



SERVICE AGREEMENT NO. 83921

Splunk Licenses and Support

THIS **Splunk Licenses & Support** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and SHI Government Solutions, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has agreed to provide Splunk Licenses and Support in accordance with DIR-TSO-3984, DIR-TSO-3926, which is incorporated by reference as if laid out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

1. **Scope.** Contractor will resell Splunk Licenses and Support ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
2. **Term.** This Agreement is for three years, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or the Contracts and Procurement Department. The parties may mutually extend the term of this Agreement for up to zero additional zero-year periods ("Option Period(s)"), provided, the parties do so by written amendment prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
3. **Compensation and Payment.** This Agreement is for an amount not to exceed \$197,149.42, subject to approved extensions and changes. Payment will be made for Services provided within 30 days of receipt of an acceptable invoice. Contractor shall invoice no more frequently than once per month. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi Attn:
Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Alan Carlos
Information Technology
361-826-3782
alancarlos@cctexas.com

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.
7. **Inspection and Acceptance.** City may inspect all Services and products supplied before acceptance which must occur within 24 hours of providing the Services at which time title and risk of loss shall fully vest to the City. Any Services or products that are non-conforming may be replaced at no charge to the City or returned in accordance with the Contractor's Return Policy at www.shi.com/returnpolicy, provided that the request for such return was made within the OEM or distributor's allowable time period for return after receipt of product by City.

8. **Warranty.**

(A) The Contractor warrants that all products supplied under this Agreement are new. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

(C) Contractor warrants that all resell services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services.

9. **Quality/Quantity Adjustments.** Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.

10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

11. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Resell Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.

12. **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or proposal or in an Attachment to this Agreement, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees

had performed the work. The City may, at the City's sole discretion, choose not to accept Resell Services performed by a subcontractor that was not approved in accordance with this paragraph.

13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Alan Carlos
Assistant Director of IT
1201 Leopard Street, Corpus Christi, Texas 78401
Phone: (361) 826-3782

IF TO CONTRACTOR:

SHI Government Solutions, Inc.
Attn: Monica Pesl
Account Executive
1301 S. MoPac Expressway, Suite 375, Austin, Texas 78746
Phone: (210) 427-6266
Fax: (512) 732-0232

17. **CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, THIRD PARTY CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, REASONABLE ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARE CAUSED BY THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATION OF LAW OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT**

ITS OWN EXPENSE, INVESTIGATE ALL THIRD PARTY CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Limitation of Liability.

- (A) NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO DATA, LOSS OF ANTICIPATED REVENUE OR PROFITS, WORK STOPPAGE OR IMPAIRMENT OF OTHER ASSETS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (B) EXCEPT IN THE CASE OF A PARTY'S OBLIGATION TO INDEMNIFY FOR THIRD PARTY CLAIMS UNDER ARTICLE 17 (INDEMNIFICATION), EITHER PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHER THEORY, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID OR PAYABLE BY THE CITY TO CONTRACTOR UNDER THIS AGREEMENT FOR THE YEAR PREVIOUS TO THE INCIDENT WHICH GAVE CAUSE FOR SUCH LIABILITY. THE CITY ACKNOWLEDGES THAT SUCH AMOUNT REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT RESELLER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

19. Termination.

(A) Either Party may terminate this Agreement for failure to comply with any of the terms of this Agreement. The Contract Administrator must give the defaulting Party written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

- 20. Owner's Manual and Preventative Maintenance.** Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor will provide such documentation upon delivery of

such equipment and prior to receipt of the final payment by the City if the owner's manual and/or preventative maintenance guidelines are provided by the OEM.

21. **Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.
22. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
23. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement (excluding attachments);
 - B. its attachments; then
 - C. DIR Agreement No. DIR-TSO-3984, DIR-TSO-3926.
24. **Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
25. **Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
26. **Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
27. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

CONTRACTOR

DocuSigned by:

Signature: _____

Kristina Mann

2A3B1E59B06C459...

Printed Name: _____

Kristina Mann

Title: _____

Senior Lead Contract Specialist

Date: _____

5/28/2020

CITY OF CORPUS CHRISTI

Kim Baker

Director of Contracts and Procurement

Date: _____

Approved as to legal form: _____

Assistant City Attorney

for Miles Risley, City Attorney

Attached and Incorporated by Reference:

Attachment A: Scope of Work

Attachment B: Bid/Pricing Schedule

Attachment C: Insurance and Bond Requirements

Attachment D: Warranty Requirements

Incorporated by Reference Only:

Exhibit 1: RFB/RFP No. DIR-TSO-3984, DIR-TSO-3926

Exhibit 2: Contractor's Bid/Proposal Response

Attachment A: Scope of Work

A. Background

Splunk is a Security Event and Information Management system that collects logs from various IT systems and devices for security to review and receive alerts.

B. Scope of Work

1. The Contractor shall provide the following software licenses and professional services:
 - a. Splunk Cloud Subscription with Standard Success Plan – 100 GB/day
 - b. Splunk Professional Services Daily Rate Splunk, Inc., for a quantity of 10 days consisting of an 8-hour day each
 - c. User Conference Attendance Conference Year for 2020 at no charge for four users
2. The Contractor will deliver the licenses via the manufacturer's Splunk Web Portal.

C. Point of Contact

Alan Carlos, Assistant Director of IT
361-826-3782
alancarlos@cctexas.com

Attachment B: Bid/Pricing Schedule

Pricing Proposal
 Quotation #: 18695437
 Created On: 4/1/2020
 Valid Until: 6/19/2020

CITY OF CORPUS CHRISTI**Andrew Sutherland**

1201 Leopard Street
 Accounts Payable
 Corpus Christi, TX 78401
 United States
 Phone:
 Fax:
 Email: AndrewS@cctexas.com

Inside Account Manager**Brett Yajcaji**

1301 South Mo-Pac Expressway
 Suite 375
 Austin, TX 78746
 Send PO to: Texas@shi.com
 Phone: 732-652-0255
 Fax:
 Email: Brett_Yajcaji@shi.com

All Prices are in US Dollar (USD)

	Product	Qty	Retail	Your Price	Total
1	Splunk Cloud Subscription with Standard Success Plan - 100 GB/day Splunk - Part#: SE-S-CLD-ST Contract Name: Software Contract #: DIR-TSO-3984 Coverage Term: - 4/29/2021 Note: Discount Off List - 28% Year 1	1	\$80,000.00	\$57,508.14	\$57,508.14
2	Splunk Professional Services Daily Rate Splunk, Inc Splunk - Part#: PS-DAY Contract Name: Emergency Preparedness (Carahsoft) Contract #: DIR-TSO-3926 Coverage Term: - 4/29/2021 Note: Discount Off List - 1.50% Year 1	10	\$2,500.00	\$2,462.50	\$24,625.00
3	.conf User Conference Attendance Conference Year = 2020 Splunk - Part#: USER-CONF-REG Contract Name: Software Contract #: DIR-TSO-3984 Note: Discount Off List -100% - Year 1	4	\$1,895.00	\$0.00	\$0.00
4	Splunk Cloud Subscription with Standard Success Plan - 100 GB/day Splunk - Part#: SE-S-CLD-ST Contract Name: Software Contract #: DIR-TSO-3984 Coverage Term: 4/30/2021 - 4/29/2022 Note: Discount Off List - 28% Year 2	1	\$80,000.00	\$57,508.14	\$57,508.14
5	Splunk Cloud Subscription with Standard Success Plan - 100 GB/day Splunk - Part#: SE-S-CLD-ST Contract Name: Software Contract #: DIR-TSO-3984 Coverage Term: 4/30/2022 - 4/29/2023 Note: Discount Off List - 28% Year 3	1	\$80,000.00	\$57,508.14	\$57,508.14

Subtotal \$197,149.42
 Shipping \$0.00

Attachment C: Insurance Requirements

Insurance and bond are not required for this service agreement; therefore, Section 5 Insurance; Bonds, subsection 5 (A) and 5 (B) are null and void.

Attachment D: Warranty Requirements

Warranty is not required for this service agreement; therefore, Section 8, Warranty, subsection 8 (A) and 8 (B) is null and void.