



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

April 09, 2024

Commissioners Court
Harris County, Texas

RE: Sole Source Exemption - Local Government Code § 262.204 (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 Addendum to the attached Agreement for the following:

Description: Nuance Powerscribe Subscription for the Harris County Joint Processing Center

Vendor(s): FUJIFILM Healthcare Americas Corporation

Term: November 10, 2024 - November 09, 2025

Amount: \$52,801

Reviewed By: • Harris County Purchasing • Sheriff's Office

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,

DeWight Dopslauf
Purchasing Agent

JMB
Attachment(s)
cc: Vendor(s)

FOR INCLUSION ON COMMISSIONERS COURT AGENDA APRIL 23, 2024



**ADDENDUM TO THE AGREEMENT BETWEEN HARRIS COUNTY AND
FUJIFILM HEALTHCARE AMERICAS CORPORATION**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Addendum to the above-referenced Agreement is made and entered into by and between Harris County (“County”), a body corporate and politic under the laws of the State of Texas acting by and through its Sheriff’s Office (“Department”), and FUJIFILM HEALTHCARE AMERICAS CORPORATION (“Contractor”). The County and Contractor are referred to herein collectively as the “Parties” and individually as a “Party.”

1) GENERAL SCOPE OF SERVICES

- A) Contractor agrees to provide Nuance Powerscribe software and services to the Department in accordance with Quote #2024-104061 1 (the “Agreement”), attached hereto as Exhibit A and incorporated herein by reference. In the event of any conflict between the terms and provisions of this Addendum, or any portion thereof, and the terms and provisions of any other part or portion of the Agreement, or any other terms and conditions, this Addendum shall control. For having rendered such services, the County agrees to pay the Contractor compensation as stated in the sections to follow.
- B) Contractor warrants and represents it will deliver the Services in compliance with all applicable federal, state, and local laws, ordinances, rules, and regulations relating to the Services.
- C) Unless otherwise stated in this Agreement, words which have well-known technical or industry meanings are used in accordance with such recognized meaning.
- D) Contractor warrants and represents that it is registered with the Texas Secretary of State to transact business in Texas and is current on all state and local fees and taxes, including but not limited to Franchise Account Status with the Texas Comptroller of Public Accounts of in good standing.
- E) Contractor warrants and represents that neither it, nor any of its principals or other affiliated entities, owe any debts to Harris County, including, but not limited to delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as specified by the Harris County Tax Office. For the purposes of this Agreement, a court judgment is not required for delinquent taxes to be considered a debt.
- F) Contractor warrants and represents that it is not in breach of any other contract, obligation or covenant that would affect Contractor’s ability to perform hereunder

and, as a result of entering into this Agreement, will not breach any such contract, obligation, or covenant.

- G) Contractor shall verify that each Subcontractor it retains to perform Services pursuant to this Agreement are in compliance with Sections D and E and F above.

2) **INDEPENDENT PARTIES**

- A) The Services performed by Contractor under this Agreement are performed by Contractor as an independent contractor. This Agreement is not intended to create and shall not constitute a partnership or joint venture between the Parties. Contractor shall have and retain the exclusive right of control over employment, firing, discipline, compensation, insurance, and benefits in accordance with the applicable laws of the State of Texas. Contractor has no authority to bind or otherwise obligate the County orally, in writing or by any act or omission. Nothing contained herein shall establish an agency, employee-employer relationship, partnership, joint enterprise, joint employer, or joint venture relationship by or between the County and Contractor.
- B) **IN THE EVENT THAT ANY STATE OR FEDERAL AGENCY, OR COURT OF COMPETENT JURISDICTION DETERMINES THAT CONTRACTOR IS NOT AN INDEPENDENT CONTRACTOR, CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE COUNTY FOR ANY AND ALL DAMAGES, PENALTIES, ASSESSMENTS, TAXES, OR EXPENSES THAT MAY BE INCURRED BY COUNTY AS A RESULT OF THIS DETERMINATION.**
- C) Contractor warrants that it will comply with all federal and state laws including but not limited to the Prompt Pay Act, in the payment of its workers.
- D) Contractor is solely responsible for the payment of wages and any applicable benefits to workers for Services performed for the County. Contractor shall be responsible for withholding federal and state income taxes, paying Federal Social Security taxes, maintaining unemployment insurance and maintaining workers' compensation insurance in an amount and under such terms as required by the applicable laws of the State of Texas.

THE COUNTY'S PAYMENT IS TO THE CONTRACTOR. THE COUNTY SHALL HAVE NO LIABILITY, DIRECTLY OR INDIRECTLY, FOR PAYMENT TO CONTRACTOR'S WORKERS OR SUBCONTRACTORS. CONTRACTOR SHALL INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL SUCH CLAIMS.

- E) Contractor's workers are not entitled to any contributions by or benefits from the County for any pension plan, bonus plan or any other benefit plan. Contractor and the workers furnished by Contractor shall not be entitled to any fringe benefits or similar benefits afforded to employees of the County. The County is not liable for payment of any federal or state taxes and charges including, but not limited to, income withholding taxes, social security, unemployment, workers' compensation, and similar taxes and charges. This Article shall survive the expiration or termination of this Agreement.
- F) The County is not responsible to Contractor or Contractor's workers for payment of any overtime compensation or any additional payments pursuant to the Fair Labor Standards Act, 29 U.S.C. Section 207 a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et al.*, as amended; or any provisions of the *Texas Labor Code Ann.*, as amended.
- G) Contractor shall not have the authority to enter into contracts or agreements on behalf of the County.

3) TERM

The term shall begin on November 10, 2024 and end on November 9, 2025.

4) CONTRACTOR'S COMPENSATION

- A) Subject to the Limitation of Appropriation, the County agrees to pay Contractor according to Exhibit A. This compensation incorporates all charges such as labor, equipment, material, delivery and any other costs incurred.
- B) Contractor shall not perform any Services until it receives a Purchase Order from the County. Any Services performed prior to the receipt of a Purchase Order shall be at the Contractor's sole expense.
- C) The Contractor understands and agrees that, in accordance with the Texas Constitution, the County is prohibited from paying Contractor in advance for any of the Services or deliverables.

5) TERMS OF PAYMENT

- A) Contractor shall submit to the Harris County Auditor an invoice for services rendered each month by email to: vendorinvoices@aud.hctx.net and by mail to: Harris County Auditor, 1001 Preston 8th floor, Houston, Texas 77002. Each invoice

shall be in a form acceptable to the County Auditor and shall include such detail of the services as may be requested by the County Auditor for verification purposes.

- B) The invoices shall, at a minimum, include a description of the services, the day(s) and the time(s) that Contractor performed the services, the department for which the Contractor provided services, and the total amount billed for the services. After receipt of an invoice, County Auditor shall forward the invoice to the Department for review and approval with such modifications as may be deemed appropriate, and after review, the department will return the invoice, with any modifications, to the County Auditor for payment. The County shall pay each invoice as approved by the County Auditor in accordance with the laws of the State of Texas, including but not limited to, the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. The County may exercise any and all rights to set off payment in the event of overpayment by the County and or funds owed to the County under this Agreement.

6) LIMITATION OF APPROPRIATION

- A) Contractor understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to for the Services performed under this Agreement, and the total maximum sum that the County shall become liable to pay to Contractor under this Agreement, shall not under any conditions, circumstances, or interpretations thereof exceed the sum of Fifty-Two Thousand Eight Hundred One and 05/100 Dollars (\$52,801.05). Notwithstanding anything to the contrary, or that may be construed to the contrary, the County's liability under the terms and provisions of this Agreement is limited to this sum.
- B) Contractor understands and agrees that the laws governing the letting of contracts for the County require the approval of the Harris County Auditor and his certification that funds are, or will be, available for the payment of the obligations created under the Agreement before such contracts become effective. Therefore, Contractor shall not proceed with any Services until such time that it receives a Purchase Order issued by the Harris County Purchasing Agent. Any Services performed by Contractor prior to its receipt of a Purchase Order are at Contractor's own expense.
- C) Contractor does understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to hereunder, and the total maximum sum that the Contractor shall become liable to pay to Contractor hereunder, shall not under any conditions, circumstances, or interpretations thereof exceed the sum certified

by the Purchase Order. Notwithstanding anything to the contrary, or that may be construed to the contrary, the County's liability under the terms and provisions of this Agreement is limited to this sum. When all the funds so certified are expended, Contractor's sole and exclusive remedy shall be to terminate this Agreement. If the Services and charges to be provided for will equal or exceed the amount certified available, Contractor shall notify the County immediately.

- D) With regard to the renewal or extension of this Agreement, the County has not allocated any funds for any renewal or extension period beyond the current fiscal year. Therefore, if the County exercises any renewal option, the renewal is subject to the future allocation and certification of funds for the renewal period.

7) TEXAS PUBLIC INFORMATION ACT

- A) Notwithstanding any language found in the Agreement, the Parties expressly acknowledge that this Agreement is subject to the Texas Public Information Act, Tex. Gov't Code Ann. §§ 552.001 *et seq.*, as amended (the "Act"). Contractor expressly understands and agrees that the County shall release any and all information necessary to comply with Texas law without the prior written consent of Contractor.
- B) It is expressly understood and agreed that the County, its officers and employees may request advice, decisions and opinions of the Attorney General of Texas ("Attorney General") 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 the County, its officers and employees shall have the right to rely on the advice, decisions, and opinions of the Attorney General, and that the 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 the County in reliance on any advice, decision or opinion of the Attorney General.
- C) In the event the 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 the County by Contractor under this Agreement, then the 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 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.

- D) Electronic Mail Addresses. Contractor affirmatively consents to the disclosure of its e-mail addresses that are provided to the County, including any agency or department of the 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.

8) **TERMINATION**

- A) The County may terminate this Agreement at any time by providing thirty (30) days' notice in writing to the Contractor.
- B) Upon receipt of termination notice, Contractor shall discontinue all Services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- C) Within thirty (30) days after receipt of notice of termination, Contractor agrees to submit an invoice showing in detail the Services performed under this Agreement up to and including the date of termination.
- D) The County agrees to pay Contractor that proportion of the prescribed charges for the Services actually performed and deliverables actually received under this Agreement bear to the total Services or deliverables called for under this Agreement, less such payments on account of charges as have previously been made.
- E) *Force Majeure*. In the event that either Party is unable to perform any of its obligations under the Agreement or to enjoy any of the benefits because of natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (referred to as a "*Force Majeure* Event"), the Party who has been so affected immediately agrees to give notice to the other Party and agrees to do everything possible to resume performance. Upon receipt of such notice, the Agreement is immediately suspended. If the period of nonperformance exceeds ten (10) calendar days from the receipt of notice of the *Force Majeure* Event, the Party whose ability to perform has not been so affected may terminate the Agreement immediately by giving written notice to the other Party.

- F) Copies of any and all completed or partially completed data, information, reports, programs, inventions, software (including source code), firmware, designs, preliminary layouts, record drawings, digital files, photographs, sketches, and all other electronic or hardcopy documents or documentation (the “Agreement Documents”) developed, created or invented under this Agreement shall be delivered to the County when this Agreement is terminated or completed.
- G) Agreement Transition. In the event the Agreement ends by either expiration or termination, Contractor shall assist in the transition until such time that a new contractor can be completely operational. Contractor acknowledges its responsibility to cooperate fully with the replacement contractor and the County to ensure a smooth and timely transition to the replacement contractor. Such transitional period shall not extend more than ninety (90) days beyond the expiration/termination date of the Agreement, or any extension thereof. During any transition period, all other terms and conditions of the Agreement shall remain in full force and effect as originally written.

9) **INDEMNIFICATION**

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR COMPLETION OF SERVICES IN WHOLE OR IN PART SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS ARTICLE.

CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS (“INDEMNIFIED PARTIES”) FROM AND AGAINST ALL CLAIMS AND LIABILITY DUE TO THE ACTIVITIES OF CONTRACTOR, OR ANOTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL, PERFORMED UNDER THIS AGREEMENT AND WHICH RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION; INTENTIONAL TORT; INTELLECTUAL PROPERTY INFRINGEMENT; OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER; COMMITTED BY CONTRACTOR OR ANOTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL.

CONTRACTOR SHALL ALSO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES WHICH MIGHT BE INCURRED BY THE COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES WHICH MIGHT BE IMPOSED ON THE COUNTY AS THE

RESULT OF SUCH ACTIVITIES BY CONTRACTOR OR ANOTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL.

COUNTY RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO BE INDEPENDENTLY REPRESENTED BY COUNSEL OF ITS OWN CHOICE IN CONNECTION WITH ANY SUCH SUIT OR PROCEEDING.

ANY LANGUAGE IN THE AGREEMENT THAT STATES THE COUNTY WILL INDEMNIFY OR HOLD HARMLESS THE CONTRACTOR IS HEREBY DELETED IN ITS ENTIRETY.

10) NOTICE

- A) Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been delivered in person or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the County or Contractor at the following addresses. If mailed, any notice or communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To Contractor: FUJIFILM HEALTHCARE AMERICAS
CORPORATION
81 Hartwell Avenue
Lexington, MA 02421
Attn: Dana Williams

To the County: Sheriff's Office
1200 Baker St.
Houston, TX 77002
Attn.: Michael Lanham

Copy To: Harris County Purchasing Agent
1111 Fannin St, 12th Floor
Houston, Texas 77002
Attn: Jessica Barelás

- B) Either Party may designate a different address by giving the other Party ten (10) days written notice.

11) COMPLIANCE AND STANDARDS

- A) Contractor represents and warrants that it is capable and willing to provide the Services called for in the Agreement, and agrees to render the Services in accordance with the generally accepted standards applicable to the Services. Contractor shall use that degree of care and skill commensurate with the profession to comply with all applicable federal, state, and local laws, ordinances, rules, and regulations relating to the Services and Contractor's performance to be rendered hereunder. Contractor represents that Contractor and its personnel are fully qualified to perform the Services and provide the deliverables described in this Agreement.
- B) Contractor agrees to keep confidential the contents of all its discussions with County officials. Contractor agrees to keep confidential the contents of all County records and all other information obtained during Contractor's performance of Services under this Agreement. Contractor shall not release any confidential information unless the County, in writing, authorizes Contractor to release specific information to any third parties.
- C) Contractor shall not access any information it is not authorized to receive, nor shall Contractor copy, recreate, or use any proprietary information or Documents obtained in connection with this Agreement other than for the performance of this Agreement.
- D) Contractor shall not divulge or otherwise make use of the trade secrets or confidential information, procedures, or policies of any former employer, client, or customer in the performance of this Agreement. Neither shall Contractor copy, recreate, or use any proprietary information of any third party in the performance of Services under this Agreement except to the extent authorized by such third parties.
- E) Contractor warrants and represents that it is not in breach of any other contract, obligation or covenant that would affect Contractor's ability to perform hereunder and, as a result of entering into this Agreement, will not breach any such contract, obligation, or covenant.
- F) Contractor warrants and represents that it is registered with the Texas Secretary of State to transact business in Texas, and is current on all state and local fees and taxes, including but not limited to Franchise Account Status of "in good standing" with the Texas Comptroller of Public Accounts.
- G) Contractor warrants and represents that neither it, nor any of its principals or other affiliated entities, owe any debts to Harris County, including, but not limited to delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as specified by the Harris County Tax Office. For the purposes of this Agreement, a court judgment is not required for delinquent taxes to be considered a debt.

- H) Conflict of Interest: Contractor warrants and represents to the County that it does not have nor shall it knowingly acquire any interest that would conflict in any manner with the performance of its obligations under this Agreement. Furthermore, Contractor warrants that no company or person, other than a bona fide employee, has been employed to solicit or secure this Agreement with the County, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the County shall have the right to terminate the Agreement without liability or in its discretion to deduct from the Agreement amount, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingent fee.
- I) Lobbying: Contractor shall not use County funds to directly or indirectly pay any person for influencing or attempting to influence any public employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract. Pursuant to 31 U.S.C.A. § 1352 (2003), if at any time during the Agreement term funding to Contractor exceeds \$100,000.00, Contractor shall file with the County the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.”
- J) NO FEDERAL EXCLUSION
- i) Contractor warrants that neither Contractor nor any of its employees is an “Ineligible Person.” An “Ineligible Person” is an individual or entity who:
- a) is currently excluded, debarred, suspended, or otherwise ineligible to participate in any federal and/or state grant, health care program, or in federal and/or state procurement or nonprocurement programs. This includes but is not limited to persons who are on the List of Excluded Individuals or Entities of the Inspector General, List of Parties excluded from Federal Programs by the General Services Administration or the Medicaid Sanction List; or,
- b) has been convicted of a criminal offense related to the provision of health care items or services [within the rules and regulations of 42 USC §1320a-7(a)], but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.
- ii) Contractor agrees to report immediately to the County if Contractor becomes an “Ineligible Person” during the term of this Agreement, or to cease assigning any employee to provide Services if the employee becomes an “Ineligible Person” during the term of this Agreement.
- iii) Contractor warrants and represents that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any Federal

programs, including but not limited to the following: Department of Health and Human Services (DHHS), Office of Inspector General (OIG) - List of Excluded Individuals & Entities (LEIE); U.S. General Services Administration (GSA) – Excluded Parties List System (EPLS); All States (50) Health & Human Services Commission Medicaid OIG Sanction List; Government Terrorist Watch List (OFAC / Patriot Act); Department of Commerce, Bureau of Industry and Security, Denied Persons List; and Department of Homeland Security, Immigration and Customs Enforcement (ICE) Most Wanted. Contractor must immediately notify the County of any such exclusion or suspension. Contractor warrants and represents that it is in good standing with all State and Federal agencies that have a contracting or regulatory relationship with the County. Contractor warrants and represents that no person who has an ownership or controlling interest in Contractor's business or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any federal program.

- K) County and its designee shall have the right to conduct examinations, studies and audits of the services, payments, and efficiencies provided under this Agreement and County may make such examinations, studies, and audits at any time whether before or after payment. Contractor shall cooperate with such examinations, studies, and audits and provide County with such books, contracts, spreadsheets, and correspondence, including all of Contractor's backup and support data for billings, and Contractor shall provide access to such records, data, documents and personnel as are requested by County or the County Auditor (the "Audit Documents"). All payments made by County are subject to re-evaluation and refund or withholding of future payments conditioned on the results of the audit. This section shall survive termination of this Agreement.
- L) Whistleblower Protection Act: Contractor understands and agrees that this Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. Contractor shall insert the substance of this clause; paragraph M ("Whistleblower Protection Act"), in all subcontracts providing services under this Agreement.
- M) (If applicable under Texas law) Prior to execution of the Agreement, Contractor shall, as an update, complete Form 1295 in accordance with Tex. Gov't Code Ann. § 2252.908 concerning "Interested Parties," Contractor warrants and represents that all the information on the form is complete and accurate.

- N) Foreign Terrorists Organizations. In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, Contractor warrants and represents that, at the time of execution of this Agreement and for the duration of the Term of this Agreement and any Renewal Terms, Contractor does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
- O) Anti-Boycott. Contractor warrants and represents, in accordance with Tex. Gov't Code Ann. § 2271.002, that unless Contractor meets an exemption under subsection (a), then, as required by subsection (b), Contractor's signature on this Agreement constitutes Contractor's written verification that it does not boycott Israel and will not boycott Israel during the term of the contract.
- P) Fraud, Waste or Abuse Hotline. Contractor shall immediately report to the County through the County's Fraud, Waste, or Abuse Hotline and also notify the County in accordance with all the Notice provisions contained in this Agreement all suspected or known instances and facts concerning fraud, waste, abuse, or criminal activity under this Agreement. The County's Fraud, Waste, or Abuse Hotline can be accessed by phone at 866-556-8181 or online at <https://secure.ethicspoint.com/domain/media/en/gui/68174/index.html>.

12) PUBLIC CONTACT

Contact with the news media, citizens of Harris County, or governmental agencies shall be the responsibility of the County. Under no circumstances shall Contractor release any material or information developed in the performance of its Services without the express written permission of the County.

13) APPLICABLE LAW AND VENUE

- A) The Agreement is subject to the state and federal laws, orders, rules, and regulations relating to the Agreement and funded by state or federal funds or of applicable conditions of participation in Medicaid or Medicare program(s).
- B) This Agreement is governed by the laws of the State of Texas.
- C) The forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas.
- D) The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

14) TAXES AND CHARGES

- A) The County is a political subdivision under the laws of the State of Texas and claims exemption from sales and use taxes under Tex. Tax Code Ann. §151.309, as amended. The County agrees to provide exemption certificates to Contractor upon request.
- B) The County is neither liable for any personal property taxes, charges, or fees assessed against Contractor nor obligated to reimburse Contractor for any taxes, charges, or fees assessed against Contractor for the supplies provided or any Services rendered. Any language in the Agreement in conflict with this section is hereby deleted.

15) PROHIBITION ON LIENS

In accordance with Texas Property Code §43.002, Contractor, or its contractors or agents, will not create or place, or permit to be created or placed, a lien or any other encumbrance on County property. If any such lien or encumbrance is placed on County property, Contractor shall pursue any lawful effort, including but limited to seeking relief in a court of competent jurisdiction, to remove the lien or encumbrance from the property.

16) NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY

- A) 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 the County.
- B) The Parties agree that no provision of this Agreement extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- C) Neither the execution of this Agreement nor any other conduct of either Party relating to this 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.
- D) The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.

17) OWNERSHIP OF DOCUMENTS; COPYRIGHT

- A) Contractor agrees that for the purposes of assigning copyright ownership, the Agreement Documents developed pursuant to the Services performed under this Agreement, shall be the sole property of the County.
- B) Contractor represents that it has the right to assign and hereby assigns to the County all rights, title, copyright ownership and interest in any Agreement Documents to be developed or has already been developed, created or invented pursuant to this Agreement or any other agreements that Contractor may currently have or had in the past, with the County.
- C) Within seven (7) days after its development, creation, or invention, Contractor agrees to deliver to the County, copies, in a form acceptable to the County, of any and all such Agreement Documents. Contractor may retain one set of reproducible copies of all Agreement Documents for the sole use of performing Services for the County. Contractor is expressly prohibited from selling, donating, licensing or otherwise marketing, or divulging to third parties, any Agreement Document, or using such Agreement Documents in the preparation of other work for any other client, without the express written permission of the County.

18) AUDIT RIGHTS

- A) Audit Rights. The Contractor shall cooperate to the fullest extent with any and all federal, state, local, or County audits related to this Agreement. The Contractor's cooperation shall include, but not be limited to access to the Audit Documents, in whatever form, that are applicable to this Agreement and requested by any federal, state, local, or County entity that has rights or jurisdiction over any part of this Agreement or the funds applicable to this Agreement.
- B) Record Retention. The Contractor agrees to retain within the boundaries of Harris County, for six (6) years after the expiration of this Agreement, all Audit Documents. The Contractor will retain and make available, and insert the requisite clause in each applicable subcontract requiring its subcontractors to retain and make available, the Audit Documents.

19) WAIVER OF BREACH

Waiver by either Party of a breach or violation of any provision of the Agreement is not a waiver of any subsequent breach.

20) SEVERABILITY

If any provision or part of the Agreement or its application to any person, entity, or circumstance is ever held by any court of competent jurisdiction to be invalid for any reason, the remainder of the Agreement and the application of such provision or part of the Agreement to other persons, entities, or circumstances are not affected.

21) SURVIVAL OF TERMS

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement including, but not limited to the indemnification provision, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

22) CONTRACT CONSTRUCTION

- A) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
- B) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- C) When terms are used in the singular or plural, the meaning shall apply to both.
- D) When either the male or female gender is used, the meaning shall apply to both.

23) SUCCESSORS AND ASSIGNS

- A) The County and Contractor bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement.
- B) Contractor shall not assign, sublet, or transfer its or his interest in this Agreement without written consent of the County.

24) NO THIRD-PARTY BENEFICIARIES

- A) The County is not obligated or liable to any party other than Contractor for the performance of this Agreement.
- B) Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies in any third party.

- C) Nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

25) EFFECTIVE DATE

The Effective Date of this Addendum will be the date the Agreement is approved by the Commissioners Court of Harris County.

26) ENTIRE AGREEMENT; MODIFICATIONS

- A) This instrument contains the entire Agreement between the Parties relating to the rights herein granted and obligations herein assumed.
- B) Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties.

27) EXECUTION, MULTIPLE COUNTERPARTS

This Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Agreement.

[Execution Page Follows]

FUJIFILM HEALTHCARE AMERICAS HARRIS COUNTY CORPORATION

DocuSigned by:
Hidetoshi Izawa
By: Hidetoshi Izawa Signer Name: Hidetoshi Izawa By: _____
Name: Hidetoshi Izawa Signing Reason: I approve this document Lina Hidalgo
Title: President and CEO Signing Time: 3/15/2024 12:13:52 PM PDT Harris County Judge
Date: 3/15/2024 000C11BB137049F2A9024F5122283413

APPROVED AS TO FORM:

Christian D. Menefee
Harris County Attorney

By: Robert de los Reyes
ROBERT DE LOS REYES
Senior Assistant County Attorney
C.A. File 24GEN0468

EXHIBIT A

Quote # 2024-104061 1

(follows behind)

FUJIFILM Healthcare Americas Corporation

Quote # 2024-104061 1

Date of Issue: 01-25-2024

FUJIFILM Healthcare Americas Corporation
81 Hartwell Avenue Suite 300
Lexington, MA 02421
800-431-1850

Quote: 2024-104061 1
Date: 01-25-2024
Expires: 03-24-2024
GPO: N/A
FOB: Destination

CONFIDENTIAL QUOTATION

Contact: Dana Williams

Contact Phone: (210) 232-3834

Contact Email: dana.williams@fujifilm.com

CUSTOMER SOLD TO:
HARRIS COUNTY SHERIFFS
DEPARTMENT
1301 FRANKLIN ST
HOUSTON Texas 77002-1957
ATTN:
713-221-6000

CUSTOMER BILL TO:
HARRIS COUNTY SHERIFFS
DEPARTMENT
1301 FRANKLIN ST
HOUSTON Texas 77002-1957
ATTN:
713-221-6000

CUSTOMER SHIP TO:
Harris County Sheriff's Department
1200 Baker St. Houston, TX 77002
Houston TX 77002
ATTN: Paul Thomas

Additional Ship To Addresses? No

Configuration - Included Items

Qty	Part #	Description	Net Each
12	800045246	<p>NUANCE TERM MODEL - POWERSCRIBE ONE RENEWAL MONTHLY SUBSCRIPTION FEE FOR HARRIS COUNTY SHERIFFS' DEPARTMENT, QUOTE 11364847-3 12 MONTH RENEWAL</p> <p>Nuance Fixed Monthly Subscription Fee: \$4,400.00</p> <ul style="list-style-type: none"> Nuance Product: Powerscribe One (Renewal) Pricing Model: Fixed Monthly Term Contract Term: 12 Months Term Dates: 11/10/2024 - 11/09/2025 Committed Annual Report Volume: 50,000 	\$4,400.00
1	800052130	<p>NUANCE ANNUAL PER REPORT OVERAGE FEE FOR HARRIS COUNTY SHERIFFS' DEPARTMENT, QUOTE 11364847-3</p> <p>Per Report Overage Fee: \$1.05</p> <p>In addition to the fixed monthly subscription fees included in this configuration quote additional report overage fees may apply. If during any given annual billing period, the actual report volume generated by the site should exceed the committed report volume by five percent or more, this per report overage fee will be due for each report in excess of the committed report volume.</p>	\$1.05

Subtotal:

Net

\$52,801.05

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Quotation Pricing

Quote # 2024-104061 1

Total Net Price:	\$52,801.05
** Estimated Sales Tax:	TBD

** Applicable sales taxes, shipping and handling charges are the responsibility of the Customer.

Customers claiming an exemption from sales taxes must have a valid sales tax exemption certificate on file with HCUS. Applicable sales taxes will be charged at the rates established by the taxing authorities at the Customer's location where products and services are tendered as set forth on this Configuration Quote.

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Quotation Acceptance

Quote # 2024-104061

1. Order Terms. This Configuration Quote is the complete terms of this order and is made a part of the following End User Purchase, License and Service Agreement(s) between FUJIFILM Healthcare Americas Corporation ("HCUS") and Customer: Synapse PACS 1/22/2013;
2. The expiration date of this Configuration Quote is 3/24/2024. If not signed and returned prior to this date, the Configuration Quote must be reissued and is therefore subject to any price changes that have become effective.
3. No additional or conflicting terms included in a customer issued purchase order and/or other customer issued document shall have any effect.
4. In the event of a conflict or inconsistency between the terms of this Configuration Quote and the End User Purchase, License, and Service Agreement this Configuration Quote shall control.
5. The individuals signing below represent that they have the authority to execute this Configuration Quote on behalf of the Customer and HCUS respectively.
6. This Configuration Quote may include hardware and other third party products that may not be available when the order for the hardware or third party products is placed with the vendor due to the product having been discontinued or having an excessive backlog. When parts as specified in the Configuration Quote are not available from the vendor, HCUS reserves the right to substitute what it believes are functionally equivalent products from the same vendor without notification to the customer.
7. The parties acknowledge that the products and Services set forth on this Configuration Quote represent each party's understanding of the products and services that are suitable for Customer's needs based on the information that Customer has provided to HCUS. Customer acknowledges that changes to the Configuration Quote may result in additional fees and/or purchase costs.
8. Nuance EULA and Product Schedules

Customer acknowledges and agrees that: (a) all Nuance Software, Equipment and Services provided to Customer under this Configuration Quote are governed by the terms of the Nuance End User License Agreement, posted at https://nuance.fujifilmusa.com/Fuji_Nuance_PowerScribe_End_User_Schedules_for_Fuji_08-29-19.zip, to access the document use Username: nuanceuser Password: powerscribe; and (b) by Customer signing this Configuration Quote, Customer: (i) represents that it has reviewed all of the terms and conditions of the Nuance End User License Agreement; and (ii) agrees to be bound by the terms and conditions of the Nuance End User License Agreement without modification, including all applicable schedules.

9. Nuance Payment Terms

In association with the Nuance parts contained within this Configuration Quote, the following payment terms shall apply:

Nuance Term Model - Software Subscriptions

- Payment terms for subscription Fees are billed Monthly based on The fixed Monthly Fees defined in this Configuration Quote.
- Payments will begin upon First Clinical Use of the System or the earlier of (i) the date Nuance completes the Professional Services related to the installation of the Solution, and it is therefore capable of

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Quote:2024-104061 1
Date: 01-25-2024
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processing data in Customer's production environment, or (ii) the date occurring one hundred and eighty (180) days after the date of the applicable Order.

Nuance Overage Fees

- Overage Fees are billed on an annual basis as defined in The Nuance Healthcare Master agreement and applicable Schedules. Payment is due upon receipt of Quote for annual Overage fee.
- Customers purchasing Nuance who also issue a Purchase Order (PO), are required to issue a separate PO for any Nuance report overages based on The Overage price per report as listed in this Configuration Quote.

Payment Terms:

The payment terms for a transaction where all or a portion of the transaction would be considered a capital purchase are:

- Invoices for down payments are due upon receipt. Invoices associated with delivery, Acceptance or other milestones are due in accordance with the terms stated on the invoice.
- The payment terms for a transaction where all or a portion of the transaction would be considered a lease or a fee per study transaction financed by a third party shall be as specified in the agreement between Customer and the finance company.
- Payment terms for (i) purchases totaling less than \$100,000 or (ii) purchases totaling less than \$100,000 in Software, are due upon delivery of product(s) or performance of services.
- Incremental Software license fees are due upon execution of this Configuration Quote.
- Payment terms for Software purchases with a total order value \$100,000 or greater are 20% / 60% / 20% where twenty percent (20%) is upon execution of this Configuration Quote. Sixty percent (60%) is due upon commencement of System installation activities. The remaining balance of twenty percent (20%) is due upon Acceptance or First Clinical Use of the System or components, whichever occurs first.
- Payment terms for sales orders consisting solely of migration services will be 20% / 60% / 20%, where 20% is due upon execution of this Configuration Quote. Sixty (60%) is due when migration services commences. Final 20% is due when HCUS submits the final migration report to Customer.
- Net 30 Days from Shipment.

FUJIFILM Healthcare Americas Corporation cannot accept payment (either in whole or in part) by credit card, p-card or any other charge card for invoices that exceed \$10,000.

Supply chain issues may affect delivery of hardware purchases. Customer Acknowledgement _____

Please enter your initials to signify if a purchase order **will or will not** be issued for this transaction:

_____ A Purchase Order will be issued for this transaction



Quote:2024-104061 1
Date: 01-25-2024
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Customer's agreement to these payment terms and order terms and conditions:

Customer Signature

Date

ORDER OF COMMISSIONERS COURT
Authorizing execution of Addendum to an 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 _____, 2024 with all members present except _____.

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

**ORDER AUTHORIZING EXECUTION OF ADDENDUM TO THE AGREEMENT
BETWEEN HARRIS COUNTY AND
FUJIFILM HEALTHCARE AMERICAS CORPORATION**

Commissioner _____ introduced an order and made a motion that the same be adopted. 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, P.E.	<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 thus adopted follows:

IT IS ORDERED that County Judge Lina Hidalgo be, and she is hereby, authorized to execute for and on behalf of Harris County, the Addendum to the Agreement with FUJIFILM HEALTHCARE AMERICAS CORPORATION to provide Nuance Powerscribe software and services for the Harris County Sheriff's Office at a cost to the County of \$52,801.05. The Agreement is incorporated herein by reference for all purposes as though fully set forth 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.