

invoice submitted by Waypoint, County shall notify Waypoint no later than twenty-one (21) days after the date County receives the invoice. If County does not dispute the invoice, then County shall pay each such approved invoice within thirty (30) calendar days. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE. County reserves the right to withhold payment pending verification of satisfactory work performed.

Mutually approved travel and mileage expenses incurred in the performance of required additional Services (in excess of the five days onsite and project expenses in excess of the estimated project cost) will be reimbursed to Waypoint to the extent that those costs that do not exceed Fort Bend County travel reimbursement allowances. A copy of the County's Travel Policy with those reimbursement limits is attached and incorporated as Exhibit B to this Agreement. Waypoint will not be reimbursed for costs in excess of those listed in Exhibit B. Receipts evidencing travel related expenditures made by Waypoint or Waypoint's subcontractors shall be submitted to the County Auditor's Office:

Fort Bend County Auditor
Attn: Robert Ed Sturdivant
301 Jackson Street, Suite 701, Richmond, TX 77469

4. **Limit of Appropriation.** Waypoint clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Ninety-Eight Thousand, Nine Hundred Eighty-Four dollars and 76/100 (\$98,984.76), specifically allocated to fully discharge any and all liabilities County may incur. Waypoint does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Waypoint may become entitled to and the total maximum sum that County may become liable to pay to Waypoint shall not under any conditions, circumstances, or interpretations thereof exceed Ninety-Eight Thousand, Nine Hundred Eighty-Four dollars and 76/100 (\$98,984.76). In no event will the amount paid by the County for all Services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
5. **Public Information Act and Open Meetings Act.** Waypoint expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Waypoint shall not be disclosed to any

third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement and this Addendum are not proprietary or confidential information.

Waypoint expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.

6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Waypoint or any other party for any reason are hereby deleted.
7. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Waypoint in any way associated with the Agreement.
8. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Waypoint hereby verifies that Waypoint and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
 - a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
 - b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Waypoint does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Waypoint does not boycott energy companies and is authorized to

agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.

- d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Waypoint does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
9. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.
 10. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, WAYPOINT ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
 11. **Use of Customer Name.** Waypoint may use County's name without County's prior written consent only in any of Waypoint's customer lists, any other use must be approved in advance by County.
 12. **Performance Warranty.** Waypoint warrants to County that Waypoint has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Waypoint will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

Waypoint warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A, and in accordance with the requirements and specifications of DIR Contract No. DIR-TSO-3763.
 13. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls. In the event there is a conflict between this Addendum and the terms and conditions of DIR Contract Number DIR-TSO-3576, then the terms and conditions of DIR Contract Number DIR-TSO-3576 controls to the extent of the conflict.

14. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
15. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
16. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
17. **County Data.** Nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code. Nothing in this Agreement will be construed to waive the requirements of any record retention laws applicable to County.
18. **Personnel.** Waypoint represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Waypoint shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Waypoint shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Waypoint or agent of Waypoint who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at the County, Waypoint shall comply with, and ensure that all Waypoint Personnel comply with, all rules, regulations and policies of County that are communicated to Waypoint in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

19. **Compliance with Laws.** Waypoint shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Waypoint shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Waypoint in providing all Services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

20. **Independent Contractor.** In the performance of work or services hereunder, Waypoint shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Waypoint or, where permitted, of its subcontractors. Waypoint and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
21. **Non-Hire.** Any reference to the prohibition concerning the solicitation for employment, employing, or retaining the services of an employee or independent contractor of a party is of no force and effect and is removed from the Agreement.
22. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
23. **Dispute Resolution.**
 - 23.1. The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement by negotiation between the parties. In the event the dispute cannot be settled through negotiation, the parties agree to submit the dispute to non-binding mediation.
 - 23.2. The party requesting mediation shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within ten (10) days of the receipt of such notice, such dispute shall be submitted for mediation.
 - 23.3. Each party shall be responsible for its own costs associated with the mediation.
 - 23.4. The requirement to seek mediation shall be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law or equity under any applicable statute of limitations.
 - 23.5. Waypoint acknowledges that County is subject to the requirements of the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, the County will comply with the provisions of the Open Meetings Act.

24. Insurance.

- A. Prior to commencement of the Services, Waypoint shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Waypoint shall provide certified copies of insurance endorsements and/or policies if requested by County. Waypoint shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Waypoint shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Waypoint shall contain a waiver of subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.
- C. If required coverage is written on a claims-made basis, Waypoint warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.

- D. Waypoint shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
 - E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
 - F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of Waypoint.
25. **Remote Access.** As applicable, if Waypoint requires remote access to County Systems for support, installation, integrations, configurations, and/or maintenance of Waypoint's Services, except as otherwise agreed by the parties and approved by the County's Director of Information Technology and Chief Information Officer in writing, the below requirements must be met before Waypoint is granted remote access to County Systems:
- (A). Waypoint will adhere to the restricted and monitored channels that are provided by the County, or other technologies approved in advance in writing by the County's Director of Information Technology and Chief Information Officer.
 - (B). Waypoint will neither implement nor deploy a remote access solution which bypasses and/or is designed to bypass County provided or approved controls. Waypoint will not access County Systems via unauthorized methods.
 - (C). Waypoint's remote access to County Systems will only be requested and activated on as-needed basis and disabled when not in use.
 - (D). Remote access is restricted only to County Systems necessary for Waypoint to provide Services to County pursuant to this Agreement.
 - (E). Waypoint will allow only its Workforce approved in advance by County to access County Systems. Waypoint will promptly notify County whenever an individual member of Waypoint's Workforce who has access to County Systems leaves its employ or no longer requires access to County Systems. Waypoint will keep a log of access when its Workforce remotely accesses County Systems. Waypoint will supply County with evidence of access logs concerning remote access to County Systems upon written request from County. Such access logs will be provided to County, within three business days from the date of County's request. These requests may be used to confirm compliance with these terms and/or to investigate a security incident.
 - (F). If any member(s) of Waypoint's Workforce is provided with remote access to County Systems, then Waypoint's Workforce will not remotely log-in to County Systems from a public internet access device (e.g., airport computer terminal, or Internet café). This is due to the possibility of sensitive information being monitored by video or computer surveillance in public areas.
 - (G). Failure of Waypoint to comply with this Section may result in Waypoint and/or Waypoint's Workforce losing remote access to County Systems. County reserves the right at any time to disable remote access to protect County Systems.

- (H). For purposes of this Section, “Workforce” means employees, agents, subcontractors (where permitted), and/or other persons whose conduct, in the performance of work for Waypoint, is under the direct control of Waypoint, whether or not they are paid by Waypoint and who have direct or incidental access to County Systems.
- (I). For purposes of this Section, “Systems” means any: (i.) computer programs, including, but not limited to, software, firmware, application programs, operating systems, files and utilities; (ii.) supporting documentation for such computer programs, including, without limitation, input and output formats, program listings, narrative descriptions and operating instructions; (iii.) data and/or media; (iv.) equipment, hardware, servers, and/or devices; and/or (v.) network(s).

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will. This Agreement is effective upon execution by both parties.

FORT BEND COUNTY

WAYPOINT BUSINESS SOLUTIONS, LLC

KP George, County Judge

Travis Pulliam

Authorized Agent – Signature

Date

Travis Pulliam

Authorized Agent- Printed Name

ATTEST:

Chief Financial Officer

Title

Laura Richard, County Clerk

09/14/2023

Date

REVIEWED:

Robyn Doughtie

Information Technology Department

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ _____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: Waypoint's Quote (Quote Number: AAAQ12712), Scope of Work, and Master Services Agreement; and
Exhibit B: County Travel Policy

I:\AGREEMENTS\2023 Agreements\IT\Waypoint Business Solutions (23-IT-101082)\Addendum to Agreement with Waypoint Business Solutions, LLC.docx aw

Exhibit A



118 Vintage Park Blvd, W414, Houston, TX 77070
Phone: 832-479-8540

QUOTE

Number AAAQ12712

Date Oct 25, 2022

Bill To

Fort Bend County Libraries
Lelia Warner
1001 Golfview Dr.
Richmond, TX 77469

Phone 281-344-3896
Email lelia@fortbend.lib.tx.us

Ship To

Fort Bend County Libraries
Lelia Warner
1001 Golfview Dr.
Richmond, TX 77469

Phone 281-344-3896
Email lelia@fortbend.lib.tx.us

Account Manager



Becky Reinis
469-964-6283
breinis@waypointsolutions.com

Contract

DIR-Dell EMC
DIR-TSO-3763

Notes:

Line	Qty	Description	Unit Price	Ext. Price
1	3	vSAN REady Node R650 All Flash, VSAN Ready Node IDM/Personality Module, VSAN-RN R650 10x2.5 Front Storage SAS/SATA Backplane No Rear Storage VSAN-RN R650 No Trusted Platform Module 2.5" Chassis with up to 10 Hard Drives (SAS/SATA) including max of 2 Universal Drives, 1 PCIe Slot, 1 CPU Intel Xeon Gold 5317 3G, 12C/24T, 11.2GT/s, 18M Cache, Turbo, HT (150W) DDR4-2933 No Additional Processor Heatsink for 1 CPU configuration (CPU less than or equal to 165W) Performance Optimized 3200MT/s RDIMMs No RAID Dell HBA355i Controller Front Front PERC Mechanical Parts, rear load UEFI BIOS Boot Mode with GPT Partition 3 Standard Fans for 1 CPU Dual, Hot-plug, Redundant Power Supply (1+1) 1100W, Mixed Mode Titanium No Power Cord Riser Config 0, 1CPU, Half Length, Low Profile, 1 x16 Slot PowerEdge R650 Motherboard with Broadcom 5720 Dual Port 1Gb On-Board LOM iDRAC9, Enterprise 15G Intel E810-XXVDA4 Quad Port 10/25GbE SFP28 Adapter, OCP NIC 3.0 LCD Bezel	\$31,554.02	\$94,662.06

PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - WE SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR WITH REGARD TO ANY LICENSED PRODUCTS. WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS, NOR FOR INCIDENTAL OR CONSEQUENTIAL MERCHANTABILITY OR FITNESS OF PURPOSE, DAMAGES RELATED TO THIS AGREEMENT. MINIMUM 15% RESTOCKING FEE WITH ORIGINAL PACKAGING.

Line	Qty	Description	Unit Price	Ext. Price
		Luggage Tray x8 and x10 Chassis, R650 BOSS-S2 controller card + with 2 M.2 480GB (RAID 1) BOSS Cables and Bracket for R650 No Quick Sync iDRAC, Legacy Password iDRAC Group Manager, Disabled VMware ESXi 7.0 U2 Embedded Image (License Not Included) No Media Required DHCP with Zero Touch Configuration Cable Management Arm ReadyRails Sliding Rails Without Cable Management Arm or Strain Relief Bar No Systems Documentation, No OpenManage DVD Kit PowerEdge R650 Shipping R650 Ship 4x3.5, 10x2.5, 8x2.5 NVMe R650 Dell/EMC label (BIS) for 2.5" Chassis PowerEdge R650 CE, CCC, Marking US Order Dell Hardware Limited Warranty Plus Onsite Service ProSupport Mission Critical 4-Hour 7x24 Onsite Service with Emergency Dispatch 3 Years ProSupport Mission Critical 4-Hour 7x24 Onsite Service with Emergency Dispatch 2 Years Extended ProSupport Mission Critical 7x24 Technical Support and Assistance 5 Years Dell Limited Hardware Warranty Plus Service, Extended Year(s) Certified Deployment Partner T2 32GB RDIMM, 3200MT/s, Dual Rank 16Gb BASE x8 - QTY. 8 800GB SSD SAS ISE Mix Use 12Gbps 512e 2.5in Hot-plug AG Drive, 3 DWPD - QTY. 2 3.84TB SSD SATA Read Intensive 6Gbps 512e 2.5in Hot Plug S4510 Drive, 1 DWPD - QTY. 8 Power Cord - C13, 3M, 125V, 15A (North America, Guam, North America) - QTY. 2/ea. Dell Networking, Cable, SFP+ to SFP+, 10GbE, Copper Twinax Direct Attach Cable, 3 Meter - QTY. 2/ea. VMware vSAN 7 Advanced, 1 CPU (max 32 cores/CPU socket), 5YR License/Maintenance ProSupport for Software, VMware, vSAN Advanced, 1 CPU, 5 Years		
2	30	Internet Office 900VA ultra comp UPS inc USB port s line TEL DSL surge supp 12 out.	\$144.09	\$4,322.70

SubTotal	\$98,984.76
Tax	\$0.00
Shipping	\$0.00
Total	\$98,984.76

Please contact me if I can be of further assistance.

PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - WE SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR WITH REGARD TO ANY LICENSED PRODUCTS. WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS, NOR FOR INCIDENTAL OR CONSEQUENTIAL MERCHANTABILITY OR FITNESS OF PURPOSE, DAMAGES RELATED TO THIS AGREEMENT. MINIMUM 15% RESTOCKING FEE WITH ORIGINAL PACKAGING.

SCOPE OF WORK

PROD VSAN IMPLEMENTATION PROJECT

FOR

FORT BEND COUNTY LIBRARIES



BY:



PROPRIETARY NOTICE

This proposal is the property of and is proprietary to Waypoint Business Solutions, LLC (Waypoint). It is not for disclosure or use without the written authorization of Waypoint. It shall not be duplicated or used, in whole or in part, for any purpose other than to evaluate Waypoint's qualifications and shall be returned upon request.

PROJECT CONTACTS

Contact Name	Title	Phone	Email
Art Vu	Account Executive	713.242.9240	AVu@waypointsolutions.com
Becky Reinis	Account Manager	469.964.6283	BREinis@waypointsolutions.com
Mark Martinez	Solutions Architect	713.213.7204	MMartinez@waypointsolutions.com

PROJECT SCOPE

Waypoint has interpreted from Fort Bend County Libraries, (client) that they wish to have Waypoint install and configure a new 3 Node vSAN cluster to use as their Production (PROD) vSphere environment. Waypoint will follow documented best practices along with practices learned in the field designing, configuring, and setting up similar environments.

PROJECT DETAILS

DETAILED ACTIVITIES

- Project management and coordination tasks:
 - Review the site environment and technical readiness requirements
 - Review project and installation dates and highlight dependencies to complete customer site readiness and when applicable, product ship dates, to meet the planned installation schedule
 - Confirm deliverables and overall plan are reviewed and approved by the client
 - Schedule outage window in the case of an offline hardware implementation or necessary network interruption
 - Ensure client reviews and understands the site requirements
 - Ensure the client reviews, accepts, and abides by the terms and conditions of this statement of work
 - Provide escalation point for issues and concerns from client or implementation engineer

PLANNING SESSION

- Review organizational expectations, goals and tasks as it relates to the new PROD vSAN infrastructure
- Review and plan a deployment strategy for the new components

- Review and plan the backup strategy by VM from the existing SC4020 storage platform
- Create and review a high-level timeline and project plan

REVIEW AND DISCUSS THE FOLLOWING:

- Client's considerations and understanding of existing production infrastructure, domain topology, server, storage environments, network configurations, policies, GPOs, processes and governance
- Geographic profile and LAN/WAN connectivity
- Current server environment and considerations
- Current network environment/security and considerations
- Current PROD SC4020 storage platform configuration and setup
- Current backup strategy
- Network topology and configuration– LAN/WAN
- Current subnets and IP Schema required for PROD
- Scope of Work associated with Quote AAAQ12712 through DIR-DELL EMC / DIR-TSO-3763

SETUP AND CONFIGURATION TASKS – CORP DATACENTER – 1001 GOLDFIELD DR RICHMOND, TX 77469

- Rack, stack, cable three (3) new Dell PowerEdge R650 vSAN Ready Nodes at Production Site
 - Each node as follows:
 - Intel Xeon Gold 5317 3G Proc 12C/24T
 - 256GB 3200MT/s RAM
 - 2 X 800GB SSD for Cache Tier
 - 8 X 3.84TB SSD for Capacity Tier
 - 1 X VMware vSAN 8 Advanced License
- Cable Each Server to have 2 X 3M 10GbE SFP DACs for redundancy and maximum bandwidth
- Power on equipment
- Check for error lights and obvious issues
- Check configuration and operability as designed
- Verify current patch level and upgrade all firmware/management software as needed on Dell EMC equipment
- Setup and configuration of VEEAM Backup & Replication ver.11 for up to four (4) PROD virtual servers
- Setup and configuration of VMWare vSAN Advanced and vSphere Ent Plus for all three (3) Hosts as PROD
 - Use VEEAM Backup & Replication to migrate four (4) PROD virtual servers to new vSAN Cluster
 - GM-EPO-V | W2K12 R2 | SQL SRV | 250GB | 4 vCPUs | 16GB MEMORY
 - STARK-V | WK212 R2 | SQL SRV | 800GB | 4 vCPUs | 16GB MEMORY
 - POLAR-V | WK212 R2 | SQL SRV | 150GB | 2 vCPUs | 8GB MEMORY
 - JAMMER2-V | WIN 10 DK | SQL SRV | 80GB | 2 vCPUs | 6GB MEMORY
 - Migrate original vSphere licensing from existing vSphere environment to the new vSAN cluster
- Demonstrate VMware vSphere and vSAN management tools and admin functions
- Capture and document configuration of environment

POST INSTALLATION

- Troubleshoot and correct any connectivity or functionality issues within the scope of this project
- Review and discuss high-level best practices for and administration of new PROD vSAN infrastructure
- Complete documentation of environment

- Review document and conduct knowledge transfer session

DELIVERABLE

At the completion, Waypoint will deliver the following, as applicable to the activities jointly defined by Waypoint and the Client throughout the duration of the project:

- Three (3) new Dell PE R650 with VSAN 8 ADV and vSphere Enterprise Plus setup and configured as PROD vSAN Cluster
- Setup and configuration of VEEAM Backup & Replication to migrate four (4) existing PROD virtual servers from existing vSphere environment to new vSAN cluster
- Project documentation
- Complete project close out

PROJECT COSTS

This is a fixed bid project; all travel and daily expenses **are included**, not to exceed 5 days onsite.

Description	Total
vSAN Implementation Project	\$9,280

While providing these services consulting or support may be required from other third-party vendors. If additional work is identified beyond the tasks included in this scope, the fees associated with the additional support will be mutually agreed upon by client and company prior to commencing such work.

Travel expenses for the onsite portion of the project included for up to 5 days. Any additional days requested by the client to be onsite will incur additional travel expenses. Once travel dates are set any travel date changes will incur a \$500 schedule change fee.

ASSUMPTIONS

Waypoint may make certain assumptions while specifying the services and deliverables detailed in this scope of work (scope). It is the client's responsibility to identify any incorrect assumptions or take immediate action which will make all the Waypoint's assumptions correct. Waypoint has made the following specific assumptions while specifying the Services detailed in this scope

GENERAL ASSUMPTIONS

- If the assumptions used to develop the scope are found incorrect, the parties agree to meet and negotiate, in good faith, equitable changes to the scope, service levels and/or fee schedule, as appropriate.
- The resources to perform the services shall be available (including travel time) Monday through Friday, 8:00 a.m. to 5:00 p.m. local Client time (excluding nationally-observed holidays) based on a forty (40) hour week unless previously agreed upon between client and Waypoint.
- Waypoint reserves the right to perform portions of the work remotely according to a schedule mutually agreed to by both the Client and Waypoint.



- This scope includes travel to the following domestic location(s) within the continental United States as detailed in this scope. Any additional travel to other locations is considered out of scope and will require the approval of the client via the change control process.

<i>Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
1001 Golf View Dr	Richmond	TX	77469

- Once travel dates are set any travel date changes will incur a \$500 schedule change fee.
- Outside services or resources not provided included in this scope is considered an expense for the project. These items can include software, hardware, professional services, etc. Any additional expenses are considered out of scope and will require the approval of the client via the change control process.
- Waypoint is not responsible for resolving compatibility or other issues that cannot be resolved by the manufacturer or for configuring hardware or software in contradiction to the settings supported by the manufacturer.
- Client has verified solution compatibility with all internal applications providers and software vendors.
- Waypoint is not responsible for client software issues or compatibility with new DR environment.
- Waypoint is not responsible for project or service delivery delays caused by the client facility or personnel challenges.
- Work will be pre-scheduled with the client on a best effort basis.
- On demand support within a given services level agreement is not part of this scope and would require a separate agreement or change order.
- Waypoint reserves the right to sub-contract portions or all the requested services.
- Active Directory is in a known healthy state with no issues or problems.
- Current DR environment is in a known healthy state with no issues or problems.
- Current server environment (physical and virtual) are in a known healthy state with no issues or problems.
- The LAN and WAN is in a known healthy state with no issues or problems.
- All cabling is in place, in good working order and tested.
- All hardware will be accessible to Waypoint with connectivity rights as needed.
- Where applicable client will assure all the named site locations and users are ready for maintenance window upon scheduling the onsite work to begin.
- Client physical installation environment meets power and cooling requirements for all equipment.
- Patch cables and any related hardware in order to support the proper implementation will be provided by the client.
- Waypoint has adequate access to and assistance from client resources.
- Appropriate scheduling of maintenance window for any off-line work required.
- All necessary access to software will be provided to Waypoint for review and documentation as requested.
- All licensing history and licensing plans will be provided to Waypoint for review and documentation as requested.
- Continuous work effort and adherence to project timeline throughout the course of the project.
- Client has deep understanding of existing systems and knowledge of internal infrastructure.
- All hardware and software for the project has current maintenance and support agreements in place and client is responsible for any costs associated with vendor support.
- Any information not provided to Waypoint before implementation that Waypoint has not specifically called out in their review that impacts design and implementation will be provided by the client. Any information not provided by the client that impacts future or existing systems and requires additional resources to correct will require a change order from the client and may result in additional charges.
- The project will involve high level overview and 'transfer of knowledge'. The purpose of knowledge transfer is to explain the solution implementation and provide general operational guidance. Clients without previous experience in the technology should not expect to become proficient as a result of knowledge transfer. Proficiency can only be achieved through formal training and experience.

PROJECT SPECIFIC ASSUMPTIONS

- Waypoint will setup and configure three (3) new Dell vSAN Ready nodes for the PROD environment and migrate up to four (4) PROD virtual machines to new vSAN cluster
- Client will assign a dedicated resource to assist with any questions and tasks related to this project
- Client will allow Waypoint to access Cisco NEXUS switch to configure as needed for the PROD vSAN cluster implementation
- It is the client's responsibility to verify power requirements and available power outlets required for project implementation

CHANGE REQUESTS

All change requests must be clearly communicated to the project coordinator and solutions architect. Project coordinator (Cody Wright), Solutions Architect (Mark Martinez), and engineer will determine the impact of the requested changes and, if any, charges incurred to fulfill the request. The project coordinator will submit the change request to the client for email approval and the client will follow up with a signed copy of the change request to the project coordinator.

The client agrees to be billed at the standard hourly time and materials rate for any work performed outside the scope of work that does not go through the change request process.

RISKS

- Missing or inaccessible hardware may restrict or hinder the completion of tasks referenced in this project. This may extend timelines for the entire project.
- Inability to contact key client resources will slow the progress of all phases
- Inability to access current in use servers/software that impacts the project may misrepresent challenges or requirements impacting the successful implementation of the project.
- System or Network performance related to repurposed hardware
- Issues or concerns that arise from the hardware after the Production vSAN Implementation Project
- Server or Application incompatibility with new vSAN environment.
- Storage availability/capacity at DR site due to no shared storage – All local storage on servers
- Connectivity or network issues unrelated to this project
- Lack of support on any hardware or software related to this project
- Lack of licensing information may misrepresent challenges or requirements impacting the successful design and implementation of the project.
- Rescheduling of work effort or delaying project timeline will adversely affect Waypoint's ability to keep project commitments and schedule appropriate resources.
- Lack of client or client resource knowledge of existing infrastructure and systems could result in missing analysis of critical systems or products.
- Connectivity or bandwidth issues with PROD sites

ITEMS NOT INCLUDED IN THIS SCOPE

For the avoidance of doubt, the parties acknowledge and agree that Waypoint is not responsible for any Customer and/or third-party personnel, hardware, software, equipment or other assets currently utilized in the Customer’s operating environment, and that the following activities are not included in the scope of this SOW:

- Any Waypoint training, services, tasks or activities other than those specifically described in this scope of work.
- Any troubleshooting tasks outside this scope of work.
- Any remediation work not identified in this scope of work.
- Issues resulting from power/cabling/wiring installed by cabling contractors or client.
- Guarantees to End-User Performance for any existing Applications or Systems
- Guarantees to the Fitness or Function of any Client Selected Software / Hardware.
- Hardware requirements or costs associated with the project.
- Software requirements or costs associated with the project.
- Analysis of environmental system (i.e. Power/Generator, A/C)

PROJECT EXPENSES

Project expenses that are in addition to the estimated project cost will be invoiced accordingly to the client. Project expenses can include but are not limited to the following:

Supplies	(Binders, labels, dividers, etc.) Necessary for project documentation to be provided by the Company and expensed to the client.
Equipment Costs	Client to pay for any acquisition, rental, leasing, shipping, or RMA processed for hardware, software, diagnostic tools, cabling, or manuals.
Mileage	Client to pay 54 cents per mile. (Outside of office MSA)
Tolls / Parking	Client to pay for tolls and parking or provide for parking passes on client premises.
Misc.	Client to pay (e.g.; courier, postage, long distance calls, vendor support calls, etc.)

Any additional expenses identified for this project they will be mutually agreed upon by client and Waypoint before invoicing of such expenses. This is a fixed bid project; all travel and daily expenses are included, not to exceed 5 days onsite.

TRAVEL EXPENSES

Travel and expenses are built into the cost of this project. However, should additional travel or expenses be required, the expenses will be in addition to the project expenses and will be invoiced accordingly to the client. Any and all additional expenses required outside of this Scope will be mutually agreed to in writing via the Change Order process. Project expenses include but are not limited to the following:

- Airfare
- Automobile Rentals
- Parking / Tolls



- Meals and Hotel to be at prevailing city business class rates

Air travel will be limited to coach class. Client and Waypoint will mutually agree upon any additional expenses identified for this project before invoicing of such expenses.

Travel expenses for the onsite portion of the project included for up to 5 days. Any additional days requested by the client to be onsite will incur additional travel expenses. Once travel dates are set any travel date changes will incur a \$500 schedule change fee.

AUTHORIZATION SIGNATURE

Unless previously withdrawn, the proposal is open for acceptance for 30 days following August 1st, 2023. By signing below, client accepts this proposal along with the stated terms and conditions. Client and Waypoint reserves the right to cancel this agreement with a written notice.

Signature	Name	Title	Date
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118 Vintage Park Blvd.
W414
Houston, TX 77070
(832) 479-8540
www.waypointsolutions.com

EXHIBIT A - SCHEDULE OF FEES

Waypoint services may be provided on a time and material basis billed hourly. Project based fees are provided only with an explicitly quoted and signed project proposal. Otherwise, the following rate schedule will apply:

Hourly onsite fee	\$250.00/hour
Hourly remote fee	\$225.00/hour
Emergency onsite fee	\$500.00/hour
Emergency remote fee	\$450.00/hour

The following conditions apply:

1. Normal work hours are Monday through Friday between 8AM and 5PM not including holidays.
2. A four-hour minimum charge will apply for all on-site work and a fifteen-minute minimum charge for all phone or remote support. Time past the minimums is billed in fifteen-minute increments.
3. Emergency rates apply to client requested unscheduled work.
4. Travel expenses are included for any scheduled on-site work.
5. Changes to the scope of the work for any project will be billed according to the current rate structure.
6. Outside services or resources not provided by The Company or its subcontractors or previously agreed to by The Company is considered an expense for the project. These items can include software, hardware, professional services, etc. These items will be passed through to the client along with any fees for any time incurred by The Company in relation to the outside services or resources.
7. Any invoice that goes beyond 30 days delinquent will result in a halt to the provided services.



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Houston, TX 77070
(832) 479-8540
www.waypointsolutions.com

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is entered into this 18th day of April 2023, by and between, **Fort Bend County Libraries** a () corporation, () limited liability company, () partnership, () sole proprietorship, () other: _____ incorporated/organized under the laws of the State of Texas, (hereafter referred to as "Client"), having its principal office at 1001 Golfview Drive Richmond, TX. 77469, and Waypoint Business Solutions, LLC, a Texas limited liability company, (hereafter referred to as "Waypoint"). Client and Waypoint are collectively referred to in this Agreement as the "Parties". In consideration of the promises contained in this Agreement, the Parties stipulate, represent and agree, each to the other, as follows:

- 1. Scope of Agreement.** This Agreement contains the entire Agreement and understanding with respect to the subject matter hereof and supersedes all prior discussions, agreements, proposals, negotiations, letters of intent or other correspondence. Neither of the Parties shall be bound by any conditions, definitions, warranties, understandings, or representations with respect to such subject matter other than as expressly provided in this Agreement or as agreed by the Parties in writing on or subsequent to the date of this Agreement.
- 2. Services Defined.** The term "Services" when used in this Agreement means the performance of professional services and include but are not limited to: system analysis, network planning design and installations, preparing hardware/software RFP, system integration, product analysis, research and testing, implementation recommendations, system management, hosting, collocation, and hardware/software maintenance.
- 3. Agreement for Services.** Subject to the terms of this Agreement, Waypoint shall provide and deliver to Client the Services in accordance with written statements of work agreed to between the Parties (the "Work"). The overall terms, conditions, directives, tasks, timelines and goals for completing the Work shall be set forth in one or more statements of Work. Client may, at any time by a written Statement of Work, make changes, deletions, or modifications provided that the time for performance and compensation to be paid will be adjusted accordingly. No changes in the Work shall be made or provided without Waypoint's written consent. Each such Statement of Work and any amendments shall be executed on behalf of each of the Parties, whereupon it shall be deemed incorporated herein by reference and as such shall be included in the Agreement. WAYPOINT HAS NO OBLIGATIONS WHATSOEVER WITH RESPECT TO SPECIFICATIONS THAT ARE NOT IN WRITING OR THAT ARE NOT ACCEPTED BY WAYPOINT.
- 4. Client Responsibility.** Client shall appoint a Representative for the Work to be performed under each Statement of Work to provide direction and approval of the Work. If the Work is performed at Client's facilities, Client agrees to provide suitable workspace, computers, telephones equipment and all technical and other information reasonably required by Waypoint to carry out the Work. Client shall furnish information requested by Waypoint that is necessary for Waypoint to fulfill its responsibilities under this Agreement or any Statement of Work. Unnecessary or unreasonable delays attributable directly to Client, which results in additional costs to Waypoint, are subject to negotiation and additional compensation to Waypoint.

5. **Status Reports.** Waypoint will furnish Client with periodic status reports as may be reasonably requested by Client upon three (3) days prior written notice.
6. **Independent Contractor.** In the performance of this Agreement, Waypoint, together with its staff, is acting as an independent contractor with respect to Waypoint's performance hereunder and neither Waypoint nor anyone used or employed by Waypoint shall be deemed for any purpose to be the employee, agent, servant or representative of Client, and Client shall have no direction or control of Waypoint, except in the results obtained.
7. **Non-Hire.** During the Term of this Agreement and for a period of two (2) years after the later of the effective date of termination of this Agreement and the completion of any Statement of Work, no party will, directly or indirectly, on its own behalf or on behalf of any other person, (a) solicit for employment, employ or retain the services of (whether as an employee, independent contractor or otherwise) or otherwise interfere with or damage the other party's business relationship with, any employee or independent contractor of the other party, or (b) use or disclose any personal information regarding any of the other party's employees or independent contractors for any purpose outside the scope of this Agreement or any Statement of Work.
8. **Client Supplied Equipment/Software.** Client is responsible for ensuring all Client provided equipment is in good working order and all required device drivers are on site. Client supplied software must be lawfully and properly licensed to Client and all installation media and support documentation must be available for inspection by Waypoint.
9. **Payment.**
 - a. **Work and Materials.** The amount of compensation to be received by Waypoint shall be based on a time and materials basis as set forth in each Statement of Work that includes a Schedule of Fees attached hereto as Exhibit "A". The total compensation payable to Waypoint in relation to any Statement of Work shall not exceed the amount in the applicable Statement of Work, subject to additions and deduction as agreed in writing by the parties.
 - b. **Invoices.** Invoices shall be rendered weekly to Client for the performance of Work and materials provided during that period. Each invoice shall reference this Agreement and the Statement of Work identification numbers, and contain pertinent backup information as is reasonably required by and satisfactory to the Client. Payment shall be due upon receipt of invoice. Past due accounts are subject to a service charge of 1½% per month on all invoices over 30 days from date of invoice (annual rate 18%). All bills are due and payable at Waypoint Business Solutions, LLC, 118 Vintage Park Blvd., W414, Houston, TX 77070.
10. **Confidentiality.**

All information disclosed by either party ("Disclosing Party") to the other party ("Receiving Party"), including, but not limited to information relating to a party's business activities and the results of Work performed by Waypoint pursuant to this Agreement, if disclosed in writing, marked as proprietary or confidential, or if disclosed orally, reduced to writing within thirty (30) days and labeled as proprietary or confidential ("Confidential Information") shall remain the sole property of Disclosing Party. Except for the specific rights granted by this Agreement, Receiving Party shall not use any Confidential Information of Disclosing Party for its own account. Receiving Party shall use the highest commercially reasonable degree

of care to protect Disclosing Party's Confidential Information. Receiving Party shall not disclose Confidential Information to any third party without the express written consent of Disclosing Party (except solely for Receiving Party's internal business needs, to employees or consultants who are bound by a written agreement with Receiving Party to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement). Confidential Information shall exclude information (i) available to the public other than by a breach of this Agreement; (ii) rightfully received from a third party not in breach of an obligation of confidentiality; (iii) independently developed by Receiving Party without access to Confidential Information; (iv) known to Receiving Party at the time of disclosure; or (v) produced in compliance with applicable law or a court order, provided Disclosing Party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.

Upon termination of this Agreement, Receiving Party agrees to cease using any and all materials embodying Confidential Information, and to promptly return such materials to Disclosing Party upon request, or make such other reasonable disposition as Disclosing Party may direct.

11. Proprietary Rights.

- a. **Assignment of Work Product.** Upon receipt of final payment for all Services and Work rendered by Waypoint under this Agreement, Waypoint will convey to Client good and marketable title to the technical notes and tangible work products required to be delivered under the Statement of Work and all rights therein. Waypoint will also provide reasonable assistance to perfect Client rights and title to such work product, at Client's request and expense. Client agrees to compensate Waypoint for such services at its standard hourly rate.
- b. **Client Property.** Any programs, data, or other materials furnished by Client for use by Waypoint in connection with the services performed under this Agreement shall remain the sole property of Client. All such materials shall be returned to Client upon receipt by Waypoint of final payment for all Work performed under the Statement of Work.
- c. **Waypoint Property.** Any ideas, concepts, know-how, techniques, sequence, or organization relating to the Work during the course of this Agreement by Waypoint, or jointly by Waypoint and Client, shall be the exclusive property of Waypoint.
- d. **Competitive Services.** Except as aforesaid, nothing in this Agreement shall be construed so as to preclude Waypoint from developing, using, or marketing Services or other work that may be competitive with that delivered to Client hereunder, irrespective of whether such services or work are similar or related to those provided under this Agreement.

12. LIMITED WARRANTY & LIMITATION OF LIABILITY.

- a. **Software.** Waypoint warrants that any software delivered to Client under any Statement of Work (the "Software") will perform substantially to the manufacturer's published functional specifications for a period of one year from the date of installation. Any modification of the Software by any persons other than Waypoint or the manufacturer shall render this warranty void. Additionally, Waypoint shall not be responsible for any damage to Software caused by Client, its agents, servants, employees or contractors. Waypoint does not warrant any Software provided will meet the requirements of Client. Client accepts sole responsibility for (i) the use of any Software to achieve Client's intended results; (ii) the results obtained from any Software; and (iii) any omissions, inadequacies, or problems in the written specification for any Software set forth in the applicable Statement of Work. Furthermore, Client agrees that Client's sole and exclusive remedy for Software failure under this agreement shall be reinstallation of any Waypoint supplied Software and to, by commercially reasonable means, cause the Software to operate substantially in accordance with such written specifications.
- b. **Equipment.** Waypoint does not provide any warranty on any hardware or equipment delivered to Client under this Agreement or any Statement of Work (the "Equipment"), and it is delivered to Client on an "AS-IS" basis as between Client and Waypoint. Waypoint shall assign to Client the warranties and indemnities, if any, provided by the manufacturer(s) of such Equipment, to the extent they are assignable by Waypoint, provided however, that Client's sole and exclusive remedy for the breach of any such warranty or indemnity shall be against the person offering the warranty or indemnity and not against Waypoint. Client represents that it accepts sole responsibility for the selection of the equipment, if any, to achieve Client's intended results.
- c. **Limited Warranty.** Waypoint warrants that the Work and Services will be provided in a good and workmanlike manner. Except as expressly otherwise provided in subsections (a) and (b) above and the preceding sentence WAYPOINT MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE SOFTWARE, EQUIPMENT, OR ANY WORK, GOODS, OR SERVICES PROVIDED TO CLIENT BY WAYPOINT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE OR NON-INFRINGEMENT.
- d. **Limitation of Liability.** EXCEPT AS PROVIDED IN SECTION 12 OR FOR A BREACH OF SECTION 9, WAYPOINT'S TOTAL LIABILITY, WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, NEGLIGENCE OR TORT, ARISING OUT OF, OR IN CONNECTION WITH THE SERVICES, THE WORK OR THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT FOR THE SPECIFIC SERVICE(S) OR WORK GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE MONTH PERIOD. EACH PARTY ACKNOWLEDGES THAT THESE LIMITATIONS APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE AND THAT, WITHOUT THESE LIMITATIONS, THE FEE FOR THE SERVICES AND WORK PROVIDED HEREUNDER WOULD BE HIGHER. WAYPOINT SHALL NOT BE LIABLE TO CLIENT FOR LOST PROFITS, LOST SAVINGS OR OTHER INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER RESULTING FROM OR ARISING OUT OF OR RELATING TO: (a) CLIENT'S USE OR INABILITY TO USE THE RESULTS OF THE WORK RENDERED HEREUNDER, EVEN IF WAYPOINT HAS BEEN ADVISED

OF SUCH DAMAGES; (b) ANY BREACH OF THIS AGREEMENT; (c) THE DELIVERY, PERFORMANCE, INSTALLATION OF AND MAINTENANCE OF ANY SOFTWARE; (d) THE DELIVERY, PERFORMANCE, INSTALLATION OF AND MAINTENANCE OF ANY EQUIPMENT; (e) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK, OR THE RECOVERY OF SUCH, (f) LOSS OF BUSINESS OPPORTUNITY, (g) BUSINESS INTERRUPTION OR DOWNTIME, (h) SERVICES, OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE BY CLIENT, or (i) ANY CLAIM MADE AGAINST CLIENT BY ANY OTHER PARTY EVEN IF WAYPOINT HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM.

13. Indemnification.

- a. **Client Indemnity.** Client, at its expense, shall indemnify, defend and hold Waypoint harmless, from any claim or action by a third party that any Client supplied software and/or equipment or other components related to the Work, as well as software directed or requested by Client to be installed or integrated as part of the Work infringes upon or violates any patent, copyright, trademark, trade secret or other proprietary right of any third party, and shall reimburse Waypoint for all reasonable expenses (including, without limitation, attorneys' fees and expenses) as they are incurred in connection with pursuing or defending any third-party claim or action, whether or not such claims are successful.

- b. **Waypoint Indemnity.** Waypoint shall defend, indemnify and hold harmless Client from any third-party claim or action that the Services, Work, Software or Equipment (“Deliverable”) delivered by Waypoint pursuant to this Agreement infringe or misappropriate that third party’s patent, copyright, trade secret, or other intellectual property rights, and shall reimburse Client for all reasonable expenses (including, without limitation, attorneys' fees and expenses) as they are incurred in connection with pursuing or defending any third-party claim or action, whether or not such claims are successful. In addition, if Waypoint receives notice of a claim that, in Waypoint’s reasonable opinion, is likely to result in an adverse ruling, then Waypoint shall at its option, (a) obtain a right for Client to continue using such Service or Deliverable; (b) modify such Service to make it non-infringing; (c) replace such Service or Deliverable with a non-infringing equivalent; or (d) refund any pre-paid fees for the allegedly infringing Service or Deliverable that have not been provided. Notwithstanding the foregoing, Waypoint shall have no obligation under this Section for any claim resulting or arising from (a) Client’s modifications of the Service or Deliverable that was not approved by Waypoint; (b) the combination, operation or use of the Service or Deliverable in connection with a third-party product or service (the combination of which causes the infringement); or (c) Waypoint’s compliance with Client’s written specifications or directions, including the incorporation of any Deliverable or other materials or process provided by or requested by Client. Waypoint shall be responsible for all physical injuries (including death) to persons (including but not limited to employees of Client) or damage to property (including, but not limited to the property of Client and Waypoint) resulting from the negligence of Waypoint or its employees and shall indemnify and save Client harmless from loss and liability upon any and all claims on account of such injuries to persons or damage to property, and from all direct costs and expenses finally awarded in suit which may be brought against Client on account thereof, provided, however, the Client or Waypoint, as the case may be, shall be responsible for workers compensation claims brought by their respective employees, without regard to the negligence of either.

This Section states each Party’s exclusive remedies for any third-party claim or action, and nothing in this Agreement or elsewhere will obligate either party to provide any greater indemnity to the other.

14. Time Limitation. NO ACTION, REGARDLESS OF FORM, ARISING OUT THE TRANSACTIONS UNDER THIS AGREEMENT, MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS OCCURRED EXCEPT THAT AN ACTION FOR NON-PAYMENT MAY BE BROUGHT WITHIN TWO YEARS OF THE DATE OF LAST PAYMENT.

15. Term, Termination.

- a. **Commencement Date.** This Agreement becomes effective on the date accepted by Waypoint.
- b. **Termination Rights.** Unless otherwise provided in a Statement of Work, either party may terminate this Agreement upon not less than five (5) business days prior written notice. Termination of this Agreement shall constitute termination of all Statement of Works. However, termination of a Statement of Work does not terminate this Agreement. In the event this Agreement or a Statement of Work is terminated pursuant to this paragraph, Client agrees to pay Waypoint for Work rendered through such date and to reimburse Waypoint for its reasonable expenses incurred through the termination date.

16. Client Data. Client is responsible for securing a full data backup 24 hours before Work is to commence on an existing system for scheduled maintenance or system modification.

17. General Provisions.

- a. **Exclusive Remedies.** Client's remedies in this Agreement are exclusive.
- b. **Entire Agreement/Assignment.** This Agreement: (i) is the complete and exclusive statement of the agreement between the parties, (ii) supersedes all proposals, oral or written, and all other communications between the parties relating to the subject of this Agreement; and (iii) may not be assigned, sublicensed, or otherwise transferred by Client without the prior written consent of Waypoint, but its terms and conditions shall extend to and bind any permitted successor or assign. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and will not be terminated.
- c. **Governing Law.** This Agreement shall be governed by the laws of the State of Texas. The exclusive jurisdiction for any legal proceedings shall be in the courts of the State of Texas, County of Harris, and the parties expressly submit to the jurisdiction of said courts.
- d. **Survival of Proprietary Rights.** The proprietary rights and confidentiality obligations of the parties shall survive the expiration or earlier termination hereof.
- e. **Titles.** The section headings in this Agreement are for convenient reference only and shall be given no substantive or interpretive effect.
- f. **Notices.** Any and all notices between the parties under this Agreement shall be in writing and deemed received when mailed by registered mail, postage prepaid, first class, electronic mail (e-mail) to a partner, officer, or authorized representative, or delivered by courier to the following addresses:

If to Waypoint:

Waypoint Business Solutions/ Paul Neyman

118 Vintage Park Blvd. W414

Houston, TX. 77070

If to Client:

Fort Bend County Libraries

1001 Golfview Drive

Richmond, TX. 77469

- g. **Form.** No provision appearing on any form originated by Client shall be applicable unless such provision is expressly accepted in writing by Waypoint.
- h. **Delay.** Waypoint shall not be liable to Client for any delay or failure by Waypoint to perform its obligations hereunder or otherwise if such delay or failure by Waypoint to perform its obligations hereunder or otherwise if such delay or failure arises from any cause or causes beyond the reasonable control of Waypoint, including but not limited to, labor disputes, strikes, other labor or industrial disturbances, acts of God, floods, hurricanes, lightning, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of public enemy, riots, insurrections, embargoes, blockages, actions, restrictions, regulations, or orders of any government agency or subdivision thereof, or temporary unavailability of service personnel due to other service calls received by Waypoint. In the event of such a delay or failure, and notwithstanding anything to the contrary in any Statement of Work, such delay or failure shall be excused during the continuance thereof, and the period of performance shall be extended to such extent necessary to enable Waypoint to perform after the cause of delay has been removed.
- i. **Legal Fees.** In the event either party must retain an attorney to interpret or enforce this Agreement, the prevailing party in a dispute shall be entitled to recover its attorney's fees and costs incurred in addition to any relief to which it may be entitled.
- j. **Dispute Resolution.** Client and Waypoint will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) arising out of or relating to this Agreement (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 60 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or equity.
- k. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

CLIENT

By: _____

Name: _____

Title: _____

WAYPOINT BUSINESS SOLUTIONS, LLC

By: Travis Pulliam

Name: Travis Pulliam

Title: 5/16/2023

(ver. 2017-07-25-01)

Exhibit B

Annex B

Fort Bend County Travel Policy

Approved in Commissioners' Court on November 3, 2009

Effective November 4, 2009

Revised September 7, 2010

Revised June 2, 2015, Effective August 1, 2015

Revised July 28, 2015, Effective August 1, 2015

Revised July 26, 2016, Effective August 1, 2016

Revised December 12, 2017, Effective January 1, 2018

The Commissioners' Court allocates funds annually for the payment of travel expenditures for county employees and officials within the individual departmental budgets. Travel expenditures paid from these budgets must serve a public purpose for Fort Bend County. These expenditures may be paid directly to the vendor or provided as a reimbursement to the employee/official upon completion of their travel. Advance payments to vendors may be accommodated by issuance of a check or use of a County procurement card. Eligible expenditure categories under this policy include: Lodging, meals, transportation, registration fees, and other fees (with justification). Each category is further defined below.

CONTRACT RATES:

Fort Bend County is a 'Cooperative Purchasing Participating Entity' with the State of Texas. This program is also known as TPASS (Texas Procurement and Support Services) State Travel Management Program (STMP). This gives County employees and officials access to the contract rates negotiated by the State for hotels and rental cars. Procurement procedures for these contract services are explained within the categories below.

OUT OF STATE TRAVEL:

Authorization: The traveler must obtain Commissioners' Court approval for out-of-state travel before departure. The duration must include travel days along with the event scheduled days. To prevent delays in processing travel reimbursement, ensure that the travel duration is accurately defined when submitting the agenda request.

Documentation: The traveler must provide an excerpt from the Commissioners' Court minutes (<http://www.fortbendcountytexas.gov/index.aspx?page=55>) with the travel reimbursement form.

LODGING (In and Out of State):

Hotel:

Hotel reimbursements are limited to the Federal Travel Regulations set forth by US General Services Administration (GSA) by location not including taxes. The rates are set annually and vary by month and location. The maximum rates for lodging per day can be found at:

http://www.gsa.gov/portal/content/104877?utm_source=OGP&utm_medium=print-radio&utm_term=perdiem&utm_campaign=shortcuts based on travelers destination.

Fort Bend County is a 'Cooperative Purchasing Participating Entity' with the State of Texas. This gives County employees and officials access to the contract rates negotiated by the State for hotels. Participating hotels can be found at: https://portal.cpa.state.tx.us/hotel/hotel_directory/index.cfm (be sure to check the correct fiscal year).

Traveler must verify confirmed rate matches the negotiated contract rates found on the State's website listed above and does not exceed the GSA daily allowance.

If the organizer of a conference/seminar has negotiated discount rates with a hotel(s), the traveler may choose these lodging services without penalty but the traveler must reserve the room at the group rate and provide documentation of the group rate with reimbursement request.

The traveler will be responsible for the excess charge over the GSA per diem rate for the city/county even if using the State rate. The Auditor's Office will deduct from the travelers' reimbursement any excess charges over the GSA per diem rate. Travel websites including but not limited to Expedia and Travelocity should not be used to book lodging.

Travel Days: If the traveler must leave before 7:00AM to arrive at the start of the event and/or return to the County after 6:00PM after the event concludes, an additional night's lodging is allowable before and/or after the event.

Additional fees allowable: Self-parking

Additional fees allowable with justification: Valet parking is allowable if an extreme hardship exists due to physical disability of the traveler or if no self-parking is available.

Fees not allowable: Internet, phone charges, laundry, safe fees

Gratuities: Gratuities are not reimbursable for any lodging services.

Overpayments by County: Any lodging overpayment by the County must be reimbursed by the hotel before processing a reimbursement to the traveler for any of the categories addressed in this policy. Prepaid lodging services should be accurately calculated or underestimated by excluding the taxes to prevent delays in processing travel reimbursements.

Procurement Card: The traveler may use the procurement card to make lodging reservations. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: **A final settled hotel bill with a zero balance from the front desk is required even if lodging is paid by the procurement card. The hotel bill left under the door is not acceptable.** The hotel bill should be scrutinized before traveler departs to make sure all charges are valid and notify hotel of any invalid charges and resolve issues before departing. Make sure all parking has been added to your bill and all personal incidentals have been paid by traveler. Any invalid charges will be the responsibility of the traveler. A copy of the itemized hotel statement must be submitted with the travel reimbursement claim if the traveler used a County procurement card to purchase lodging services or prepaid by County check. Event agenda/documentation or a letter from the traveler describing the event/meeting is required. If utilizing conference negotiated hotel rates, documentation of rates is required.

Changes/Modifications to Reservation – Any modifications including cancellation of reservation, the traveler must obtain a confirmation number and note the name of the person they spoke with in case the hotel charges the traveler. If the traveler does not obtain a confirmation number then any expenses incurred will be the responsibility of the traveler. Expenses resulting from changes or modifications to travel reservations will be paid by the County if the traveler produces documentation that a family emergency exists.

County Exemption Status – Fort Bend County Employees traveling on County Business are not exempt from State and local hotel taxes, state taxes, etc. with the exception of District Judges and the District Attorney.

MEALS:

Texas: Meals including gratuities will be reimbursed to the traveler at a flat rate of \$36/day. The travelers per diem on the departure day and final day of travel will be at 75% of the per diem which is \$27/day.

Out-of-state: Meals including gratuities will be reimbursed to the traveler at a flat rate of \$48/day. The travelers per diem on the departure day and final day of travel will be at 75% of the per diem which is \$36/day.

Late Night Arrival – If a traveler arrives in Fort Bend County between midnight and 6am the traveler will receive a full day per diem for the previous day.

Day trips: Meals will not be reimbursed for trips that do not require an overnight stay.

Procurement Card: No meal purchases are allowed on any County procurement card.

Documentation: No meal receipts are required for reimbursement. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

TRANSPORTATION:

Personal Vehicle: Use of personal vehicle will be reimbursed at the current rate/mile set by Commissioners' Court. Mileage should be calculated using the County office location of the traveler and the event location. Mileage may not be calculated using the traveler's home. Mileage should be calculated using an employee's vehicle odometer reading or by a readily available online mapping service for travel out of Fort Bend County. If using the mileage of an online mapping service, state which mapping service was used or provide a printout of your route detailing the mileage. For local travel, odometer readings or mapping service details are not required. Departments should develop a mileage guide for employees for local travel points, if a department does not have a mileage guide, the Auditor's Office will determine if the mileage listed is reasonable.

Allowable expenses: Parking and tolls with documentation.

County Vehicle: Fuel purchases when using a County vehicle should be made with the County Procurement card if available. Original receipts will accompany the Procurement Card statement but a copy must be provided with the travel reimbursement request.

Allowable expenses: Parking and tolls with documentation required.

Airfare: Airfare is reimbursable at the lowest available rate based on 14 day advance purchase of a discounted coach/economy full-service seat based on the required arrival time for the event. The payment confirmation and itinerary must be presented with the travel reimbursement form. The traveler will be responsible for the excess charges of an airline ticket purchase other than a coach/economy seat. When using Southwest Airlines a traveler should choose the "wanna get away" flight category.

Allowable Expenses: Bag fees. Fare changes are allowable if business related or due to family emergency.

Unallowable Expenses/Fees: Trip insurance, Early Bird Check In, Front of the line, Leg Room, Fare changes for personal reasons.

Rental Car: Rental cars are limited to the negotiated TPASS rates listed at: <http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/vendor-comparison/>. The contact information for Avis is listed here: <http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/Avis/>. The contact information for Enterprise is listed here: <http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/Enterprise/>. When making a reservation traveler should provide the County's agency # C0790. The traveler will not be reimbursed for any amount over the negotiated contract rates if a non-contract company is used at a higher rate. The traveler should

select a vehicle size comparable to the number of County travelers. The traveler may use a non-contract vendor at an overall rate lower than the contract rates with no penalty. The original contract/receipt must be presented with the travel reimbursement form or a copy if a County procurement card is used. . The traveler will be responsible for any excess charges not included in the TPASS rates or for choosing a vehicle size not comparable with the number of travelers on the trip. Insurance is included in the negotiated TPASS rates, if a traveler chooses to take out additional insurance the cost is on the traveler.

Enterprise:

● [REDACTED]
● [REDACTED]
● [REDACTED]

Avis:

● [REDACTED]
● [REDACTED]

Unallowable Fees/Charges: GPS, prepaid fuel, premium radio, child safety seats, additional insurance, one way rentals.

Allowable expenses: Parking and tolls allowed with documentation.

Other Transportation: Other forms of transit (bus, taxi, train) are reimbursable with an original receipt.

Gratuities: Gratuities are permitted if original receipt includes gratuity (20% maximum allowed) for any transportation services.

Procurement Card: The traveler may use a County procurement card to make transportation reservations for air travel and rental car services. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: Original receipts are required for all transportation reimbursements paid by the traveler. Transportation services obtained with a County procurement card require a copy of the receipt. Additional requirements are noted within each category above. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

REGISTRATION:

Registration fees: Registration fees are reimbursable for events that serve a Fort Bend County purpose. Registration fees for golf tournaments, tours, guest fees and other recreational events are not reimbursable.

Procurement Card: The traveler may use a County procurement card to register for an event. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: An original receipt must be obtained upon registration and submitted with the reimbursement request if paid by the traveler. A copy of the receipt must be provided if registration is paid on a County procurement card. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

GRANTS:

Travel expenditures from Federal and State grants must also conform to the granting agency's funding requirements.

TRAVEL REIMBURSEMENT FORM:

The traveler must use the current travel reimbursement form (<http://econnect/index.aspx?page=55>) for all travel related services addressed in this policy. No other expenditures may be submitted for reimbursement on the travel reimbursement form. After completing all required information, the travel form must be signed/dated by the traveler and the department head/elected official. Travel reimbursement request should be submitted within 30 days from when traveler returns from trip. Mileage reimbursement request should be submitted no less frequently than quarterly. Mileage reimbursement request for the fourth quarter should be submitted no later than October 30th for yearend processing.

EXCLUSIONS:

If the traveler has custody of a person pursuant to statute or court order or if the traveler is required by court or legal entity to appear at a particular time and place the traveler will not be penalized for accommodations that require a 14 day advance purchase ticket if travel is required with less than 14 days' notice.

If the traveler has custody of a person pursuant to statute to court order the traveler will not be held to the 75% per diem on the departure and final day of travel.