shall be made without unreasonable delay and:

(i) if to an Individual pursuant to Section 16(b)(ii), no later than sixty (60) calendar days following the discovery of such breach by the Business Associate, as defined by 45 C.F.R § 164.410;

(ii) if to Covered Entity pursuant to Section 16(b)(iii), no later than forty-five (45) calendar days following the discovery of such breach by the Business Associate, as defined by 45 C.F.R § 164.410.

(d) All notifications under subsection (b)(ii) of this Section 16, shall comply with 45 C.F.R. § 164.404(d).

(e) Business Associate shall implement a reasonable system for discovery of breaches of unsecured PHI. Business Associate shall notify Covered Entity of any and all breaches of unsecured PHI. A breach shall be treated as discovered by Business Associate on the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate is deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach), who is an employee, officer or other agent of the Business Associate.

(f) In the event Business Associate discovers a breach of unsecured PHI, Covered Entity shall decide how and when the notification to Individuals and media shall be provided and shall approve the content of such notifications. At the request of Covered Entity and in Covered Entity's sole discretion, Business Associate shall provide the notification to Individuals and/or the media as directed by Covered Entity, and/or reimburse Covered Entity for the cost of notifying Individuals and/or the media.

17. *Subcontractors*. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and § 164.308(b)(2), if applicable, Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHIon behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

18. To the extent the Business Associate is to carry out one or more of Covered Entity’s obligations under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

E. Internal Practices, Books, and Records. The Business Associate shall make available its internal practices, policies, procedures, books, and records relating to the use and disclosure of PHI received from Covered Entity, created or received by the Business Associate on behalf of Covered Entity, to the Secretary for the purpose of determining Covered Entity's compliance with HIPAA, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary.

F. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief ), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate in connection with the performance of Business Associate's duties under this BAISA. This indemnity shall apply even if Covered Entity is alleged to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of the Business Associate. Covered Entity shall provide the Business Associate with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist the Business Associate in establishing a defense to such action.

These indemnities shall survive termination of this BAISA and the Agreement, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

G. Mitigation. If Business Associate violates this BAISA or HIPAA, Business Associate agrees to mitigate any damage caused by such violation.

H. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.

I. Termination for Breach. Without limiting the termination provisions herein, if Business Associate breaches any provision of this BAISA, Covered Entity may, at its option, access and audit the records of Business Associate related to its use and disclosure of PHI, require Business Associate to submit to monitoring and reporting, and such other conditions as Covered Entity may determine is necessary to ensure compliance with this BAISA; or Covered Entity may terminate this BAISA and the Agreement on a date specified by Covered Entity.

J. Survival of Key Provisions. The provisions of this BAISA and the respective rights and obligations of the Business Associate under Section D.11. of this BAISA shall survive the termination of this BAISA and the Agreement.

K. Amendments. Covered Entity and Business Associate agree to enter into good faith negotiations to amend this BAISA to come into compliance with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI. Covered Entity may terminate this BAISA upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.

L. Regulatory References. A citation in this BAISA to the Code of Federal Regulations (C.F.R.) shall mean the cited section as that section may be amended from time to time.

M. Obligations of Covered Entity. If deemed applicable by Covered Entity, Covered Entity shall:

1. provide Business Associate a copy of its HIPAA Notice produced by Covered Entity in accordance with 45 C.F.R. 164.520 as well as any changes to such HIPAA Notice;

2. provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate’s permitted or required uses and/or disclosures;

3. notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522;

4. notify Business Associate of any amendment to PHI to which Covered Entity has agreed that affects a Designated Record Set maintained by Business Associate; and

5. if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual’s right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI.

**Exhibit “D”**

**Vendor Certification Form**

|  |  |  |
| --- | --- | --- |
| **Instructions:**  Vendors doing business with the District are requested to complete this form in its entirety. If you are a Disadvantaged Business Enterprise, the requested information pertains to the owner(s) of the company. This form must be signed and dated by an authorized representative of your company. | | |
| Respondent’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Years in business under same name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Previous Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  General E-mail Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Current Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Sales Rep/Customer Service Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  E-mail Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Sales Rep/Customer Service Phone#: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Fax#: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Accounts Receivable Contact Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Phone # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ TCHD dba JPS Account Receivable # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |
| **List your major commodities:** | | |
| **Check all that apply with respect to major commodity:**  Supply  Equipment  Service  (List type of service, i.e. temp. agency, surveyor, etc: \_\_\_\_\_\_\_  Consultant Distributor  Manufacturer Contractor Subcontractor  Approximate dollar volume of business with the District in past twelve (12) months: **$\_\_\_\_\_\_\_\_\_\_\_\_** | | |
| **ETHNICITY OF company’S American OWNERSHIP** (Please place an X in the appropriate box**:** | | |
| Asian Pacific  African American  Caucasian  Hispanic  Native American | Other  \_\_\_\_\_\_\_\_\_\_\_\_ (SPECIFY) | Public OWN STOCK:  yES  nO |
|  |  | MAJORITY OWNER :  mALE  fEMALE |

**INCLUDE THE FOLLOWING:**

Copy of certificate(s) (State of Texas, North Central Texas Regional Certification Agency (NCTRCA), Historically Underutilized Businesses (HUB), or any agency confirming your business as being a women/minority-owned or small business enterprise.

***signature*:** *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* ***Title:*** \_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Print Name:*** *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* ***Date:*** *\_\_\_\_\_\_\_\_\_\_*

**Exhibit “E”**

**Conflict of Interest Questionaire**

Chapter 176 to the Texas Local Government Code (“Chapter 176”) contains provisions mandating the public disclosure of certain information concerning persons doing business or seeking to do business with TCHD (“Disclosure Information”). The Disclosure Information relates to affiliations, and business and financial relationships such persons may have with members of TCHD’s governing body, its officers and certain other high level TCHD employees. Each Prospective Vendor is charged with the responsibility of becoming familiar with the requirements of Chapter 176 and for complying with the applicable provisions thereof.

Each Prospective Vendor shall complete the Conflict of Interest Questionnaire set forth below and shall return the completed Conflict of Interest Questionnaire with its RFP Response.

A complete copy of Chapter 176 of the Local Government Code may be found at:

<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>

For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

1. a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
2. a transaction conducted at a price and subject to terms available to the public; or
3. a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

1. a contract between the local governmental entity and vendor has been executed; or
2. the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

1. a contract between the local governmental entity and vendor has been executed; or
2. the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

[Balance of page left blank intentionally. Conflict of interest questionnaire follows.]

|  |  |  |
| --- | --- | --- |
| **This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**  This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).  By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.  A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor. | | **OFFICE USE ONLY** |
| Date Received |
| **1** | Name of vendor who has a business relationship with local governmental entity. |
|  |
| **2** | Check this box if you are filing an update to a previously filed questionnaire**.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.) | |
|  |
| **3** | Name of local government officer about whom the information is being disclosed.  Name of Officer | |
|  |
| **4** | Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.  Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?  Yes No   1. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?   Yes No | |
|  |
| **5** | Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more. | |
|  |
| **6** | Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1). | |
|  |
| **7** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of vendor doing business with the governmental entity Date | |

**Exhibit “F”**

**Vendor’s Proposed Amendment**

**RFP No. LH-0534**

The District will NOT review, consider or approve any exceptions, additions, deletions or revisions made by Vendor to the RFP or to its Exhibits and Attachments. The District will only consider those exceptions, additions, deletions or revisions (collectively, the “Proposed Revisions”) as are set forth by Vendor specifically on this form (See Proposed Revisions section on the next page). The Vendor may submit its Proposed Revisions below in this separate Vendor’s Proposed Amendment; ONLY the Proposed Revisions specified in this Amendment (you may attach additional pages if you need additional space) will be considered. The District will review only those Proposed Revisions set forth in this Proposed Amendment, and may accept or reject the same at its sole discretion. No such Proposed Revisions will become effective unless accepted by the District and agreed to in writing and signed by both parties.

In submitting a response to this RFP, the Vendor agrees to accept the terms and conditions set forth in this RFP or incorporated herein by reference (“JPS Terms and Conditions” or “Contract Form”). The successful Vendor will be expected to enter into a contract which contains substantially the same JPS Terms and Conditions as are included in Exhibit C to this RFP. In no event is Vendor permitted to submit its own standard contract terms and conditions in response to this solicitation. If Vendor attempts to substitute its own standard contract terms and conditions in response to this solicitation the Vendor’s Response may be rejected by The District without further examination.

Clearly indicate the portions of the RFP to which you propose an amendment. Be specific as to whether you want to delete language, add language or replace language.

The District considers the Vendor to agree to all terms and conditions of the Contract Form (including Exhibits), unless otherwise indicated herein. Absence of Proposed Revisions (next page) will constitute agreement for those terms not herein addressed, and there will be no further negotiations regarding the same. The District will only review Proposed Revisions included in this **Vendor’s Proposed Amendment.**

**Vendor *MUST* check the appropriate response below:**

\_\_\_\_\_ Vendor accepts Contract Form (including Exhibits) without exception.

OR

\_\_\_\_\_ Vendor proposes exceptions/modifications to the Contract Form (including Exhibits). Summarize any and all exceptions to Contract Form (including Exhibits) below. With respect to the Exhibit C, Terms and Conditions, enclose both a red-lined version of Exhibit C, Terms and Conditions that clearly shows each proposed exception/modification, and provide written documentation to substantiate each proposed exception/modification using the table below. *The District considers the Vendor to agree to all terms and conditions of the Contract Form (including Exhibits), unless otherwise indicated herein. Absence of Proposed Revisions will constitute agreement for those terms not herein addressed, and will not be subject to further negotiation.*

**Proposed Revisions**

**In the “Section/Addition” column, indicate page, section and paragraph number of language you propose to revise (if applicable) and include proposed revised language in “Proposed Revision” column. If the proposed revision does not affect current RFP language, indicate that such language would be additional language in the “Section/Addition” column. If you are attaching a red-lined version of Exhibit C, please indicate that below and include attachment:**

|  |  |
| --- | --- |
| **Section/Addition** | **Proposed Revision** |
|  |  |
|  |  |
|  |  |
|  |  |
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**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signature**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Title**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date**