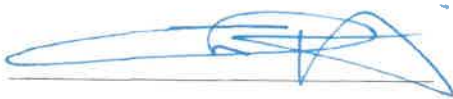


State of Texas § Court Order
Collin County § 2019-991-10-28
Commissioners Court §

An order of the Collin County Commissioners Court approving a request to award a contract for products or services to be provided to the county.

In accordance with Texas Local Government Code section 262.027, the Collin County Commissioners Court hereby approves a request to award a contract for the following products or services to be provided to the county: *Enterprise Evidence Management System (RFP No. 2018-048)* to Foray Technologies (Foray LLC), further authorizes the Purchasing Agent to finalize and execute the agreement, and approves a budget adjustment for same, as detailed in the attached documentation.

A motion was made, seconded, and carried by a majority of the court members in attendance during a regular session on Monday, October 28, 2019.



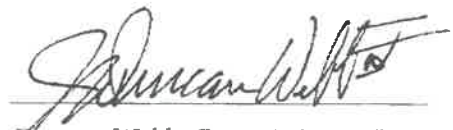
Chris Hill, County Judge



Darrell Hale, Commissioner, Pct 3




Susan Fletcher, Commissioner, Pct 1



Duncan Webb, Commissioner, Pct 4

Not Present

Cheryl Williams, Commissioner, Pct 2



ATTEST: Stacey Kemp, County Clerk

SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT (this “**Agreement**”) is made effective as of October 29, 2019 (the “**Effective Date**”), by and between COLLIN COUNTY GOVERNMENT (“**Collin County**”), and Foray LLC dba Foray Technologies, LLC, a Limited Liability Company (“**VENDOR**”). VENDOR and Collin County are individually a “**Party**” and collectively the “**Parties**.”

- A. VENDOR owns an Internet-based application known as ADAMS™ (the “**Software**”).
- B. Collin County desires to obtain access to the Software via the Internet.
- C. This Agreement sets forth the terms and conditions on which VENDOR shall provide, and Collin County shall receive, the functionality made available by the Software via the Internet (the “**Subscription Services**”).

In consideration of the terms and conditions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Definitions.** The following definitions apply for purposes of this Agreement:
 - 1.1 “**CIO**” means the then-current Chief Information Officer of Collin County.
 - 1.2 “**Confidential Information**” means all information and materials (tangible and intangible) disclosed by Collin County to VENDOR. For the avoidance of doubt, all Collin County Data shall be the Confidential Information of Collin County.
 - 1.3 “**Consent**” means the prior, express, and written consent of a Party, which consent may be withheld, delayed, or conditioned in such Party’s sole discretion.
 - 1.4 “**Collin County Data**” means all data entered by Collin County, or received by VENDOR, as part of, or in connection with, Collin County’s use of the Subscription Services.
 - 1.5 “**Director**” means the then-current Director of Collin County’s District Attorney’s Office.
 - 1.6 “**Error**” means a failure of the Subscription Services to perform as intended and/or with VENDOR’s documentation for the Subscription Services.
 - 1.7 “**Major Incident**” means an Error that has a critical impact on the use of, or access to, the Subscription Services, resulting in the inability to continue to use or access the Subscription Services as required or intended. There is no reasonable workaround, and such Error is potentially catastrophic in nature. The business impact to Collin County is severe, creating a stop point in major and essential business processes. Essential business processes of the Subscription Services cannot continue until a solution to the Error is implemented.
 - 1.8 “**Minor Incident**” means an Error that has a moderate restriction on the use of, or access to, the Subscription Services, resulting in the restricted ability to continue to use or access the Subscription Services as required or intended.
 - 1.9 “**Operating Hours**” means the operating hours as identified by the Director and is subject to change by such director upon 30 days prior notice to VENDOR.

1.10 “**Routine Incident**” means an Error that has a slight restriction on the use of, or access to, the Subscription Services, resulting in the ability to continue to use or access the Subscription Services as required or intended.

1.11 “**Resources**” means any and all hardware and software necessary to provide the Subscription Services, including servers owned and/or controlled by VENDOR.

1.12 “**Support**” means VENDOR’s being available to (i) answer questions from, and provide general advice to, Collin County concerning the Subscription Services and (ii) receive reports from Collin County of possible Errors concerning the Subscription Services and using best efforts to correct such actual Errors.

1.13 “**Third Party**” means a person or entity that is not a Party.

2. **Subscription Services.**

2.1 **Access and Use.** VENDOR grants to Collin County a limited, non-exclusive, and non-transferable license to access and use the Subscription Services. VENDOR shall obtain and be solely responsible for the cost, installation, use, and operation of the Resources, including maintaining, backing-up, and providing security for the Resources. VENDOR may not subcontract, delegate, or assign the provision of any portion of the Subscription Services to any Third Party without Collin County’s Consent, and in the event such Consent is obtained by VENDOR from Collin County, VENDOR shall enter into a written agreement with the applicable Third Party for the provision of such services and shall promptly provide a copy of each such written agreement to Collin County.

2.2 **Collin County Hardware.** Collin County shall be responsible for providing high speed Internet connection, hardware, and software that is compatible with the Subscription Services (the “**Collin County Environment**”). If upgrades to the Resources require Collin County to upgrade the Collin County Environment, then VENDOR shall notify Collin County in writing at least 90 days in advance of such upgrade.

3. **Collin County Data.**

3.1 **Ownership and Use.** Collin County shall own all right, title, and interest in and to the Collin County Data, including all intellectual property rights in and to the Collin County Data. VENDOR may use the Collin County Data only as expressly required in order to provide the Subscription Services. VENDOR may not add, delete, update, or otherwise modify the Collin County Data, unless expressly authorized by Collin County in writing. VENDOR disclaims any and all rights in and to the Collin County Data. VENDOR shall keep all Collin County Data confidential and secure behind a firewall and shall maintain regular backups of the Collin County Data, all of which shall be based on best practices and approved by Collin County. VENDOR shall not provide or use the Collin County Data for corporate gain, statistical use, or provide the Collin County Data to any other organization or person without the Consent of the Director.

3.2 **Access by Collin County.** Collin County shall have ability to access and retrieve the Collin County Data at any time. Without limiting the foregoing, in the event of an emergency or time sensitive situation, VENDOR shall permit Collin County full access to the Collin County Data in accordance with the following:

(a) The Director and/or CIO will contact VENDOR during any emergency or time sensitive event, as determined in Collin County’s sole discretion, in order to access and retrieve the Collin County Data;

(b) **VENDOR** shall immediately contact the Director and the CIO in the event **VENDOR** believes that an emergency with respect to the Collin County Data has occurred and or may occur;

(c) In the event of an emergency or time sensitive situation, as determined in Collin County's sole discretion, **VENDOR** shall make available to Collin County the use of FTP (or file transfer portal) and/or other means of retrieving the Collin County Data.

3.3 **Destruction.** **VENDOR** will provide the ability to dispose of, and/or destroy, Collin County Data upon request of Collin County in order to meet required retention schedules allowable by the law. **VENDOR** shall not retain or make additional copies of the disposition record residing in other locations or cloud environments making the record subject to disclosure upon any public record request or in the event of litigation.

3.4 **Return.** In connection with the termination of this Agreement, **VENDOR** shall provide all of the Collin County Data to Collin County in accordance with the following:

(a) All Collin County Data shall be provided through FTP (file transfer protocol) and/or other agreed upon technology 60 days prior to the termination date of this Agreement;

(b) All Collin County Data shall be provided back in a Microsoft SQL Server database format (minimum versions are 2005 or 2008R2) and/or other agreed upon database technology;

(c) All Collin County Data shall be destroyed by **VENDOR** upon termination, which includes all backups and/or copies of the Collin County Data in other environments or locations; and

(d) Collin County reserves the right to conduct one or more audits to ensure that all Collin County Data has been destroyed in the cloud and/or other environments or locations.

3.5 **Data Breach.** If **VENDOR** discovers unauthorized access to the Collin County Data, **VENDOR** will immediately notify the Director and the CIO. Within two weeks of such discovery, detail notification is required and shall include the nature of the unauthorized access, the data accessed, the involving parties, mitigation efforts, and corrective actions to be taken by **VENDOR**.

3.6 **Storage in Texas.** All of Collin County Data (including copies, backups, and data in the cloud) shall be stored in the state of Texas at all times, unless otherwise agreed upon by **VENDOR** and the Director and the CIO.

3.7 **Disaster Recovery.** **VENDOR** shall provide required disaster recovery and business continuity plans to the Director and the CIO, which plans must be agreed upon and plans must meet government requirements.

4. **Support.**

4.1 **Upgrades.** **VENDOR** shall provide regular upgrades to the Subscription Services and shall schedule each such upgrade in advance with Collin County.

4.2 **Help Desk.** **VENDOR** shall be available by telephone to provide Emergency (Catastrophic Failure) Support to one designated Collin County System Administrator on a 24/7 basis.

4.3 **Support Requests.** Upon **VENDOR**'s receipt of a support request (a "**Support Request**"), **VENDOR** shall (i) log such Support Request in **VENDOR**'s support log, (ii) assign such Support

Request a unique tracking number, and (iii) use reasonable attempts to promptly address the Support Request. VENDOR shall continuously manage the Support Request until resolved.

4.4 Response Times. Upon VENDOR's receiving a Support Request regarding a possible Failure, VENDOR shall designate such possible Failure as being (i) a Major Failure, or (ii) a Minor Failure. VENDOR shall address such possible Failure in accordance with the following:

(a) Major Failure. VENDOR's response to major failure maintenance calls shall not exceed four (4) hours. Major Failure maintenance shall be defined as: (i) the entire system is inoperative, (ii) Disruption in service to a single user of material nature. Material nature shall mean the DA's operations are critically affected.

(b) Minor Failure. VENDOR's response to a minor failure shall not exceed the next business day following the report. Minor Failure shall be defined as (i) any request for service when a major failure does not exist shall be deemed to be a minor failure.

(c) Source Code. Collin County shall have the right to cause VENDOR to place the source code version of the Software in escrow with a mutually acceptable escrow agent at Collin County's expense. The release conditions for such placement shall permit, at a minimum, Collin County to obtain such source code in the event VENDOR fails to comply with the Support requirements in this Agreement.

5. Service Levels.

5.1 Description. VENDOR shall comply with the following service levels (the "*Service Levels*"):

(a) VENDOR shall cause the Subscription Services to be available 90.0% of the time during Operating Hours, excluding scheduled downtime, as measured on a monthly basis (the "*Availability*").

(b) VENDOR shall provide Collin County the required level of performance and response time to the Subscription Services in order for Collin County to conduct Collin County's business efficiently and effectively, but in no event less than the response times set forth in Section 4.4.

(c) VENDOR shall notify, at least two weeks in advance, the Director and the CIO for all scheduled outages. All scheduled outage notification must include the start and completion dates, time, impact, risk, back out plan of the schedule outages, and any technology updates that impact (or will impact) Collin County at any time. VENDOR shall notify the Director and the CIO of all unscheduled outages immediately when such outage occurs. VENDOR will provided the Director and the CIO within two hours the details of the unscheduled outages, to include, impact to the County and resolution. Unscheduled outages should always be minimized and should not occur no more than four times in a 12-month fiscal year.

(d) VENDOR will provide the proper infrastructure and other Resources and security to properly maintain access to Collin County Data and the Subscription Services.

5.2 Service Level Credit. Customer shall receive a 20% service level credit for each month that a Service Level is not met (the "*Service Level Credit*"). The Service Level Credit shall be applied to the following month's Fees.

6. **Fees.** Collin County shall pay VENDOR the amounts set forth in Schedule 1 (the “*Fees*”) in accordance with the payment terms and conditions contained therein. To the extent Schedule 1 permits increases in the Fees, VENDOR may not increase the Fees more than once in any calendar year and any annual increase may not exceed 3% of the Fees paid in the previous year excluding any additional services such as users or data above the current subscription levels.

7. **Confidentiality.**

7.1 **Use and Disclosure.** Without the Consent of Collin County or as otherwise contemplated by this Agreement, VENDOR shall never disclose, copy, or use any Confidential Information in any manner.

7.2 **Degree of Care and Ownership.** VENDOR shall treat the Confidential Information with the same degree of care as VENDOR accords to VENDOR’s own Confidential Information, but in no case less than reasonable care. VENDOR shall promptly advise Collin County if VENDOR learns of any unauthorized use, disclosure, or copying of the Confidential Information. Collin County shall continue to own all of the Confidential Information. VENDOR shall promptly return to Collin County all Confidential Information in VENDOR’s possession or control upon the earlier to occur of (i) a written request by Collin County or (ii) termination of this Agreement for any reason by any Party.

7.3 **Remedies.** A breach of this Section 7 by VENDOR may cause irreparable harm and injury to Collin County for which money damages are inadequate. In the event of such breach, Collin County shall be entitled to seek injunctive relief, without the requirement of posting a bond or any other security, in addition to all other available remedies.

8. **Audits.** The Director and the CIO reserve the right to request third-party audits and/or certifications related to infrastructure and security, including penetration testing and vulnerability assessments, of the Subscription Services. All reports from these audits will be provided to Collin County. Collin County, or a Third Party provider selected by Collin County, has a right to perform an onsite inspection of VENDOR’s cloud, infrastructure, and security practices on a specified basis. Collin County has the right to review the Resources and security specifications in written format. Collin County has the right to audit the performance records of the Subscription Services, as well as access to daily and weekly service quality statistics.

9. **Indemnification.** VENDOR shall reimburse, defend, indemnify, and hold harmless Collin County and Collin County’s affiliates and Collin County’s and Collin County’s affiliates’ partners, officers, employees, contractors, and agents for, from, and against any and all claims, damages, losses, deficiencies, liabilities, penalties, charges, costs, and expenses resulting from, relating to, or arising out of, any claims that the Software or Subscription Services violate, misappropriate, or infringe any Third Party’s intellectual property rights.

10. **Term and Termination.**

10.1 **Term.** This Agreement shall be effective for one (1) year beginning on the Effective Date and ending at 12:01 a.m. on the first anniversary of the Effective Date. (the “*Initial Term*”). Upon expiration of the Initial Term, this Agreement shall automatically renew for subsequent terms of one year each (each a “*Renewal Term*”), at Collin County’s sole discretion.

10.2 **Termination.** Either Party may immediately terminate this Agreement by giving written notice to the other Party if such other Party is in material breach of this Agreement and fails to cure such material breach within 30 days following receipt of written notice from the non-breaching Party of

such breach. Notwithstanding the foregoing 30-day cure period, Collin County may immediately terminate this Agreement by giving written notice to VENDOR if VENDOR breaches Section 7.

11. **General.**

11.1 **Relationship of Parties.** Nothing in this Agreement shall create or be deemed to create the relationship of partners, joint ventures, employer-employee, joint employees, or principal-agent between the Parties. Neither Party shall have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf or in the name of the other Party or to bind the other Party in any manner whatsoever nor shall either Party make any representation, warranty, covenant, agreement, or commitment on behalf of the other Party.

11.2 **Binding Effect.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and the Parties' respective successors and permitted assigns. This Agreement may be changed, waived, or discharged only pursuant to a written agreement between the Parties. The waiver or failure of a Party to exercise in any respect any right provided for under this Agreement shall not be deemed a waiver of any further right under this Agreement by such Party. Each Party shall pay all of such Party's own expenses relating to the negotiation and preparation of this Agreement, including the fees and expenses of such Party's counsel.

11.3 **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.4 **Notices.** Any notices or communications to be given under this Agreement by a Party to the other Party shall be deemed to have been duly given if given in writing and (i) personally delivered, (ii) sent by nationally recognized overnight courier, (iii) sent by facsimile (with electronic confirmation), or (iv) sent by electronic mail (with confirmation through any of methods (i), (ii), or (iii) above), in each case, at the address for such other Party set forth on the signature page. Notices delivered personally, by courier, by facsimile, or by electronic mail shall be deemed communicated as of actual receipt (or refusal) by the addressee. Any Party may change such Party's address for notice under this Agreement by giving prior written notice to the other Party of such change in the manner provided in this Section 11.4. All notices to third parties and all other publicity concerning the transactions contemplated by this Agreement shall be jointly planned and coordinated by the Parties, (a) unless such notices or other publicity are mandated by law and (b) except that VENDOR shall be entitled to announce and refer to Collin County as a licensee and client of VENDOR.

11.5 **Governing Law and Venue.** This Agreement shall be performed in, governed by, and construed and enforced in accordance with the laws of the state of Texas, without regard to Texas' conflict of laws principles. The parties agree that the exclusive venue for any legal proceedings involving this agreement shall be in the courts of Collin County, Texas.

11.6 **Entire Agreement.** This Agreement (i) embodies the entire agreement and understanding between the Parties relating to the subject matter of this Agreement and (ii) supersedes all prior agreements and understandings relating to the subject matter of this Agreement. This Agreement may be signed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed or .pdf copies of manually signed

signature pages to this Agreement are fully binding and enforceable without the need for delivery of the original manually signed signature page. This Agreement does not create, and shall not be construed as creating, any right enforceable by anyone not a Party. VENDOR may not assign this Agreement without Collin County's Consent.

11.7 Interpretation. In the interpretation of this Agreement, except where the context otherwise requires, (i) "including" or "include" does not denote or imply any limitation, (ii) "or" has the inclusive meaning "and/or," (iii) "and/or" means "or" and is used for emphasis only, (iv) "\$" refers to United States dollars, (v) the singular includes the plural, and vice versa, and each gender includes each other gender, (vi) captions or headings are only for reference and are not to be considered in interpreting this Agreement, and (vii) "Section" refers to a section of this Agreement, unless otherwise stated in this Agreement.

11.8 Survival. This Section 11 and Sections 1, 3, and 7 through 9 shall survive termination of this Agreement.

11.9 Expenses for Enforcement. In the event either party hereto is required to employ an attorney to enforce the provisions of this agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including collection.

11.10 Order of Precedence. In the event of possible conflict or inconsistency between such documents, the conflict or inconsistency shall be resolved by giving precedence in the following order: (1) the terms of this Agreement; (2) Exhibits attached and incorporated herein; (3) all other SOWs or other purchase documents.

(Balance of page intentionally blank—Signatures on next page)

This Agreement is entered into by the Parties to be effective on the Effective Date.

VENDOR:

**FORAY TECHNOLOGIES, A LIMITED
LIABILITY COMPANY**

By: Michal Temple

Name: Michal Temple

Title: Sales Operations

Address:

**3911 5th Avenue
Suite 300
San Diego, CA 92103
Attention: Michal Temple, Sales Operations**

COLLIN COUNTY:

COLLIN COUNTY GOVERNMENT

By: Michelyn Rains

Name: Michelyn Rains

Title: Purchasing Agent

Address:

**2300 Bloomdale Road
Suite 3160
McKinney, TX 75071
Attention: Purchasing Department**

**2300 Bloomdale Road
Suite 4192
McKinney, TX 75071
Attention: County Administrator, Bill Bilyeu**

Schedule 1

Fees

Year 1 Software Subscription Fees:

Total Price - \$86,060 (includes licensing fees, 1st year annual maintenance, installation and configuration, cloud based solution, 24/7/365 emergency support, integration via API (to one existing system), GIS capabilities, geo redundancy, and annual escrow fee.

Implementation fees:

Training - \$7,500

Post Go-Live Support - \$6,000

Not to Exceed Travel - \$4,916 (included in 1st year cost below. Not to exceed travel expenses shall be invoiced as utilized on a monthly basis.)

Total 1st year cost: \$104,476

Milestone Payment Plan:

- 50% of Total 1st Year Cost Invoiced Upon Completion of Project Kick-Off Meeting
- 50% of Total 1st Year Cost Invoiced 30 Days Post Go-Live
- Not to exceed travel expenses shall be invoiced as utilized on a monthly basis.

Future year's software subscription fees shall be invoiced on each anniversary of the Go-Live date.

The following software subscription fees include 24/7/365 emergency support, annual maintenance cost, cloud based solution, integration via API (to one existing system), GIS capabilities, geo redundancy, and annual escrow fee.

Year 2 - \$86,060

Year 3 - \$86,060

Year 4 - \$86,060

Optional Services:

Hourly rate for future accelerated features (customizations/modifications) – \$150 per hour

Cost for Mobile Device Functionality years 1 – 4 - \$3,000 per year

Integration via API - \$3,000 per system