**AGREEMENT FOR TRAFFIC MANAGEMENT CONTROLLER
FIRMWARE/SOFTWARE**

**BETWEEN
THE CITY OF SAN ANTONIO**

AND

INTELIGHT, INC.

This Agreement for Traffic Management Controller Firmware/Software (this "**Agreement**") is entered into by and between the City of San Antonio, a Texas Municipal Corporation (the "**City**"), and Intelight, Inc., an Arizona For-Profit Corporation ("**Contractor**"), referred to collectively herein as the "**Parties**."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

RECITALS

WHEREAS, the City desires to hire Contractor to provide specialized software used to manage traffic operations at signalized intersections and control pedestrian hybrid beacons; and

WHEREAS, Contractor represents that it possesses the knowledge, ability, professional skills, and qualifications to perform this work in an expeditious and economical manner consistent with the City's interests.

NOW THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, the Parties agree as follows:

Article 1 - Definitions

1.1 <u>Defined Terms</u>. Each term defined in the preamble of this Agreement has its assigned meaning, and each of the following terms has the meaning assigned to it:

"**City's Project Manager**" means the person(s) designated by the City to perform the duties and responsibilities specified by and in accordance with Sections 6.2 of this Agreement.

"**Contract Documents**" has the meaning assigned to it in Section 3.1 of this Agreement.

"**Contractor's Project Manager**" means the person designated by Contractor to perform the duties and responsibilities specified by and in accordance with Section 6.1 of this Agreement.

"**Cure**" has the meaning assigned to it in Section 8.4 of this Agreement.

"**Director**" means the Director of the City's specified Department, or Director's designee.

"**Documents**" has the meaning assigned to it in Section 12.5 of this Agreement.

"**Enhancements**" means changes to the system that make the system run better and add functionality that were not in the original specifications.

"**Items**" means all hardware and services, including components, intermediate assembles, troubleshooting, training, and maintenance and support.

"**Maintenance**" means any upgrade or modification of a work product or artifact after delivery to correct faults or improve performance or other attributes.

"**Retention Period**" has the meaning assigned to it in Section 12.5 of this Agreement.

"**Software**" means the MAXTIME software, including its code and data, to be installed on the traffic signal controller hardware, including each license and all Enhancements, Maintenance, and warranty work. Any use of the word "firmware" shall also mean Software.

"**Support**" means assistance provided by Contractor to City by telephone or e-mail during City's regular business hours to answer questions regarding the use of the system.

"**Term**" has the meaning assigned to it in Section 2.1 of this Agreement.

Article 2 - Term of Agreement

2.1   Term of Agreement. This Agreement begins upon the effective date of the ordinance awarding the contract or date specified in the award letter, whichever is later, and ends March 31, 2022 (the "**Term**"), unless terminated earlier in accordance with the provisions of this Agreement.

2.2   Renewal. At the City's option, this Agreement may be renewed under the same terms and conditions for two additional one-year periods. Renewals shall be in writing and signed by the City's Finance Department Director, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore.

2.3   Temporary Short Term Extensions. The City shall have the right to extend this Agreement under the same terms and conditions beyond the original term or any renewal thereof, on a month to month basis, not to exceed three months. Said month to month extensions shall be in writing, signed by the City's Finance Department Director, and shall not require City Council approval, subject to and contingent upon appropriation of funding therefore.

Article 3 - Contract Documents

3.1   The term "**Contract Documents**" means the documents, which contain the agreements of the Parties with respect to this transaction. The Contract Documents shall consist of this Agreement, the Requirements Traceability Matrix (**Attachment A**), the Scope of Services (**Attachment B**), the City of San Antonio Data Security Policy (**Attachment C**), the Price Schedule (**Attachment D**), and the Travel and Related Expense Forms (**Attachment E**), all of which are attached hereto and are incorporated into this Agreement by this reference.

Article 4 - Order of Precedence

4.1   In the event of any conflict or inconsistency among the Contract Documents, said conflict or inconsistency shall be resolved by giving precedence to the documents in the following order:

(a)   This Agreement;

(b)   Requirements Traceability Matrix (**Attachment A**);

(c)   Scope of Services (**Attachment B**);

(d)   The City of San Antonio Data Security Policy (**Attachment C**);

(e)   Price Schedule (**Attachment D**); and

(f)   Travel and Related Expense Forms (**Attachment E**).

Article 5 - Contractor's Obligations

5.1   Statement of Work. Contractor shall perform and produce all Items and Software as detailed in **Attachment A** and **Attachment B**.

5.2   Timely Services. Contractor shall perform all services with due diligence and shall meet all dates set forth in this Agreement and as may from time to time be agreed upon in writing by the Parties. Contractor shall meet with the City, as necessary, to discuss statuses and provide timely responses to issues related to project progress raised in writing by Contractor or the City.

5.3   Employees and Subcontractors. Contractor agrees to utilize only experienced, responsible, and competent personnel in its performance under this Agreement. Contractor shall assign, to the project, such personnel in sufficient numbers to ensure the project's timely completion. Contractor shall remove from the project any personnel who endanger persons or property or whose continued participation in the project is found to be inconsistent with the best interests of the City. Contractor shall be fully responsible to the City for the performance and behavior of its employees, subcontractors, and persons either directly or indirectly employed by

its subcontractors.

5.4   Data Security. Contractor shall comply with the City of San Antonio Data Security Policy, provided by the City's Administrative Directive 7.3a, attached hereto and incorporated herein for all purposes as **Attachment C**.

5.5   Clean Air Act & Federal Water Pollution Control Act. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this contract and the appropriate EPA Regional Office. Contractor further agrees to include these requirements in each subcontract to this contract exceeding $150,000, financed in whole or in part with federal funds.

5.6   Procurement of Recovered Materials. Contractor and its subcontractors shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Article 6 - Project Managers

6.1   Contractor's Project Manager. Contractor shall designate one or more Project Manager(s) who will work directly with the City's Project Manager(s) and project team to finalize documentation specific to the management aspects of the project, monitor project communications and actions to make sure they align with agreed upon processes, ensure timely delivery of Items and Software, and manage review and approval processes.

6.2   City's Project Manager. The City shall designate one or more Project Manager(s) who will direct the City's efforts. The City's Project Manager(s) shall be the point of contact for Contractor to resolve any contract issues pertaining to system Maintenance, Enhancements, and warranty work. Any requests for Maintenance, Enhancements, or warranty work shall only be payable if made by the City's Project Manager(s), evidenced in writing and signed by the City's Project Manager(s). Signed written requests for such services shall, as between the City and Contractor, be deemed conclusive evidence of the City's authorization of such services. The City's Transportation and Capital Improvements Department Director has the authority to designate a new or additional Project Manager for the City. Except as otherwise provided in this Agreement, any change made by Contractor at the direction of any other person in any other manner shall be considered as having been made without authority.

Article 7 – Consideration, Invoices, and Expenses

7.1   Consideration. In consideration of the Items and Software furnished by Contractor

pursuant to this Agreement, the City shall pay Contractor the fees set forth in the Price Schedule, attached hereto and incorporated herein for all purposes as **Attachment D**.

7.2   Invoices. Contractor shall submit invoices to the City's Project Manager(s), in accordance with Article 10 of this Agreement, to receive payment for all Items or Software provided under this Agreement. All invoices shall detail the Items provided and the fixed price for those Items. Contractor shall comply with reasonable requests made by the City to include additional information on the invoice. City shall pay Contractor within the time limits imposed by Texas law on municipalities and in accordance with Article 10 of this Agreement.

7.3   Travel and Related Expenses. The City of San Antonio Administrative Directive 8.31 establishes uniform procedures for the processing of requests for travel authorization, advances and reimbursements, identifies travel expenses eligible for payment and establishes proper accounting for all travel-related expenses for the City. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by the City shall not exceed the amounts authorized by the current GSA Travel Regulations per diem. Travel time may not be included as part of the amounts payable by Contractor for any services rendered under this Agreement. Air transportation shall be booked at the lowest available fare available at the time. Anticipated travel expenses must be pre-approved in writing by the City. The City has provided forms as examples to be used for reporting expenses for reimbursement in **Attachment E**. The City requires that receipts for expenses not covered by the per diem be attached to the reimbursement request forms for proper verification and processing. **Attachment E** includes the following forms: 1) Personal Vehicle Mileage Record, and 2) Travel & Miscellaneous Expense Report. Contractor may use their own forms for reporting travel expenses that provide the same information requested in the forms found in **Attachment E**.

Article 8 - Inspection and Rejection

8.1   All Items. In addition to the delivery of the Software, which is governed by Article 9 below and not by this Article 8, all Items shall be subject to inspection and testing by the City to the extent practicable.

8.2   Approval and Acceptance. The City shall review, approve, and sign off on each Item received. Upon acceptance of each Item and receipt of Contractor's correct invoice, the City shall pay Contractor according to the terms and conditions of this Agreement.

8.3   Nonconformity or Non-functionality. In the event of any material nonconformity or non-functionality of any Item, as determined solely by the City, the City shall provide written notice to Contractor within 14 business days of the date the Item is received by the City.

8.4   Opportunity to Cure. Contractor may cure any nonconformity or non-functionality of any Item completed, performed, or produced of which Contractor is notified of by the City.

The following provisions apply to Contractor's opportunity to cure:

(a) *Time to Cure*. Upon receipt of such notice of nonconformity or non-functionality, Contractor shall have 30 business days to cure the nonconformity or non-functionality. The City must receive the delivery of such cured Deliverable or work (the "**Cure**") no later than the 31st business day following Contactor's receipt of the notice of nonconformity or non-functionality for such Deliverable or work. Notwithstanding the foregoing, the City may, upon Contractor's written request and solely within the discretion of City's Transportation and Capital Improvements Department Director, extend the time to cure to a number of days deemed reasonable under the circumstances.

(b) *City's Acceptance of Cure*. Upon delivery of the Cure, the City will have 14 business days to evaluate and determine if such Cure is acceptable.

(c) *Failure to Cure, Second Notice*. In the event the Item remains unacceptable, the City will provide a second written notice of nonconformity or non-functionality to Contractor no later than the 15th business day following the City's receipt of such Cure. Contractor shall then have an additional 14 business days to cure the nonconformity or non-functionality. The City must receive delivery of such second-attempted Cure no later than the 15th business day following Contractor's receipt of the second notice of nonconformity or non-functionality for such Item.

(d) *Second Attempt to Cure*. Upon delivery of the Cure in response to the second notice of nonconformity or non-functionality, the City will have 14 business days to evaluate and determine if such Cure is acceptable.

(e) *Failure to Cure, Third Notice*. In the event the Item remains unacceptable, the City will provide a third notice of any nonconformity or non-functionality to Contractor and the City, without waiving any rights the City may have under this Agreement or otherwise by law as a result of such default, may (i) accept the defective Item and require such Item be reduced in price by Contractor in an amount that is equitable under the circumstances; (ii) accept the defective Item and, by separate contract or otherwise, correct such Item and charge Contractor, or deduct from any amount due to Contractor, any additional costs incurred by the City to correct such Item; or (iii) reject the defective Item and, by separate contract or otherwise, replace the defective Item and charge Contractor, or deduct from any amount due to Contractor, any additional costs incurred by the City to replace such Item.

8.5 <u>Delay and Reduction in Value</u>. All inspections and tests by the City shall be performed in such a manner as not to unduly delay the project. With respect to rejected Items, the City shall not be liable for any reduction in value of any such rejected Item used in connection with such inspection or test.

8.6   Failure to Inspect or Reject. Failure to inspect or reject Items shall not relieve Contractor of responsibility for Items that are not in accordance with the requirements of the Contract Documents, nor impose any liability on the City for any reason. Inspection and testing of any Item does not relieve Contractor from any responsibility regarding latent defects or defects that may be discovered prior to payment or during warranty periods.

Article 9 - Acceptance Testing

The purpose of the acceptance tests is to provide the City with a complete and accurate assessment of whether the Software meets the requirements set forth in the Contract Documents and any system specifications necessary to meet those requirements, whether contained in the Contract Documents or elsewhere.

9.1   Generally. The acceptance tests shall fully test each function of the Software. The City reserves the right to test such functions more than once. Additionally, the City may test such functions singularly, in groups, at the sub-system level, and at the system level. The City reserves the right to conduct any other inspections or tests to ensure the Software meets requirements and specifications.

9.2   Problem or Failure. Contractor shall define and document the cause of any problem or failure with the Software. Contractor shall facilitate the resolution of, and shall furnish the corrective action to fix, any such problem or failure of the Software. In the event that a problem or failure is caused by a problem with any product or facility provided by the City, Contractor's obligations to facilitate resolution and/or furnish the corrective action shall be met by diagnosing the problem and advising the City on how the problem or failure can be corrected. Nothing set forth in this Section 9.2 relieves Contractor from the obligation of correcting problems or failures caused by any product or facility provided by Contractor.

9.3   Items Passing Test. The City shall determine, solely in the City's reasonable discretion, whether the Software passes an acceptance test. If the City reasonably determines that the Software has not passed an acceptance test, the City shall provide Contractor with a written description of the way(s) in which the Software was deemed unsatisfactory. This written description shall include a limited but reasonable period of time in which the problem is to be resolved by Contractor.

Article 10 - Payment

10.1   Final Acceptance. Upon approval and acceptance by the City for each Item and Software, Contractor shall submit a written invoice to the City in accordance with the Price Schedule. The preferred method of delivery is electronically to the following e-mail address:

accounts.payable@sanantonio.gov

Invoices submitted electronically to the e-mail address above must be in separate .pdf

format file. Multiple invoices cannot be submitted in a single .pdf file; however, Contractor may submit multiple, separate invoice files in a single e-mail. Any required documentation in support of the invoice should be compiled directly behind the invoice in the same .pdf file. Each electronically submitted file must have a unique identifying name that is not the same as any other file name. Invoices submitted by electronic submission are only considered "original" when the submission comes directly from the Contractor to Accounts Payable using this e-mail address. Contractor may courtesy copy the ordering City department personnel on the e-mail. If Contractor is not able to submit invoices with the required file formatting above, Contactor may mail original invoices, on white paper only, to the following address:

City of San Antonio
Finance Department/Accounts Payable
111 Soledad, 4th Floor
San Antonio, Texas 78205

10.2 <u>Time for Payment</u>. Upon receipt of Contractor's written invoice, the City shall have not less than 30 calendar days to pay for goods or services. Time for payment will be computed from the later of:

(a) the date City receives conforming goods under the contract;

(b) the date performance of the service under the contract is completed; or

(c) the date the City receives a correct and valid invoice for the goods or services.

Payment is deemed to be made on the date of mailing of the check. Payment is made in US dollars only.

10.3 <u>Payment Delay Caused by Dispute</u>. Section 10.2 shall not apply where there is a bona fide dispute between the City and Contractor about the goods delivered or the service performed that causes the payment to be late, or where the invoice is not mailed to the address provided herein. The payment amount due on invoices may not be manually altered by City personnel. Once disputed items are reconciled, Contractor must submit a corrected invoice or a credit memorandum for the disputed amount. The City will not make partial payments on an invoice where there is a dispute.

Article 11 - Intellectual Property

11.1 <u>Intellectual Property Rights</u>. Contractor shall pay all royalties and licensing fees arising from or in connection with the performance of this Agreement. Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims, or otherwise, growing out of infringement or alleged infringement of copyrights, patents, trademarks, or trade secrets arising from or in connection with any material or method used by Contractor in Contractor's performance of this

Agreement. In accordance with Section 11.3, Contractor shall defend all suits for infringement of any Intellectual Property rights. Further, if Contractor has reason to believe that the design, service, process, or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

11.2 <u>Notification of Intellectual Property Infringement</u>. Upon receipt of notification that a third party claims that the Software or any other intellectual property infringe upon any United States or International patent, copyright, or trademark, Contractor shall immediately:

(a) (i) obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow the City to continue using the Software or any other intellectual property as the case may be, or (ii) alter the Software or any other intellectual property so that the alleged infringement is eliminated; and

(b) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the Software or other intellectual property while the dispute is pending.

11.3 <u>Response to Intellectual Property Infringement</u>. Contractor further agrees to:

(a) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark, or any other intellectual property rights arising from the use and/or sale of the equipment, software, or other intellectual property under this Agreement,

(b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

(c) indemnify the City against any monetary damages and/or costs awarded in such suit;

provided that:

(a) Contractor is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Contractor agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,

(b) the equipment, software, or other intellectual property is used by the City in the form, state, or condition as delivered by Contractor or as modified without the permission of Contractor, so long as such modification is not the source of the infringement claim,

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(c)   the liability claimed shall not have arisen out of the City's negligent act or omission, and

(d)   the City promptly provide Contractor with written notice within 15 calendar days following the formal assertion of any claim with respect to which the City asserts that Contractor assumes responsibility under this Section.

Article 12 – Document Ownership, Access, and Retention

12.1 <u>Document Ownership</u>. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations governing documents and ownership, and access and retention thereof, including, but not limited to, the following Sections in this Article 12.

12.2 <u>Local Government Records</u>. In accordance with Texas law, Contractor acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or Maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.

12.3 <u>Local Government Record Defined</u>. The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law, including an ordinance, or in the transaction of official business.

12.4 <u>City Ownership</u>. Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, will belong to and be the property of the City. Contractor shall turn over to the City, all such records as required by this Agreement. Contractor shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without City's written permission, unless required to do so by a court of competent jurisdiction.

12.5 <u>Records Retention</u>. Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder ("**Documents**"), and shall make such Documents available to the City at their respective offices, at all reasonable times and as often as the City may deem necessary during the Term of this Agreement, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by the City and any of its authorized representatives. Contractor shall retain any and all Documents produced as a result of services

provided hereunder for a period of four years ("**Retention Period**") from the date of expiration or termination of this Agreement. If, at the end of the Retention Period, there is litigation or other questions arising from, involving or concerning these Documents or the services provided hereunder, Contractor shall retain the Documents until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that the City shall have access to any and all such Documents at any and all times, as deemed necessary by the City, during said Retention Period. The City may, at its election, require Contractor to return the Documents to the City at Contractor's expense prior to or at the conclusion of the Retention Period. In such event, Contractor may retain a copy of the Documents.

12.6 Exclusions. Item-specific documentation, including technical data sheets, user and maintenance manuals, technical notes, training guides and presentations, functional test documentation, and other material for training purposes will be provided to the City under an irrevocable, perpetual use license. All such training material is and shall remain the sole intellectual property of Contractor.

Article 13 - Insurance

13.1 Insurance Requirements. Contractor shall comply with the insurance requirements set forth below:

(a) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "Traffic Management Controller Software/Firmware" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Finance Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

(b) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereby the City may incur increased risk.

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(c) Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

INSURANCE TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000

3. Commercial General Liability Insurance to include coverage for the following:
    a. Premises/Operations
    b. Products/Completed Operations
    c. Personal/Advertising Injury
    d. Contractual Liability
	For Bodily Injury and Property Damage $1,000,000 per occurrence;
	$2,000,000 general aggregate
	$2,000,000 Products & Completed Operations, or its equivalent in Umbrella or Excess Liability Coverage.

4. Business Automobile Liability
    a. Owned/leased vehicles
    b. Non-owned vehicles
    c. Hired Vehicles
	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence.

5. Professional Liability –[Technology Errors and Omissions] (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

(d) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

(e)   As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to the City at the address provided below within 10 calendar days. Contractor shall pay any costs incurred resulting from provision of said documents.

<div align="center">
City of San Antonio
Attn: Transportation & Capital Improvements
P.O. Box 839966
San Antonio, Texas 78283-3966
</div>

(f)   Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

    (i)   Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

    (ii)   Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy; and

    (iii)   Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

(g)   Contractor shall provide advance written notice directly to the City of any suspension or non-renewal in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.

(h)   Within 5 calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. The City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

(i)   In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

(j)   Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

(k)   It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self- insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

(l)   It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

(m)   Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

Article 14 - Notices

14.1 <u>Addresses</u>. Any notice, request, or consent sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

THE CITY:	CONTRACTOR:
City of San Antonio	Q-Free, Intelight, Inc.
Transportation & Capital Improvements	Att: Tom Stiles
Att: Marc Jacobson	4660 La Jolla Village Dr, Ste 100
3500 NW Loop 410	San Diego, CA 92122
San Antonio, TX 78229	

14.2 <u>Change of Address</u>. Notice of change of address by any Party must be made in writing and mailed to the other Parties within 15 business days of such change. All invoices, notices, requests, or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the invoice, notice, request, or consent shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article 15 – Indemnification and Limitation of Liability

15.1 <u>City Indemnified</u>. CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including, but not limited to, personal or bodily injury, death, and property damage, made upon the CITY and directly or indirectly arising out of, resulting from, or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR or the agents, officers, directors, representatives, employees, consultants, or subcontractors of CONTRACTOR and their respective officers, agents employees, directors, and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the CITY or its officers or employees in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY, IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

15.2 <u>Indemnity for Benefit of the Parties</u>. The provisions of the indemnification provided for in this Agreement are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall provide written notice to the City within 24 hours of any claim or demand against the City or Contractor known to Contractor and related to or arising out of Contractor's activities under this Agreement; and Contractor shall see to the investigation and defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph or Section 15.1 above.

15.3 <u>Defense Counsel</u>. The City shall have the right to approve Contractor's proposed defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify the City. The City may only reject the hiring of Contractor's proposed defense counsel if there is an apparent conflict of interest between the proposed defense counsel and the City. If suit is filed and Contractor fails to retain City approved defense counsel by the 10th calendar day before the expiration of the time required to file an answer, the City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by the City. The City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

15.4 Employee Litigation. In any and all claims against any party indemnified hereunder by any employee or subcontractor of Contractor, anyone directly or indirectly employed by any employee or subcontractor of Contractor, or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.

15.5 Limitation of Liability. THE TOTAL LIABILITY OF CONTRACTOR ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT PAID TO CONTRACTOR BY THE CITY DURING THE TERM OF THIS AGREEMENT.

Article 16 - Contractor's Representations and Warranties

16.1 Licenses, Certifications, and Training. Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license, and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

16.2 Undisclosed Features. Contractor warrants that Items, equipment, and software provided to the City under this Agreement do not contain any undisclosed features or functions that would impair or might impair the City's use of any Items or Software. Specifically, but without limiting the previous representation, Contractor warrants there is no "Trojan Horse," lock, "time bomb," backdoor, or similar routine. This Agreement shall not now nor will it hereafter be subject to the self-help provisions of the Uniform Computer Information Transactions Act or any other law not specified herein. Contractor specifically disclaims any unilateral self-help remedies.

16.3 Suspension and Debarment. This Agreement is a covered transaction for purposes of 2 CFR Part 1200. As such, Contractor is required to verify that neither Contractor, nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. Contractor is required to comply with 2 CFR 1200, Subpart C and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into. By signing and entering into this Agreement, Contractor certifies that:

(a) Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

(b) Contractor shall provide immediate written notice to the City if, at any time during the Term of this Agreement, including any renewals or extensions hereof,

Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by the Department of Transportation. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Department of Transportation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR 1200, Subpart C throughout the Term of this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16.4 <u>Prohibited Financial Interest</u>. Contractor acknowledges that the Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in §2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a prohibited "financial interest" in a contract with the City or in the sale to City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

(a) a City officer or employee, his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;

(b) an entity in which the officer or employee, or his or her parent, child, or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the entity, or (ii) 10% or more of the fair market value of the entity; or

(c) an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary entity.

Contractor warrants and certifies, and this Agreement is made in reliance thereon, that none of the above listed individuals or entities is a party to this Agreement.

16.5 <u>Prohibition on Contracts with Companies Boycotting Israel</u>. Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

(a) does not boycott Israel; and

(b) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel

or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By executing Contract Documents with the City, Contractor hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. The City hereby relies on Contractor's verification. If found to be false, the City may terminate this Agreement for material breach.

16.6 <u>Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited</u>. Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§ 806.051, 807.051, or 2252.153. By executing Contract Documents with the City, Contractor hereby certifies that it is not identified on such a list and that it will notify the City should it be placed on such a list while under contract with the City. The City hereby relies on Contractor's certification. If found to be false, the City may terminate this Agreement for material breach.

Article 17 - Termination

17.1 <u>The City's Right to Terminate</u>. Termination by the City may be effected by the City's Finance Department Director, without further action by the San Antonio City Council. In addition, the following rules govern the City's right to terminate:

(a) <u>Termination-Breach</u>. Should Contractor fail to fulfill in a timely and proper manner, as determined solely by the City's Transportation and Capital Improvements Department Director, its material obligations under this Agreement, or violate any of the material terms of this Agreement, the City shall have the right to terminate this Agreement, in whole or in part, if after prompt written notice to Contractor specifying the failure(s) or violation(s) and a minimum of a 10 business day cure period, the failure or violation has not been corrected. If a cure period has already been given to Contractor in accordance with Article 8 of this Agreement, the City may not give the cure period specified by this Section 17.1(a). Notice of termination shall be provided in writing to Contractor, effective upon the date set forth in the notice. Such termination shall not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

(b) <u>Termination-Notice</u>. The City may terminate this Agreement, in whole or in part, without cause. The City shall be required to give Contractor notice not less than 10

business days prior to the date termination of this Agreement without cause is to be effective.

(c) Termination-Funding. The City retains the right to terminate this Agreement at the expiration of each of the City's budget periods. This Agreement is conditioned on a best efforts attempt by the City to obtain and appropriate funds for payment of any debt due by the City herein.

17.2 Sections that Survive Termination. The provision previously designated and any other right, obligation, or required performance of the Parties in this Agreement, which by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration. In addition, the obligations of the Parties to protect propriety and confidential information and the obligation of Contractor to indemnify and hold the City harmless for copyright, patent, or trademark infringement contained in this Agreement shall also survive termination of this Agreement.

Article 15 – Legal Construction

17.1 Compliance with Law. Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state, and local laws, rules, and regulations.

17.2 Severability. If any clause or provision of this Agreement is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including but not limited to the City of San Antonio Charter, City of San Antonio Codes, or City of San Antonio ordinances, then and in that event it is the intention of the Parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein. It is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

17.3 Venue, Jurisdiction, and Arbitration. For any dispute or claim arising from or in connection with this Agreement, venue shall be in Bexar County, Texas and the laws of the State of Texas shall apply. The City will not contractually agree to engage in binding arbitration and will not contractually agree to relinquish its right to a trial by jury.

17.4 Attorney's Fees. The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees, unless specified otherwise in this Agreement.

17.5 Force Majeure. Neither party will be liable to the other for any failure or delay in the performance of such party's non-monetary obligations due to any occurrence not occasioned

by the conduct of either party and beyond the party's control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, or other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, communications line or power failures, or governmental laws, court orders, and regulations imposed after the fact. Such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

17.6 <u>Non-waiver of Performance</u>. Unless otherwise specifically provided for in this Agreement, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice at any time any right, power, privilege, or remedy available to that party hereunder or by law or in equity.

Article 18 – General Terms and Conditions

18.1 <u>Captions</u>. All captions used in this Agreement are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the Parties to this Agreement.

18.2 <u>Non-Discrimination</u>. As a party to this Agreement, Contractor understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability, unless exempted by state or federal law, or as otherwise established herein.

18.3 <u>Independent Contractor</u>. Each party to this Agreement will be acting in its own capacity in performance of this Agreement. Contractor and all persons designated by Contractor to provide services in connection with this Agreement are and shall be deemed to be independent contractors, responsible for their respective acts or omissions. The City shall in no way be responsible for Contractor's actions, and neither of the Parties hereto will have authority to bind the other or to hold out to third parties that it has such authority. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships, between the Parties hereto. This provision shall survive termination of this Agreement.

18.4 <u>Assignment</u>. Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer, or convey any interest in this Agreement, nor delegate the performance of any duties hereunder by transferring, assigning, subcontracting, or any other means without the written consent of the City's Transportation and Capital Improvements Department Director . As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services and provision of goods outlined in this Agreement in the event of default by the successor contractor, assignee, transferee, or subcontractor. Any attempt to transfer, pledge, or otherwise assign this Agreement, in whole or in part, without said written consent shall be void ab initio and shall confer no rights upon any third person.

18.5 <u>Change of Ownership</u>. Contractor agrees to notify the City of any changes in ownership interest greater than 50%, and of any changes in control of its business entity, not less than 45 days in advance of the effective date of any such change. Notwithstanding any other remedies that are available to the City under this Agreement, any such change of ownership interest or control of Contractor's business entity may be grounds for termination of this Agreement at the sole discretion of the City.

18.6 <u>Change Orders</u>. In order to comply with Texas law governing purchases made by municipalities, the following rules shall govern all change orders made under this Agreement:

(a) Any change orders that become necessary during the Term of this Agreement as a result of changes in plans, specifications, quantity of work to be performed, materials, equipment, or supplies to be furnished must be in writing and conform to the requirements of City Ordinance 2011-12-08-1014, as may hereafter be amended from time to time.

(b) Changes that do not involve an increase in contract price may be made by the City's Finance Department Director.

(c) Any other change will require approval of the City Council of the City of San Antonio.

(d) No oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated herein.

18.7 <u>Entire Agreement</u>. This Agreement, together with its authorizing ordinance, attachments, and exhibits, if any, constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereof, and be duly executed by the Parties, in accordance with the change order provision in Section 18.6 above.

[Remainder of Page Intentionally Left Blank - Signature Page Follows]

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY OF SAN ANTONIO   **INTELIGHT, INC.**

_____   _____
Director of Transportation and Capital   Name: _____
Improvements Department   Title: _____

Date: _____   Date: _____

APPROVED AS TO FORM:

_____
Assistant City Attorney

ATTEST:

_____
Leticia Vacek
City Clerk

Attachment A – Requirements Traceability Matrix

(attached as a separate document)

Attachment B – Scope of Services

1. Project Requirements

1.1 The Parties have compiled a comprehensive list of functional and technical requirements that Contractor shall provide. Those requirements are identified in the Requirements Traceability Matrix ("**RTM**"), attached hereto and incorporated herein for all purposes as **Attachment A**. The RTM provides an extensive list of functionality requirements that are identified as either "mandatory" or "desired". Contractor shall provide each mandatory requirement indicated as "Available" in the RTM. Contractor shall provide each mandatory requirement indicated as "Available with Configuration" in the RTM if appropriate configuration is applied for the applicable requirement. The Parties intend to achieve as many of the desired requirements as possible while balancing cost with best value.

2. Support for National Transportation Communication for ITS Protocol ("NTCIP")

2.1 General. The Software shall comply with all NTCIP standard documents. Compliance shall be to the current approved or recommended version(s) of the relevant NTCIP standards as of the date of the initial acceptance of the Software by the City. The Software must be able to implement nationally defined NTCIP messages as specified by the RTM.

2.2 Documentation. The Software shall be supplied with full documentation. Documentation shall include electronic and hard copies. The electronic copy shall be provided on a flash drive, DVD, or CD-ROM. The documentation shall include all NTCIP standard Management Information Bases ("**MIB**" or "**MIBs**") and extensions, developer-specific MIBs, and all Simple Network Management Protocol ("**SNMP**") and Simple Mail Transfer Protocol ("**STMP**") data elements. All MIBs shall be provided in American Standard Code for Information Exchange ("**ASCII**") format using ASN.1 notation.

2.3 MIB Extensions. Contractor shall clearly define all MIB extensions. Primarily, all extensions shall be accomplished by the following methods:

    2.3.1   Extending the capabilities of existing standard features.

    2.3.2   Defining new data elements or features under a developer-specific MIB extension.

To the extent possible, the replacement of a partially complete feature with a complete custom feature shall be avoided.

2.4 Support of NTCIP Standards, Amendments and Revisions. Contractor shall address any proposed revisions or draft amendments to the required NTCIP MIBs available during the Beginning Stage and the impact on the proposed software's NTCIP compliance and/or ability to meet the functional requirements of this specification. The "Beginning Stage" begins upon the effective date of the Ordinance awarding the Agreement or date specified in the award letter, whichever is later, and ends on the one (1) year anniversary of the effective date.

2.5 <u>Object Range Values</u>. All objects required by these specifications shall support all values within their standardized ranges, unless otherwise approved by the City's Project Manager. A size, range, or enumerated listing indicated in the object's SYNTAX field or through descriptive text in the object's DESCRIPTION field of the relevant standard defines the standardized range. Contractor shall prepare a table of object range values for each object in NTCIP Standards 1201 and 1202 and identify any variances from the standard ranges that are required to meet this specification.

2.6 <u>NTCIP Standards</u>. Contractor shall define an entire NTCIP stack and identify the NTCIP or other standards that will be required at each level to meet the specifications contained in the Contract Documents. For each NTCIP standard, Contractor shall complete a profile implementation conformance statement ("**PICS**") identifying each required object. All mandatory objects identified in the standards shall be included in the PICS. At a minimum, the Software shall comply with the following standards:

General

2.6.1   NTCIP 1101 v01.12 - NTCIP Simple Transportation Management Framework

2.6.2   The software shall comply with Conformance Level 2

2.6.3   NCTIP 1102: 2004 – NTCIP Octet Encoding Rules (OER)

2.6.4   NTCIP 1103 v01 - NTCIP Transportation Management Protocols (TMP)

2.6.5   The software shall include support for the "Simple Fixed Message Protocol" (SFMP)

2.6.6   NTCIP 8004 v01 - NTCIP Structure and Identification of Management Information (SMI)

Information Level

2.6.7   NTCIP 1201v03 – NTCIP Global Objects (GO) Definitions

2.6.8   NTCIP 1202:2005 – NTCIP Object Definitions for ASC

2.6.9   The software shall fully implement all mandatory objects of all mandatory and optional conformance groups defined in this standard

Application Level

2.6.10 NTCIP 2303:2001 v01.06 – NTCIP AP-FTP

2.6.11 NTCIP 2301: v02 - NTCIP AP-STMF

Transport Level

2.6.12 NTCIP 2201:2003 - NTCIP TP-Transportation Transport Profile

2.6.13 NTCIP 2202:2001 - NTCIP TP-Internet (UDP/IP) Transport Profile

Subnetwork Level

2.6.14 NTCIP 2101:2001 - NTCIP SP-PMPP/RS232

2.6.15 NTCIP 2104:2003 – NTCIP SP-Ethernet

Contractor shall identify and comply with any additional NTCIP or other standards necessary to meet the specifications of the Contract Documents.

3. **Possible Database Conversions**

3.1 The City may be interested in acquiring additional services for providing database conversions. There are three categories or classes of database conversions: simple, moderate, and complex. An example of an intersection with low complexity would be a 2 phase operation, such as the intersection of Blanco Road at Cadillac Way. An example of an intersection of medium complexity would be an eight phase operation, such as Babcock Road at Huebner Road. An example of an intersection of high complexity would be a diamond operation, such as Braun Road at Loop 1604.

4. **City's Responsibilities**

4.1 The City will be responsible for the following:

4.1.1   Providing single point of contact for all technical and operational issues.

4.1.2   Converting all controller databases from NextPhase to the new firmware except those controller databases that the contractor is being paid to convert.

4.1.3   Executing the Contract and all resulting delivery orders.

4.1.4   Testing the controller software for acceptance before field deployment at the following milestones:

4.1.4.1 Initial delivery of the software.

4.1.4.2 Final acceptance of software which meet all minimum requirements.

4.1.4.3 Upgrade testing conducted for all upgrades, and other milestones as required.

4.1.5   Reporting all suspected issues and concerns to Contractor.

4.1.6   Changing hardware, such as the 1C card or ATC controller, to complete the requirements of the Software.

5. **Contractor's Responsibilities**

5.1 Contractor shall be responsible for the following:

5.1.1   Providing single point of contact for all technical and operational issues.

5.1.2   Providing Software license agreement.

5.1.3   Providing Software MIB.

5.1.4   Providing Software.

5.1.5   Providing Software user manual and other supporting documentation.

5.1.6   Providing specified Items.

5.1.7   Providing training and oversight of the conversion of the first 20 controller databases from NextPhase to the new firmware.

5.1.8   Converting controller databases requested by the City.

5.1.9   Working with Kimley-Horn (as identified below).

5.1.10 Supporting all tests conducted by the City.

6. <u>Working with Kimley-Horn for Support in KITS</u>

6.1 The City has a significant investment in the KITS software. Contractor of the supplied Software will play an important role in the advancement of traffic management and control. It is critical that all parties under contract to the City place mobility and congestion management as the number one priority. To that end, all parties shall uphold open communication and sharing of information, such as any changes in the Contractor's Software (subject to the stated technical requirements), shall be communicated immediately and openly to Kimley-Horn so that the KITS software can be modified accordingly for the life of the use of the Software. Non-Disclosure Agreements may be utilized to protect Contractor's rights. The withholding of any critical information may be considered sufficient grounds for termination of this Agreement for material breach and possible litigation.

6.2 Kimley-Horn shall be responsible for the following:

6.2.1   Working with Contractor in the exchange of communication protocols for all objects.

6.2.1   Providing quick feedback to Contractor during testing to report on issues identified.

6.2.3   Cooperating with Contractor to ensure compliance.

7. <u>Federal Funding</u>

7.1 This Agreement will be supported in part with federal funds; therefore, federal laws and standards apply and are included in this Agreement.

8. <u>Maintenance and Support</u>

8.1 Contractor warrants the ATC Traffic Controller, subject to the listed exclusions and limitation of liability, as stated in Contractor's Statement of Warranty for ATC TRAFFIC CONTROLLER, attached hereto and incorporated herein for all purposes as **Exhibit A**.

8.2 Contractor warrants the 2070 1C - CPU, subject to the listed exclusions and limitation of liability, as stated in Contractor's Statement of Warranty for 2070 1C - CPU, attached hereto and incorporated herein for all purposes as **Exhibit B**.

8.3 The City may elect to extend the warranties identified in Section 8.1 and Section 8.2 above, beyond the initial warranty periods or any extensions thereof, by executing an annual maintenance and support agreement with Contractor. Such maintenance and support agreement shall also extend all warranty provisions listed in Exhibit A and Exhibit B, respectively for each warranted product.

8.4 Contractor shall provide a maintenance and support agreement that City may enter into at City's sole option. The maintenance and support agreement may be renewed at City's sole option on an annual basis and shall be paid according to the Price Schedule. At a minimum, the maintenance and support agreement shall include access to an Intelight on-call phone number with an appropriate staff member available between the hours of 7:00 a.m. to 7:00 p.m. CT. The maintenance and support agreement shall also include email, webinar, and on-site support for Software bug fixes, annual new releases, and other necessary preventative, diagnostic, replacement, and repair procedures.

8.5 If the City does not enter into a maintenance and support agreement with Contractor, or if the maintenance and support agreement expires and the City does not choose to renew, the City may purchase software upgrades for a reduced price at any time.

9. **Software Upgrades**

9.1 During the initial warranty period and all subsequent maintenance and support agreement periods, the selected Contractor shall provide all software upgrades at no cost to the City. Software upgrades shall include all maintenance, support, and functionality upgrades. New functionality upgrades shall include all upgrades to the software regardless of the source of the new functionality.

9.2 Software upgrades shall include maintenance updates to correct defects in the software or major upgrades that add new functional features to the software.

9.3 Each upgrade shall be accompanied by a file describing the changes/revisions in the software. Each upgrade shall include new documentation including the user manual, installation guide, and the MIB.

9.4 All upgrades shall maintain compatibility with the requirements presented in this contract including hardware, functionality, communications, and compliance to applicable standards.

10. Training

10.1 Contractor shall provide training on the software prior to and during field deployment and implementation. Following deployment and implementation of the software, and within the initial warranty period, Contractor shall provide an additional training annually as requested by the City. Contractor shall provide the quantity of hours recommended to adequately instruct the City signal technicians and engineers in the use of the proposed software. Training shall be tailored for the specific audience (i.e. management, engineers, field technicians) to be trained. Prior to any training, Contractor shall provide to the City for review and approval, a training syllabus and all training materials of the training program.

10.2 Training Program. Intelight will provide training before, during, and after the MaxTime deployment so that users will be prepared for the incoming software system, while also having the opportunity to receive a review and ask follow-up questions after some time using the deployed system. Intelight will facilitate a total of 48 hours of on-site training before and during deployment as shown below.

10.2.1 TRAINING CLASS TYPES AND ESTIMATED LENGTH (1 day = 8 hours including lunch and breaks):

- MaxTime Basic (1 Day) – This training will train City staff on the use of the traffic signal controller software. Training will cover logging into the controller, working from the front panel, and the Web User Interface. The training will encompass all basic features required to program signal timings; troubleshooting field issues; database management, and as time permits, advanced features will be introduced;

- MaxTime Administration (1/2 day) – This training will train City staff on all administrative procedures, such as managing controller user accounts centrally, central and local firmware management, and management of the Application Programming Interface (API);

- MaxTime Maintenance (1/2 day) – This informal training will train City staff/technicians on working with the software for maintenance and troubleshooting.

- MaxTime Advanced (1 day) – This training will train small groups of staff to give more individual and in-depth instruction tailored to the City staff user type; focusing on advanced user logic, transit priority, and other advanced MaxTime features and modules.

10.2.2 PROPOSED TRAINING PROGRAM

10.2.2.1 Prior to Field Deployment:

- MaxTime Basic
- MaxTime Admin

- MaxTime Maintenance

10.2.2.2 During Field Deployment (After ~25 controllers have been deployed):

- MaxTime Basic

- MaxTime Advanced

- MaxTime Maintenance

10.2.2.3 Post Field Deployment (After 90% of all controllers have been upgraded):

- MaxTime Advanced

- MaxTime Maintenance

10.3 <u>Training Location and Equipment</u>. Training will be performed at the City of San Antonio's designated facilities and will be presented in English. Intelight will cater training to be delivered utilizing the equipment provided by the City (projectors, screens, etc.), and will request the equipment from the City with ample time to prepare. If additional non-standard equipment is required, Intelight will provide said equipment as needed. Intelight will provide ten (10) copies of the training manuals to the City for each course. Additionally, all materials and updates to the materials will be provided electronically. The training courses will be designed to be interactive and hands on. The training will utilize virtual or 2070 controllers, as well as the MaxTime web interface on trainee's electronic devices (laptops, tablets, etc.). The necessary software for training will be provided by Intelight.

11. <u>Support Team</u>

11.1 Contract shall maintain an expert team of traffic signal timing engineers, field support staff, and technicians during the Term and any renewals or extensions of this Agreement.

12. <u>Support Work-Flow</u>

12.1 If a Software issue is found, the City may notify Contractor by calling Contractor's Project Manager or logging a ticket on Contractor's website at the following address: https://support.intelight-its.com/. Regardless of the reporting mechanism, Contractor will immediately open a web-ticket for each issue reported. Throughout the resolution process for each issue, Contractor shall timely notate status updates on the issue's web-ticket so that the City may view updates to their request on Contractor's website.

12.2 The figure below reflects Contractor's issue resolution process.
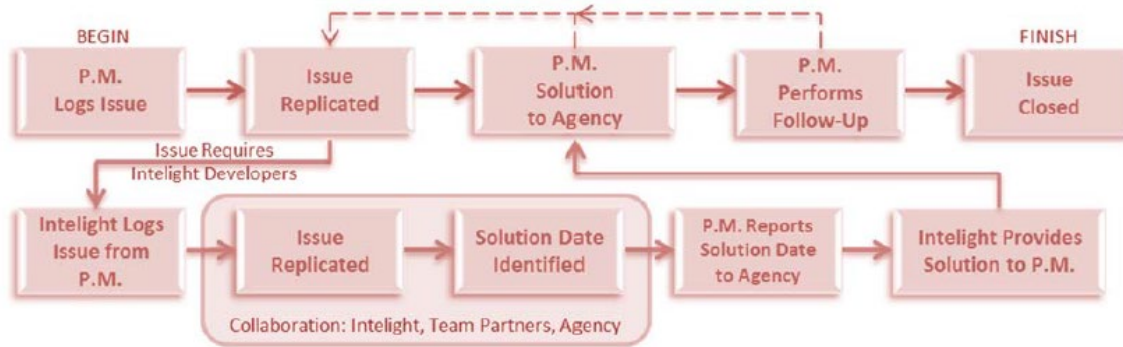
13. Value-added Propositions

13.1 <u>Contractor's Representations</u>. Contractor acknowledges and agrees that it has made the representations below to the City, and the City has reasonably relied on such representations in entering into this Agreement. Contractor shall, at a minimum, provide the following:

    13.1.1 <u>On-Board Performance Metrics</u>. Contractor's Software package contains on-controller signal performance metrics to aid field staff in troubleshooting and managing signal operations. The City shall have access to visualizations of the past 24-hours of high resolution data collected and stored directly on the controller. Current reports include the following:

        (i) Phase Termination Report – The report provides a visualization of phase terminations as colored dots plotted over time. Users can quickly look at the density of dot colors and determine if a phase is gapping out, forcing off, or maxing out frequently. Comparing the terminations with other phase terminations may quickly indicate phase in need of split time and those who have time to spare.

        (ii) Coordination Report – The report plots the values of the controller's master and local cycle timers and offsets over time. From this report, users can quickly see how often the controller is transitioning and how much the controller needs to transition. When operating in free the report provides a running timeline of the signal's natural cycle length.

        (iii) Service Time Report – Split Monitor with dynamic views allowing the user to display line-graphs, bar charts, add/remove phases from the report, etc.

        (iv) Detailed Event Report – Provides a custom report that users can query the raw 1/10 second data stored on the controller. Using a web-browser, users can run advanced, custom queries on the controller's high resolution data while directly connected to the controller.

13.1.2 <u>On-Board Status Replay</u>. In addition to performance reports, Contractor's Software is the only local controller software to include an on-board, on-demand "Status Replay." Status replay allows a user to replay the past 3-4 hours of controller activity directly from the high resolution data event log. Status replay will replay phase, ped and overlap states, detector calls, phase and overlap timers, and show the split logs in corresponding time and 1/10th second resolution. Replay controls include:

(i) Fast Forward;

(ii) Rewind;

(iii) "Jump to time" slider bar;

(iv) Play/Pause;

(v) Slow motion (-10x speed);

(vi) Fast motion (>10x speed); and

(vii) Jump to last stored failure (Caches all data leading up to a flash event).

13.1.3 <u>Mass Deployed Software Updates Without Restart</u>. Software updates may be mass/centrally scheduled and deployed using Contractor's included Software application manager or locally deployed at the intersection using a USB or laptop. Overall, Software updates take approximately five minutes. Previous version of the Software are stored on the controller so the users may "roll-back" the controller to a previous version of the Software after an update.

(i) To update the controller's software locally, the user places the software installer file on a flash drive, inserts the flash drive into the controller's USB hub, and, via the ATC API, runs Contractor's "Application Manager" to install the update. The user may select to install the update on a live intersection without requiring a power cycle or controller reboot. Once the update is complete, the controller will verify that the new version of the Software is safe to run the intersection and will switch from the existing Software version to the updated version during an all red period.

(ii) Using the included Software application manager, system administrators may schedule, and mass deploy software updates to field connected devices. The application manager monitors the software update process for each device and alerts the user of successful and failed updates, if any. Users may also run system-wide reports to query deployed software versions and the dates the controllers were updated.

13.1.4 <u>Misc. Unique Functionality</u>. Contractor's Software includes a suite of basic and advanced operations to provide numerous unique, value-add features. These features include, but are not limited to, the following:

(i) Onboard web server - Monitor and configure timings wirelessly from a laptop, tablet, or smart-phone without database editor or 3rd party software

(ii) Runs Exclusively on Linux O/S

(iii) Supports Serial and/or Ethernet Communications

(iv) 40 Phases, 16 Rings, 20 Sequences, 32 Overlaps

(v) 32 Phase Tables, 10 Detector Tables, 10 Overlap Tables (Select by TOD)

(vi) Built-In Master/Closed Loop Functionality (Included)

(vii) Peer-to-Peer communications (Included)

(viii) Transit Prioritor (Included)

(ix) Full NTCIP MIB Supplied to City for support of MAXTIME in the City's central system

(x) Preconfigured or User Defined Cabinet Support (DFW 332, DFW 336, DFW 337, CalTrans 332, 336, TS-1, TS-2, ITS, ATCC)

(xi) Intuitive and advanced user logic programming

(xii) Monitor and modify timings from Windows and Apple computers, IPAD, Tablets, Smart Phone without special software

(xiii) Store and switch between hundreds of timing databases on controller

(xiv) Easy, automated software updates via Network or USB flash drive (no need for terminal servers or proprietary installer programs)

(xv) Individual user accounts with customized home screen, change tracking, roaming profiles, and menu based view/edit permissions

(xvi) Advanced transition algorithm and options; and

(xvii) COTS Feature philosophy (User logic should not be considered a tool to meet standard feature requirements).

Attachment C – The City of San Antonio Data Security Policy

(attached as a separate document)

Attachment D - Price Schedule

(attached as a separate document)

Attachment E - Travel and Related Expense Forms

(attached as a separate document)

Exhibit A – Statement of Warranty for ATC TRAFFIC CONTROLLER

(attached as a separate document)

Exhibit B – Statement of Warranty for 2070 1C – CPU

(attached as a separate document)