



DeWight Dopslauf, C.P.M., CPPO
Harris County Purchasing Agent

December 22, 2022

Commissioners Court
Harris County, Texas

RE: Sole Source Exemption – Local Government Code § 262.024 (a)(7)

Members of Commissioners Court:

Please approve a sole source exemption from the competitive bid requirements and the attached Order authorizing the County Judge to execute the attached Agreement for the following:

Description: Hosting and Maintenance of Affordable Rental Properties Database for the Harris County Community Services Department

Vendor: Emphasys Computer Solutions, Inc. dba Emphasys Software

Term: January 10, 2023 through January 9, 2024 with four (4) one-year renewal options

Amount: \$109,114

Reviewed by: • Harris County Purchasing • Community Services

The Office of the Harris County Purchasing Agent has confirmed the sole source exemption. Purchase order(s) will be issued upon Commissioners Court approval.

Sincerely,

Damon Harris for

DeWight Dopslauf
Purchasing Agent

BCB
Cc: Community Services
Vendor

FOR INCLUSION ON COMMISSIONERS COURT AGENDA JANUARY 10, 2023

EMPHASYS SOFTWARE AGREEMENT

This Agreement is entered into on the date set forth below, by and between Emphasys Software having its principal place of business in Pembroke Pines FL (hereinafter Emphasys); and Harris County, a body corporate and politic under the laws of the State of Texas, acting by and through Harris County Community Services Department, 1001 Preston Suite 670 Houston, TX 77002 (hereinafter Client or County).

1. SERVICES

- 1.1. Emphasys will perform Services and provide Support for the Client in accordance with the attached Proposal. Any additional tasks requested by Client shall be agreed upon in writing in advance by both parties and billed at the then current hourly rates.

2. PAYMENT TERMS

- 2.1. Client agrees to pay for Services in accordance with the attached Proposal.
- 2.2. Emphasys shall invoice Client for Annual Maintenance each year, prior to the anniversary of the initial due date, which shall be effective the first of the month following the date of initial installation of the Software ("Effective Date"). This Agreement may be renewed for four (4) additional terms ("Renewal Terms") of one (1) year each upon mutual agreement of the Parties.
- 2.3. Emphasys shall be entitled to increase its fees for Annual Maintenance. Emphasys shall provide written notice of fee increases no less than sixty (60) days prior to the anniversary of the initial due date.
- 2.4. All amounts are due and payable within 30 calendar days of Emphasys' invoice, and all amounts shall be in US dollars unless otherwise noted.
- 2.5. Emphasys shall have the right to withhold services and be held harmless in the event payments due hereunder remain outstanding for a period longer than 60 days from the due date. Emphasys reserves the right to cancel this Agreement, after written notice of 30 days, for any material breach by Client or if any charges called for herein, which are not reasonably disputable and remain unpaid for a period of one hundred twenty (120) days beyond the due date. Cancellation for any reason shall not affect the sums due hereunder or any additional remedies provided by law or equity.
- 2.5. Client is a governmental entity under Tex. Tax Code Ann. § 151.309, as amended and claims exemption from sales and use taxes. Client agrees to provide exemption certificates upon request.

3. SOFTWARE

- 3.1. Any Software accessed by Client under this Agreement, including source code, and all documents related thereto, constitutes proprietary information

and trade secrets to Emphasys or to the principals for whom Emphasys is the authorized agent. Title and full ownership, including any modifications or revisions thereto, shall at all times remain with Emphasys or its principal.

- 3.2. Client may not download or make copies of the Software.
- 3.3. Client agrees that it will not allow others to reverse engineer, disassemble, de-compile or in any way tamper with the Software.
- 3.4. Client shall take all reasonable steps to ensure that all Software, in whatever form, and all documents relating thereto, are held in confidence by Client, its employees and consultants and are not disclosed or made available to any third party not licensed by Emphasys. Client shall instruct in writing all parties having access to the Licensed Software of their obligations under this Article.
- 3.5. In the event of Client's breach of this Article, as determined by Emphasys, Emphasys shall have the right to enjoin Client from further breach and obtain such relief as may be determined by a court of competent jurisdiction.

4. WARRANTY

- 4.1. Emphasys warrants that all Services and Support provided pursuant to this Agreement will be performed in a workmanlike manner in accordance with reasonable commercial standards. This warranty shall extend for one year following completion of the particular Service, and Emphasys shall correct all Services not so performed if brought to Emphasys' attention in any form within the warranty period.
- 4.2. THE WARRANTIES PROVIDED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE HEREOF, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. LIMITATION OF LIABILITY

- 5.1. Emphasys shall not be liable to Client or any other person for any claim or damages arising directly or indirectly from the furnishing of Services or Support or any documentation relating to such Services or Support provided hereunder or from any other cause, except for claims arising from the gross negligence or willful misconduct of Emphasys or Emphasys' employees, agents or subcontractors. Liability of Emphasys shall in no event exceed the total price of the particular Service or Support that is the subject of the claim. Except for acts of willful misconduct, in no event shall Emphasys be liable to Client or any

third party for indirect, incidental, special, consequential, or exemplary damages of any kind arising out of the furnishing or the use of the Services provided hereunder, even if Emphasys has been advised of the possibility of such damages.

6. **AGREEMENT**

6.1. The Agreement between Client and Emphasys consists of the following documents and all attachments thereto, which are hereby incorporated by reference. If there is any conflict between the documents, the following order of precedence shall govern:

6.1.1. The contents herein, including all Exhibits.

7. **GENERAL**

7.1. Assignment: The rights under this Agreement shall not be assigned by Client without the written consent of Emphasys.

7.2. Complete Agreement: This Agreement, including all Exhibits, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous understandings or agreements, whether written or oral, regarding the subject matter hereof.

7.3. Modification: This Agreement may not be modified, except by an instrument in writing signed by a duly authorized representative of each party.

7.4. Severability: If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

7.5. Waivers: Any waivers by either party of a breach of any provision to this Agreement shall not operate as, or be construed as, a waiver of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

7.6. Arbitration: All disputes arising out of or relating to this Agreement or a material breach thereof, will be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, or as otherwise agreed to by the parties. Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof. The parties shall jointly request the American Arbitration Association to submit a panel of three arbitrators, each of which is listed on the Computer Arbitration Panel and at least one of which shall be an attorney in good standing.

7.7. Force Majeure: In the event of any cause beyond the control of either party, such party shall not be liable

for any delay in the performance of, or failure to perform, this Agreement. Without limiting the generality of the foregoing, such causes include acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, lockouts, quarantines, wars or war operations or other causes which could not, with reasonable diligence, be controlled or prevented by the party affected.

7.8. Notices: All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing either by United States Postal Service, courier service, fax, e-mail, or real time text messaging.

7.9. Jurisdiction: The parties agree that this Agreement will be entered into in the State of Texas, that both parties are subject to the jurisdiction of the state and federal courts in Texas, and that such courts shall have exclusive jurisdiction over any case or controversy arising out of, or in any way relating to, this Agreement or to the relationship created hereunder. The parties further agree that the laws of the State of Texas and of the United States shall govern the construction and interpretation of this Agreement and shall apply in any such case or controversy.

7.10. Termination; Either party may terminate this Agreement by giving 60 days written notice to the other party.

7.11. Headings: The paragraph headings used herein are for convenience of reference only and shall in no way be deemed to define, limit or add to any of the provisions hereof.

7.12. NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY: Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of Harris County. The Parties agree that no provision of the Agreement extends County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas. Neither the execution of the Agreement nor any other conduct of either Party relating to the Agreement shall be considered a waiver by the County of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas. County does not agree to binding arbitration, nor does County waive its right to a jury trial.

7.13. Limit of Appropriation: It is expressly understood and agreed that the County has available One Hundred Nine Thousand One Hundred Fourteen and

47/Dollars (\$109,114.47), the total maximum sum of funds certified available by the County Auditor of Harris County through the issuance of a Purchase Order by the Harris County Purchasing Agent, for the purpose of satisfying the County's obligations during the Term, under the terms and provisions of the Agreement. County understands and agrees, said understanding and agreement being also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that the County shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances, or interpretations thereof exceed the sum. Therefore, any language in the Agreements that refer to any additional fees, expenses, charges, penalties, costs, or damages is hereby deleted in its entirety. When and if all the funds certified available are expended for the purpose of satisfying County's obligations under the terms and provisions of the Agreement, the sole and exclusive remedy of Contractor shall be to terminate the Agreement. With regard to any Renewal Terms or extension of the Agreement, the County has not certified any funds for any renewal or extension period beyond the current fiscal year. Therefore, if County exercises any renewal option, the renewal is subject to the future allocation and certification of funds for each Renewal Term.

7.14. Texas Public Information Act:

7.14.1. The Parties expressly acknowledge that the Agreement is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended (the "Act"). Contractor agrees that to the extent, if any, that any provision of the Agreement is in conflict with the Act, the same shall be of no force and effect. Therefore, any provisions in the Agreement which provide that any information, including the terms of the Agreement, is confidential are hereby stricken and excluded from the terms of the Agreement. Contractor expressly understands and agrees that County shall release any and all information necessary to comply with Texas law without the prior written consent of Contractor.

7.14.2. It is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Act to any software, or any part thereof, or other information or data furnished to the County, whether or not the same are available to the public. It is further

understood that County, its officers and employees shall have the right to rely on the advice, decisions, and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligations to Contractor for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other information or data furnished to County in reliance on any advice, decision or opinion of the Attorney General of the State of Texas.

7.14.3. In the event County receives a written request for information pursuant to the Act that affects Contractor's rights, title to, or interest in any information or data or a part thereof, furnished to County by Contractor under the Agreement, then County will promptly notify Contractor of such request. Contractor may, at its own option and expense, prepare comments and submit information directly to the Attorney General of Texas stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. Contractor is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. Contractor is solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.

7.14.4. Electronic Mail Addresses. County affirmatively consents to the disclosure of its e-mail addresses that are provided to County, including any agency or department of County. This consent is intended to comply with the requirements of the Act, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by Contractor and agents acting on behalf of Contractor and shall apply to any e-mail address provided in any form for any reason whether related to this Agreement or otherwise.

IN WITNESS WHEREOF the parties hereunto have caused this Agreement to be executed by their duly authorized representatives this 15th day of Nov. 2022.

Emphasys Computer Solutions, Inc. dba Emphasys Software

Harris County

Sign: George Rodriguez

Sign: _____

Lina Hidalgo

Name: George Rodriguez

Harris County Judge

Date: Nov 14 2022

APPROVED AS TO FORM:
CHRISTIAN D. MENELEE
COUNTY ATTORNEY

Cherelle Sims

By: _____

Cherelle Sims
Assistant County Attorney
C.A. File 22GEN3847

Exhibit A: Emphasys Proposal

Annual Base & Support Cost	2022-2023
Housing locator – Base service annual cost	\$84,215.99
Rent Reasonableness Tool & Service Maintenance	\$8,345.10
Restricted Access Caseworker Portal Maintenance	\$1,522.57
Opportunity Areas Maintenance	\$1,522.57
Clickable Map Maintenance	\$1,522.57
WHH Embedded Locator Maintenance	\$985.67
Contingency funds to be used for custom reporting, custom development work, targeted outreach, etc. <i>Only invoiced if utilized by client.</i>	\$11,000
Total - Budget	\$109,114.47

ORDER OF COMMISSIONERS COURT
Authorizing execution of Agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the ____ day of _____, 2023 with all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AGREEMENT BETWEEN
HARRIS COUNTY AND EMPHASYS COMPUTER SOLUTIONS, INC.**

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Briones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that County Judge Hidalgo be and is hereby authorized to execute for and on behalf of Harris County an agreement with Emphasys Computer Solutions, Inc. dba Emphasys Software; to provide software support and maintenance services; for a not to exceed amount of One Hundred Nine Thousand One Hundred Fourteen and 47/Dollars (\$109,114.47); for a term beginning upon approval of Commissioners Court and continuing for one (1) year, with four (4) additional one-year renewal terms under the same terms as the Agreement; said Agreement being incorporated as though fully set forth herein word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.