

(2) ✓ 9/22/15

DOCUMENT ROUTING FORM

NAME OF DOCUMENT: **AGREEMENT FOR BEST PRACTICES BASED PROCUREMENT PROCESS AND ORGANIZATIONAL ASSESSMENT with Periscope Holdings, Inc.**

Approved Comm. Mtg. on: 9/1/2015 CAM #: 15-1021 ITEM #: P-07

Routing Origin: ☒ Procurement Also attached: ☒ copy of CAM ☒ Original Documents

1) **Procurement Division:** Delivered ~~2~~ Originals to City Attorney's Office on 9/10/2015.

2) **City Attorney's Office:** Approved as to Form # 9/16/15 : Originals and Delivered to ^{Purchasing} ~~City Manager~~ on

PAUL BANGEL ✓

3) **City Manager:** Please indicate if item is CIP Funded, sign where indicated, and forward _____ originals to City Clerk.

CIP FUNDED ☐ YES ☐ NO
Capital Investment / Community Improvement Projects

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

4) **City Clerk:** Retains one original and forwards 1 ^{orig} ~~original~~ document to: ~~(Linda is ok)~~

Linda Blanco, Procurement

☒ Original Route form to ^{Linda Blanco} ~~Meredith Shuster, CAO~~

**AGREEMENT FOR
BEST PRACTICES BASED PROCUREMENT PROCESS AND
ORGANIZATIONAL ASSESSMENT**

THIS AGREEMENT, made this 1st day of September 2015, is by and between the City of Fort Lauderdale, a Florida municipality, ("City"), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and Periscope Holdings, Inc., a Delaware corporation authorized to transact business in the state of Florida, ("Contractor" or "Company"), whose address is 211 East 7th Street, Suite 1100, Austin, TX 78701, telephone number: 512-666-9382, email: butley@periscope.com.

WITNESSETH:

For and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the Contractor shall provide to the City a best practice based procurement ordinance and purchasing manual methodology (the "Work"), and the City and the Contractor further covenant and agree as follows:

I. DOCUMENTS

The following documents (collectively "Contract Documents") are hereby incorporated into and made part of this Agreement:

- A. This Contract Form P-0001.
- B. The Contractor's statement of work/proposal dated August 25, 2015, ("Exhibit A").

All Contract Documents may also be collectively referred to as the "Documents." In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, specific direction from the City Manager (or designee).
- B. Second, this Agreement Form P-0001 dated September 1, 2015, and any attachments.
- C. Third, Exhibit A.

II. SCOPE

The Contractor shall perform the Work under the general direction of the City as set forth in the Contract Documents.

Unless otherwise specified herein, the Contractor shall perform all Work identified in this Agreement. The parties agree that Exhibit A contains a description of Contractor's obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

By signing this Agreement, the Contractor represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the Work and the conditions under which the Work is to be performed.

III. FISCAL YEAR

In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds.

IV. COMPENSATION

The Contractor agrees to provide the services and/or materials as specified in the Contract Documents at the cost specified in Exhibit A. It is acknowledged and agreed by Contractor that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for Contractor's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided herein, no amount shall be paid to Contractor to reimburse Contractor's expenses.

V. METHOD OF BILLING AND PAYMENT

Contractor may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided.

City shall pay Contractor within forty-five (45) days of receipt of Contractor's proper invoice, as provided in the Florida Local Government Prompt Payment Act.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the City's Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

VI. GENERAL CONDITIONS

A. Indemnification

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

B. Intellectual Property

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Contractor's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

C. Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

D. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the

written notice of termination. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

E. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

F. Insurance

The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at the Contractor's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes
Employers' Liability - \$500,000

Any firm performing work for or on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made, by the City's Risk Manager, if they are in accordance with Florida Statutes.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors

Automobile Liability Insurance

Covering all owned hired and non-owned automobile equipment.

Limits: Bodily injury	\$250,000 each person, \$500,000 each occurrence
Property damage	\$100,000 each occurrence

Professional Liability (Errors & Omissions)

Consultants

Limits:	\$1,000,000 per occurrence
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Certificate holder should be addressed as follows:

City of Fort Lauderdale
Procurement Services Division
100 N. Andrews Avenue, Room 619
Ft. Lauderdale, FL 33301

G. Environmental, Health and Safety

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

H. Standard of Care

Contractor represents that he/she/it is qualified to perform the Work, that Contractor and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of

care and skill ordinarily exercised by other qualified contractors under similar circumstances.

I. Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until Contractor delivers all documents to the City as provided herein.

J. Audit Right and Retention of Records

City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

K. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

L. Independent Contractor

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

M. Inspection and Non-Waiver

Contractor shall permit the representatives of CITY to inspect and observe the Work at all times.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

N. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as provided in the Schedule of Subcontractor Participation. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance

and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall ensure that all of Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

O. Conflicts

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to Contractor's performance under this Agreement.

Contractor further agrees that none of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

P. Schedule and Delays

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

Q. Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

R. Compliance with Laws

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

S. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

T. Limitation of Liability

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes.

To the maximum extent permitted by applicable law, Granicus and its suppliers and licensors shall not be liable for any indirect, special, incidental, consequential, or punitive damages, whether foreseeable or not, including but not limited to: those arising out of access to or inability to access the services, software, content, or related technical support; damages or costs relating to the loss of: profits or revenues, goodwill, data (including loss of use or of data, loss or inaccuracy or corruption of data); or cost of procurement of substitute goods, services or technology, even if advised of the possibility of such damages and even in the event of the failure of any exclusive remedy. In no event will Granicus' and its suppliers' and licensors' liability exceed the amounts paid by client

under this agreement regardless of the form of the claim (including without limitation, any contract, product liability, or tort claim (including negligence, statutory or otherwise).

U. Jurisdiction. Venue. Waiver. Waiver of Jury Trial

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

V. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

W. Prior Agreements

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

X. Payable Interest

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

Y. Representation of Authority

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

AA. Uncontrollable Circumstances ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

BB. Scrutinized Companies

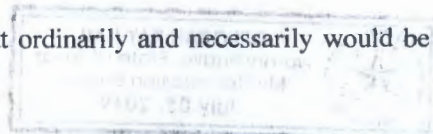
Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more:

The Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2014), as may be amended or revised. The City may terminate this Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2014), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2014), as may be amended or revised.

CC. Public Records

Contractor shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.



(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2014), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

CITY OF FORT LAUDERDALE

By: [Signature]
City Manager

Approved as to form:

[Signature]
Senior Assistant City Attorney

ATTEST:

Patricia Stutz

Print Name:

Title: VP, operations

PERISCOPE HOLDINGS, INC.

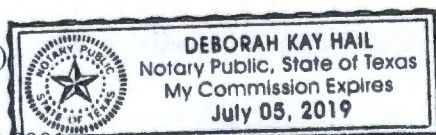
By: [Signature]
Brian Utley, Chief Executive Officer

(CORPORATE SEAL)

STATE OF Texas:
COUNTY OF Tarrant:

The foregoing instrument was acknowledged before me this 8 day of September, 2015, by Brian Utley as Chief Executive Officer for Periscope Holdings, Inc., a Delaware corporation authorized to transact business in the State of Florida.

(SEAL)



Form P-0001

Deborah Hail
Notary Public, State of Texas
(Signature of Notary Public)

DEBORAH HAIL
(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known ☒ OR Produced Identification _____
Type of Identification Produced _____

Periscope
HOLDINGS INC.
PROPOSED STATEMENT OF WORK
FOR
CITY OF FORT LAUDERDALE, FL
August 25, 2015

Introduction

The procurement function in public sector organizations has advanced to a mission critical operation over the past several decades. Once perceived as a “rule maker” or “gatekeeper”, procurement is now transitioning to be more of a strategic player that works with its client departments to provide high quality products and services in an efficient and effective manner. Today’s procurement professionals work diligently to be a partner with its client departments and to measure accomplishments with appropriate performance metrics. A large part of becoming a more strategic partner within an organization is regular monitoring and implementation of best practices and continuous improvement of policies, processes, and programs.

Project Scope - Overview

A team of Consultants will work with the City of Fort Lauderdale, Florida to develop a “best practices” based Procurement Ordinance and Purchasing Manual with a focus on the following:

- Review of state, county, and local procurement laws which impact the City’s policies and practices for a foundation of the legal framework;
- Review of the City’s current Procurement Ordinance and Procurement Manual and written procurement procedures for potential best practices enhancements.

Additionally, the team of Consultants will work with the City to provide a procurement process and organizational assessment for the City of Fort Lauderdale which will address the effectiveness of the purchasing and contracting functions including the areas of:

- Procurement Process Assessment and Review
- Procurement Organization – Current Centralization Model, Delegation of Authority Opportunities and Staffing Requirements
- Roadmap for Potential Transformation Recommendations and Supporting Business Case.

To ensure a successful consulting engagement, the Consulting program executes the project plan by utilizing key elements of project management, including the necessary techniques to control and monitor deliverables in the execution of this Statement of Work. These specific techniques include fully defining and understanding the scope of the project, building an effective consulting team, and defining key project milestones.

Project Scope

A team of Consultants will work with the City of Fort Lauderdale to address the targeted and integrated areas outlined in the Introduction. Each engagement is grounded in a comprehensive understanding of the principles of public procurement and recognizes that each public procurement organization possesses a unique organizational culture with its own set of attributes and challenges. Our proven, four-phased methodology will allow us to work hand-in-hand with the City of Fort Lauderdale to meet, address and assist the City with a review, analysis and implementation plan for change to improve efficiency in the selected City business processes, with the goal of improving value to the City of Fort Lauderdale and the stakeholders of the City's services.

I. Periscope's "Four-Phase Methodology"



- A. **Preparation:** Our first phase starts with the coordination between the NIGP Senior Consultant and the City's Project Manager to obtain the relevant documents for review, identify the appropriate City staff, procurement staff, and individual customers to interview and to schedule meetings. During this period, our team will review legislation, procurement regulations, relevant City ordinances, state statutes, department policies and procedures, workload statistics, solicitation instructions and any other information to gain a solid understanding of the City's purchasing processes. Additionally, during this phase we will jointly determine key cities to use for any benchmarking purposes.
- B. **On-Site Data Collection:** The second phase consists of an initial, on-site meeting between the City and the consulting team to discuss the scope of the project. This initial meeting will be important in providing an understanding of the City's key goals in the development of the updated Ordinance and Purchasing Manual. Interviews will be conducted with the purchasing staff, City officials, and key customers to assess the work processes (including any impediments). This approach helps us to evaluate procurement methods, approval processes and overall procurement function for potential efficiencies.

This on-site phase will be for duration of 3 days to provide sufficient time and attention to meet with the high-volume customer departments and purchasing staff.

- C. **Analysis:** The third phase involves assessing and evaluating all data collected (including workload data, processes and interview results) and defining areas for improvement. Applicable best practices are identified at this point that may help the City realize significant efficiency, effectiveness and economy. At this point, these best practices are incorporated into the NIGP's recommendations and development of the business case is initiated. This is also the point where available benchmarking data is reviewed and incorporated along with organizational and staff assessments. Additionally, during this phase, the analysis between the potential process and organizational improvements will be examined to ensure proper correlation with the Ordinance and Purchasing Manual update.

- D. **Report/Deliverable Generation:** This final phase is comprised of preparation of a draft Ordinance, Purchasing Manual, and draft report that outlines the process and organizational improvements with a proposed priority framework for implementation. The Consulting team will develop a comprehensive report that covers the findings of all analyses, make recommendations, establish the business case for change and provide a recommended schedule and approach for implementation. The report will identify specific opportunities for improvement based upon the evaluation of current operations, process flows against current best practices, current organizational structure and staff resources, and a comparison to business processes of other relevant entities. We will provide an initial draft of the Ordinance, Purchasing Manual, and report to the City of Fort Lauderdale, and ask that all comments be provided back to us within 14 days of our delivery of the deliverables. We will then incorporate the City's feedback and make any additional edits to the document, and deliver our final deliverables in a timely manner.

II. Targeted Areas to be Addressed

Procurement Ordinance and Purchasing Manual

A team of Consultants will work with the City of Fort Lauderdale, Florida to develop a "best practices" based Procurement Ordinance and Purchasing Manual with a focus on the following:

- Review of state, county, and local procurement laws which impact the City's policies and practices for a foundation of the legal framework;
- Review of the City's current Procurement Ordinance and Procurement Manual and written procurement procedures for potential best practices enhancements.

The Consultants will prepare a Draft Procurement Ordinance and Procurement Manual with the incorporation of current procurement principles, practices and "best practices".

Procurement Process Review

Review business processes from identification of the need/requisition to contract administration for the various methods of procurement and to identify potential process deviations and efficiency opportunities based on procurement best practices and legal requirements. Specific tasks will include:

- 1) Conduct interviews with key stakeholders to gain a thorough understanding of their experiences with the procurement process and development of potential recommendations for enhanced operational efficiency and effectiveness.
- 2) Review of the current centralized procurement model operations and processes, to include:
(a) identification of need/requisitions, (b) specifications, (c) small dollar purchases, (d) methods of procurement (solicitations), (e) evaluation, (f) award, (g) contract administration (h) documentation and transparency to identify efficiency and effectiveness opportunities.

Organizational Review – Procurement Model, Structure, and Staffing

- A. The Procurement Department's organizational structure in relationship to the relevant policies and procedures that govern the procurement process, including authority, roles and responsibilities for the Chief Procurement Officer, Purchasing staff, and user department personnel will be examined for adherence to current best practices, with potential recommendations developed.
- B. Review of the current centralized procurement model of procurement responsibility, and provide best practices recommendations for the future delivery of procurement services.
- C. Review staffing levels for purchasing volume and make recommendations for proper staffing levels to handle purchasing volume. Review staff workloads and work distribution to identify any recommended changes to increase efficiency and effectiveness; such as delegation of authority.
- D. Assess the Procurement Department's staff to include:
 - 1) Review of the Procurement Department's organizational structure, position descriptions, education, certification, experience level and training;
 - 2) Provide overall staff assessment; knowledge, skills, and abilities in support of recommended process or workload assignment improvements.
- E. Establish a business case in support of proposed procurement process and organizational recommendations to demonstrate the value to the City of Fort Lauderdale in the implementation of the recommendations.

Roadmap for Potential Transformation Recommendations

A performance review and potential recommendations are a piece of the parts needed for transformation. Every transformation initiative contains a component of change management that should be addressed to ensure a successful outcome. Understanding the need for a focus on change management, the Final Report will provide recommendations outlined on a short, medium, and long term basis to assist in the implementation process. Additionally, key information gained from the various stakeholders and department meetings will be incorporated into the recommendations and implementation strategy to ensure the culture and environment within the City's organization is recognized and taken into consideration – the City's uniqueness.

Project Plan

Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Task Name														
1. Notice to Proceed														
2. Preparation Phase														
Data/ Document Collection & On-site Logistics														
Review of Documentation														
Determine Benchmark Cities														
3. On-Site Phase – 3 days														
Meetings with Stakeholders and Procurement Staff														
Meetings with Key Department Customers														
Review Procurement Operations/Processes and Documents														
Review Procurement Org. and Metrics														
4. Analysis Phase														
Analyze All Data Gathered														
Request Additional Data or Clarifications														
Finalize Benchmark Data and Business Case Analysis														
5. Deliverable Generation														
Draft Report, Ordinance, and Purchasing Manual														
Client Draft Report, Ordinance and Purchasing Manual Review														
Final Report, Ordinance and Purchasing Manual														

For the scope outlined above, the City should expect participation of staff resources to include the following responsibilities:

- Provide the Consulting team with electronic documents for review
- Provide all data that will be listed on the initial project data request in a timely manner (during the project preparation phase)
- Make staff available for questions and clarifications from the consulting team
- Work with the Consulting team to provide information for the customer the survey, including recipients for the survey and e-mail addresses
- Review the draft purchasing manual and report and provide comments within a two (2) week period.

Deliverables and Schedule

We anticipate the services beginning September, 2015. The total project duration is anticipated to be 14-15 weeks. The project will commence after execution of contract or issuance of purchase order.

The Consultants will issue a Draft Ordinance, Purchasing Manual, and a draft report with recommendations. The City will review the Draft Deliverables/Reports and provide feedback, and then the consulting team will provide the Final Deliverables/Reports.

Project Costs

Per Scope of Work (all inclusive, fixed fee)	\$64,900
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Billing

The City will be billed for 30% of the Project upon completion of the On-site Visit, 40% of the Project Fees upon delivery of the Draft Procurement Ordinance, Purchasing Manual, and Draft Report, and 30% of the Project Fees for delivery of the Final Procurement Ordinance, Manual, and Report. Billing will be based on deliverable completion without client sign-off of each deliverable – billed as fixed fee.

Invoices will be due forty-five days after the City's receipt of proper invoice in accordance with the Florida Local Government Prompt Payment Act.

A project plan will be agreed upon prior to kickoff and Periscope, subsequently, will allocate resources in order to successfully meet the project deadlines and to control costs. The Customer is expected to meet project deadlines as well. If actions (or inactions) on the part of the Customer result in a project delay, and it becomes necessary for Periscope to reschedule or reallocate resources, the cost of the project might escalate requiring a change order. Further, it is Periscope's expectation that the Customer agrees to performance completion for the entire consulting engagement as outlined in the scope of work.

CLIENT PROJECTS AND REFERENCES

Raleigh Durham Airport Authority – Decentralized to Centralized Procurement – August, 2012 (4 months); returned for follow-on engagement May, 2015

NIGP Consulting assisted the Authority in the transition from a “de-centralized” procurement model to a “centralized” procurement model. Conducted of a procurement process assessment and organizational review was completed to examine the current practices, processes, and procurement experiences. Based on the data gathering and interviews, NIGP Consulting provided recommendations that balanced “center-led” procurement practices with client tactical procurement actions for increased efficiency and maximization of staff resources. Recommendations included expanded use of the Purchasing Card and Direct Pay procedures for small dollar type transactions, adjustments to existing procurement position responsibilities and new job descriptions, and procurement training for procurement staff and client departments. Continued on-site assistance and guidance throughout implementation of the new model was provided. NIGP Consulting has been requested to return to assist with further transformation efforts in May, 2015 and is currently engaged with the Authority.

Contact Information: Donna Sylver – SVP and Senior Financial Officer
(919) 840-7731; donna.sylver@rdu.com

City of Palo Alto, CA. – Procurement Performance Review - January, 2014 (3 months)

NIGP Consulting was engaged to perform a comprehensive procurement performance review to enhance operational efficiency of the Procurement function with a focus of transitioning to a strategic, high performance operation. Recommendations were made for modifications to the Municipal Code to enable greater flexibility for the delegation of authority, increased procurement thresholds, and enhanced contract administration oversight. Additionally, recommendations for performance metrics, effective term contracts, increased Pcard usage and the implementation of direct pay procedures were proposed to enhance service and reduce costs. The Pcard and Direct Payment Process recommendations identified potentially \$40,000 in combined administrative savings. Examination of the procurement organizational structure, staff resources, knowledge, skills and abilities was also conducted with proposed modifications.

Contact Information: David Ramberg, Assistant Director, Administrative Services
(650) 329-2634; David.Ramberg@CityofPaloAlto.org

Hillsborough County Aviation Authority – Tampa, FL – Procurement Performance Review – March, 2014 (4 months)

NIGP Consulting performed a comprehensive review of the procurement organization and processes to assist in movement towards industry best practices for public sector organizations. The engagement included a review of policies and procedures, procurement transaction analysis, spend analysis, workload metrics and procurement technology. Over 100 recommendations were made addressing delegation of procurement authority, Pcard program, staff resources, and contract administration. The

Delegation of Authority recommendation potentially eliminated up to 87% of all transactions through purchasing for administrative savings.

Contact Information: Edward R. Haines, Director of Procurement
(813) 870-8796; EHaines@TampaAirport.com

City of Dallas, TX – Procurement Performance Review – October, 2014 (5 months)

NIGP Consulting was engaged to conduct a full in-depth procurement review that focused on procurement policies and procedures, procurement ethics, processes, comparable benchmarking, procurement technology and reporting. The procurement review provided recommendations in 13 different areas, with multiple sub-parts. The recommendations were based upon best practices and benchmark data from 5 different comparable municipal governments and the NIGP Benchmark Study of 2012 and 2014. Particular focus was also placed on client department procurement service levels.

Contact Information: Stephanie Cooper, Assistant Director/Purchasing Agent
(214) 670-3348; Stephanie.cooper@dallascityhall.com

San Antonio Water System, TX – Procurement Performance Review –August, 2014 (5 months)

NIGP Consulting was engaged to perform a comprehensive procurement performance review that included means to increase the level of competition and optimize the procurement processes, procurement technology, and procurement organizational structure. A component of the procurement process review included a review of SAWS procurement and contracting unit organizational structures for potential recommendations surrounding consolidation, reporting relationships, workload, and span of control. Based on the workload metrics and types of procurement (construction/supplies/services), recommendations included retention of the existing “separate” Contracting and Purchasing units and re-assignment of the Pcard Administrator to Purchasing. With SAWS being a relatively high-performing organization, additional key recommendations were developed that outlined the potential business impact to the entity including possible cost or avoidance savings and process efficiencies.

Contact Information: Dan Crowley, Director – Innovation and Efficiency
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