

184986

**CONTRACT FOR
THE FIRE AND POLICE DISABILITY AND RETIREMENT APPLICATION
REPLATFORM**

CONTRACT NO: _____

This "Contract" is made by and between the City of Portland, a municipal corporation of the State of Oregon, and its successors or assigns (hereinafter referred to as "City") and Online Business Systems (hereinafter referred to as "Contractor"), a(n) Minnesota corporation, by and through their duly authorized representatives. The Initial Term of this contract shall be 15, October 2011 through 14 October 2016. This Contract may refer to the City and Contractor individually as a "Party" or jointly as the "Parties." The total not-to-exceed price under this Contract shall be \$525,000.

Contractor Contact: David Neufeld

City of Portland Contact: Sheri Miller

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Recitals:

WHEREAS, in conjunction with its government operations, the City of Portland desires to replatform its existing Fire and Police Disability and Retirement (FPDR) database application (the "Project");

WHEREAS, in its Proposal dated August 17th, 2001 and submitted in response to City RFP # 112886, Contractor represents that it has the knowledge, experience and expertise in analyzing existing database applications, business processes, and functional and technical requirements, and in developing new database applications.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1 DEFINITIONS (04/10)

General Definitions. These definitions apply to the entire Contract and subsequent Amendments, Task/Change Orders:

"Acceptance" means Product has been inspected, loaded, shipped, transported, installed, delivered, configured and diagnostics tests have been performed to demonstrate, to the City's satisfaction, that Product conforms and operates according to the requirements of this Contract, applicable Documentation and Contractor's representations.

"Acceptance Criteria" means all specifications, functionality and performance requirements as set forth in the RFP, the Statement of Work (as such specifications, and requirements and Statement of Work may be changed from time to time by mutual agreement in writing), Contractor's proposal and Contractor's representations and warranties. The City's acceptance

criteria will be based on reliance on Contractor's experience and expertise. City and Contractor agree to establish the Acceptance Criteria in writing for the purpose of conducting Acceptance Testing. Terms and Conditions for Acceptance Criteria are set forth in Section 5.

"Acceptance Date" means the date on which the City issues a Certificate of Acceptance for the System. In regard to a particular Task Order without a requirement for an Acceptance Test, the Acceptance Date is the date when the City certifies to Contractor in writing that the Service or installation is complete.

"Acceptance Test" means the evaluation and testing method, procedures, or both, that are used to determine whether or not the System or a Product requiring Acceptance Testing operates in accordance with the Acceptance Criteria. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.

"Affiliates" means, with respect to a named individual or entity, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control with the named individual or entity. The term "control" means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

"Amendment" means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions, term, or cost provisions of the Contract or changing, adding to, or substantially altering a Statement of Work.

"Certificate of Acceptance" means a written instrument by which the City notifies Contractor either that in its sole discretion the Acceptance Criteria have been met or waived, in whole or in part.

"Change Order" means a written request to document a change to an existing Task Order that the City and Contractor may execute from time to time under this Contract.

"City Confidential Information" means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the City.

"Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing

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within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving party's possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party. All usage of the term "Confidential Information" in this Contract shall be deemed to include the qualifications set forth in Section 2.29.

"Contingent Product" means a Product or Service which the City intends to use in conjunction with some other Product or Service and from which the City would not derive the essential purpose of the bargain if acquiring one without the other.

"Contract" means the Master Terms and Conditions and all the documents referenced in Paragraph 2.1.

"Contract Administrator" means the individual appointed by the City to manage the resulting Contract and to serve as the official point of contact for all administrative matters relating to the Contract.

"Contract Price" means the not-to-exceed price agreed upon by the Parties for the System, subject to the provisions herein.

"Coverage Hours" means those hours specified in this Contract or subsequent Task Order during which period Contractor shall provide Maintenance.

"Customization" means (a) any modification to or adaptation of the Products, or (b) any new component or accessory or, in the case of Software, new code that contains features unique to the City's governmental purposes, whether prepared, created, or developed (1) by Contractor at the City's request as a work for hire, (2) by the City, or (3) by the City in conjunction with Contractor.

"Day" means a calendar day of twenty four (24) hours unless otherwise stated in the Contract.

"Delivery of Products" means Product has been received at the location specified in this Contract or a Task Order. Delivery of Products shall not be construed to represent Final Acceptance following delivery of the System.

"Documentation" means user manuals and other written materials in any form that describe the features or functions of the Products and System, including but not limited to published specifications, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

"Final Acceptance" means the City has determined that the System or a Product requiring Acceptance Testing: (a) has met the Acceptance Criteria and the City has provided a Certificate of Acceptance to Contractor; and (b) all Products function and perform compatibly and without Error when integrated as functional components of the System.

"Knowledge Transfer" means information and know how regarding technological or general

business issues, including, without limitation, products, identified or foreseeable problems, personnel, resources, or costs, as may relate to the System or any component thereof which Contractor may be required under this Contract or any subsequent Task Order or Change Order to pass on to the City.

"Mandatory Priced Options" means features and functionality that must be available, offered and priced in the Contract, but which the City may or may not purchase at the time the Task Order or Change Order is issued. The City may purchase Mandatory Priced Options by issuing a Task Order or Change Order at any time during the Contract term. The quoted price of Mandatory Priced Options shall remain effective for one-year following Acceptance, and may be adjusted per the Contract for subsequent years.

"Maintenance" means services provided by Contractor to the City designed to keep System operating in optimum condition.

"Maintenance Fee" means the fee paid by the City for Maintenance.

"Maintenance Period" means the time period when Contractor provides Maintenance to the City, which begins upon expiration of the Warranty Period.

"Maintenance Request" means a request by the City to Contractor for Maintenance.

"Manufacturers' Warranty" means a written statement to the City from a third party or from the Contractor on behalf of the third party that one or more components of the System or its Products will operate at the required specifications, functionality and performance level.

"Manufacturer's Warranty Period" means the time period during which a Manufacturer's Warranty is valid and enforceable by the City.

"Master Terms and Conditions" means this portion of the Contract, the body of text from the preamble through the signature page.

"Material Breach" means any breach of this Contract that (a) causes or may cause substantial harm to the non-breaching party; or (b) substantially deprives the non-breaching party of the benefit it reasonably expected under this Contract.

"Open Source Software" means any computer program for which the license provides the rights to run the program, view and change the source code, distribute exact copies, distribute modified copies and frees parties from any obligation to pay license fees or royalties.

"Operating System Software" means any computer program product that is installed on, and is a component integral to the function of, the Equipment.

"Product(s)" means Software, Equipment, Documentation and supplies, Services including warranty services, installation and Maintenance and professional services, which may include Upgrades, Customization and training.

"Project" means the overall collection of activities required for delivery and support of the System including, without limitation, design, development, integration, testing, support and Maintenance, any of which Contractor may be providing in whole or in part.

"Repair" means to fix, patch, reprogram, or replace the System or any Equipment or Software component thereof so as to eliminate Errors or failure to the City's satisfaction.

"Services" means both ordinary and professional services as required to be performed by Contractor under this Contract for the City. Services include, but are not limited to, Maintenance, consulting, training, site management, installation, analysis, programming, needs assessment, or technology review.

"Software" means the object code version of any proprietary or licensed computer programs, firmware, applications, or Operating System Software which are components of the System and are licensed by Contractor to City pursuant to this Contract, including, without limitation, any custom Software or Customization, application software, base software, diagnostic software, Updates, Upgrades and any related Documentation. Software may include Third Party Software and/or Open Source Software delivered by Contractor if required to produce and maintain the System.

"Software Enhancement" means a modification of Contractor's Software Source Code to increase its capabilities.

"Software Enhancement Release" means Software Enhancements provided by Contractor to the City as part of its Maintenance and Support services.

"Source Code" means a complete copy, expressed in high-level (i.e., human readable; not machine language or object code) computer language, of the Software which, when assembled or compiled, becomes the executable object code of the Software. Source Code shall include all material including but not limited to design documentation, Software documentation, reference manuals and documentation, libraries for the Software, and interface software (patch or whole programs), in any form (printed, electronic, or magnetic) and any other information necessary that a reasonably skilled programmer or analyst can understand and maintain the Software.

"Statement of Work" (SOW) means the written detailed specifications of the System, Product(s), or Services(s) to be delivered to the City by Contractor subject to the terms and conditions of the Contract.

"Subcontractor" means any person or business entity employed to perform all or part of an obligation of this Contract under the control of the Contractor.

"System" means collectively all Equipment, Products, Software, and Services to be provided by Contractor to City under this Contract.

"Task Order" means any written request or document issued by the City and signed by both Parties for additional Product(s) or Service(s) to be provided under this Contract that the City may require in conjunction with its use of the System. Task Orders shall document the description of goods and/or services, price, payment schedule, project and performance schedule, due dates, milestones and deliverables..

"Third Party Software" means software other than Contractor Software provided to City by Contractor under this Contract and that Contractor is authorized to license to the City subject to the original manufacturer's standard provisions.

"Update" means a change, modification, or enhancement to the Hardware or Software, and related Documentation, which improves its performance or efficiency, but does not alter its core

"Upgrade" means a newer, better version, change, modification, or enhancement to the Hardware or Software (including Third Party Software), and related Documentation, which Contractor makes available from time to time, which incorporates major new features or increases the core functionality of the Software and may be considered a new version. Software Upgrades may include error correction, bug fixes, additions to, or patches to the Software.

"Use" means the City's right to install, integrate, configure, implement, test, access, maintain and operate the System; any Contractor-provided software tools to customize the System; Documentation listed in the Contract; training materials City may acquire to provide internal training on the System to City Users; any Software Enhancements produced by or in collaboration with Contractor to develop the System to City's unique business processes and/or programming environment for purposes of installing, operating, configuring or using the System.

"User" means any person employed or working on behalf of the City, its Bureaus, Divisions, Offices, Directors, and any person or entity under contract or authorized by the City to provide it with services and to use the City's resources in whole or in part, in the course of assisting the City.

"Warranty Period" means the period from the go-live date to the end of year three.

SECTION 2 GENERAL PROVISIONS

2.1 Order of Precedence: (04/10) In the event there is a conflict between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict will be resolved by designating which portion of the Contract documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this Contract the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Change Orders
4. Task Orders
5. Exhibit A, Contractor's Price
6. Exhibit B, Statement of Work
7. Exhibit C, Sample Task Order
8. Exhibit D, Sample Change Order
9. Exhibit E, Sample Status Report
10. Exhibit F, Sample Certificate of Acceptance
11. City RFP # 112886 (including any addenda issued)
12. Contractor's Proposal, incorporated by reference

13. Contractor Documents (including any licenses, EULA, maintenance agreement, support agreement or others)

2.2 Point of Contact: (04/10) Contractor shall be the sole point of contact for the City with regard to the Contract.

2.3 Capacity to Contract. (04/10) Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.

2.4 Compliance with Law/Venue

2.4.1 Authority to Conduct Business. (04/10) Contractor warrants it is duly authorized to operate and do business in all places where it shall be required to do business under the Contract; that it has obtained or shall obtain all necessary licenses and permits required in connection with the Contract, and that it shall fully comply with all laws, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.

2.4.2 Oregon Venue/Choice of Law. (04/10) This Contract shall be construed according to the laws of the State of Oregon without reference to its conflict of laws provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

2.4.3 Compliance with Applicable Law. (04/10) Contractor warrants it has complied and shall comply with all applicable law, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs in connection with the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract.

2.4.4 Conflict of Interest. (04/10) Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under the Contract.

2.4.5 Rule of Construction/Contract Elements/Headings. (04/10) This Contract has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of the Contract.

2.5 Term. (04/10) Unless terminated earlier under the provisions herein, this Contract shall remain in effect during the Initial Term through design and implementation of the Project as well as the period for Services agreed to by the City and Contractor, including option years exercised at the City's discretion. Initial Term cannot exceed five (5) years. City Contracts can be no longer than ten (10) years total.

2.6 Changes to Contract

- 2.6.1 Amendment of the Contract. (04/10) No provision of this Contract may be amended or modified unless such Amendment or modification is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. All changes that would permanently change any provisions of this Contract shall be memorialized in the form of an Amendment. If the requirements for Amendment or modification of this Contract as described in this section are not satisfied in full, then such Amendments or modifications automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.
- 2.6.2 Task Orders. (04/10) The City and Contractor agree that if the City requires additional Services or Products, including Maintenance and Upgrades, it may submit a Task Order to Contractor. Task Orders are subject to the terms of this Contract. Agreed-upon changes shall not be retroactive and shall apply as of the effective date of the respective Task Order. Changes to a Task Order shall be done via the Change Order process, outlined below.
- 2.6.3 Change Orders to a Task Order. (04/10) The City reserves the right to make changes, at any time to a Task Order in the form of a Change Order agreed to in writing by the Parties. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Contract as needed or adjust the fee accordingly, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified fee.
- 2.7 Survival of Orders. (04/10) In the event that a Task Order/Change Order is not completed prior to the expiration of this Contract, the Task Order/Change Order shall survive the expiration of such until completion and all provisions of this Contract shall be considered active and in full force until the Task Order/Change Order reaches conclusion. In no case shall a new Task Order/Change Order be placed by the City or be accepted by Contractor after the expiration date of this Contract.
- 2.8 Delivery. (04/10) Contractor shall deliver the System and Products freight and insurance prepaid; F.O.B. the City's designated location at the time indicated herein or on any Task/Change Order. Shipments will be complete and partial shipments will be avoided unless the City agrees in writing to the partial shipment in advance of such a shipment. The risk of loss or damage in transit shall be upon Contractor until Product is received by the City at the delivery site. Contractor shall furnish on-site or other assistance, as may be required to install the Product at no additional cost to the City, if required by the City. Acceptance shall not relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor. In the case of the System, delivery of Products shall not be deemed to be complete until the System is available for commencement of the Acceptance Test.
- 2.9 Delivery Schedule. (04/10) Contractor shall use best efforts to deliver Product(s) and/or Services(s) on time, in accordance with the scheduled delivery date as set forth in this Contract or an individual Task/Change Order. If Contractor delivers Product more than thirty (30) days later than the scheduled delivery date as listed in this Contract or an individual Task/Change Order, the City may cancel the Task/Change Order without penalty.

- 2.10 Written Notifications. (04/10) All written notifications and written Amendments shall be sent to the following:

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| For City of Portland: | For Contractor: |
| Name: Sheri Miller | Name: David Neufeld |
| Title: Sr. Management Analyst | Title: VP – PNW Region |
| Address: Bureau of Fire and Police Disability and Retirement 1800 S.W. First Avenue, Suite 450 | Address: Online Business Systems 315 SW Fifth Ave, Suite 201 |
| City, State: Portland, OR 97201 | City, State: Portland, OR 97204 |
| e-mail: Sheri.Miller@portlandoregon.gov | e-mail: dneufeld@obsglobal.com |
| Copy to: Technology Contracts | Copy to: |
| Procurement Services | |
| 1120 SW Fifth Avenue Room 750 | |
| Portland OR 97204 | |

- 2.11 City Reporting Requirements. (04/10) The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, and Emerging Small Business (M/W/ESB) participation and Subcontractor/Supplier Payment. Contractor shall submit a Monthly Sub-consultant Payment and Utilization Report reporting ALL Subcontractors employed in the performance of this Contract. The City will enforce all diversity in workforce and M/W/ESB subcontracting commitments.
- 2.12 Payment. (04/10) Unless subject to successful completion of an Acceptance Test or other payment milestone specified in any respective Task/Change Order, payment for the System and/or any Product shall be in accordance with the Contractor's Price attached hereto as Exhibit A. Payment shall be issued by the City net forty-five (45) days from receipt and acceptance of a proper invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Contract number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-required reporting, if any, and the title and phone number of the responsible official to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to vendor.
- 2.13 Payment of Taxes/Contractor Shall Withhold. (04/10) Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations. Contractor shall also assure that any Subcontractors shall comply with the foregoing obligations.
- 2.14 Independent Contractor/No Duty for the City to Withhold. (04/10) Contractor is a contractor independent of the City and, accordingly, no Task/Change Order for Services pursuant to this Contract is entered into as a joint venture, partnership, or agency between

the Parties. No employment relationship is or is intended to be created between the City and any individual representing Contractor. During the term of this Contract, employees of Contractor and any authorized Subcontractors shall at all times remain employees of Contractor or authorized Subcontractors and ultimately shall remain under Contractor's sole control.

2.15 Assignment. (04/10) Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld, except that (a) either Party may assign to any corporate Affiliate pursuant to any merger, consolidation or other reorganization, without the other Party's consent but upon written notice to the other Party, (b) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, provided such outsourcing provider operates the Software licensed hereunder expressly and solely for the City's benefit, upon written notice to the other Party, and (c) Contractor may, without the other Party's consent but upon prior written notice to the other Party, assign its right to payment under this Contract or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract.

2.16 Delegation of Obligations/Subcontractors. (04/10) Contractor shall not subcontract any work, assign any rights (including, without limitation, in connection with the sale of all or substantially all of Contractor's assets, stock, or the line(s) of business applicable to any Task/Change Order), or delegate any obligations under this Contract, cancel or change any previously approved subcontract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its Subcontractors for Products and/or Services authorized under this Contract.

All M/W/ESB subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any M/W/ESB subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Purchasing Agent before such substitutions can be made. In no event shall Contractor subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior consent.

2.17 Warranties. Contractor and its Subcontractors warrant as follows:

2.17.1 Disclosure and Assignment of Manufacturer's Warranties. (04/10) In all cases where Product or Services are covered by a Manufacturer's Warranty, Contractor will provide the City with a complete and accurate list of all Manufacturer's Warranties pertaining to all Services or Products provided by Contractor. Contractor will assign to the City any Manufacturer's Warranty applicable to any respective Product or Service. Notwithstanding the foregoing, Contractor shall be held responsible by the City for correction to or replacement of the System or any of its components during the period of Warranty and Maintenance.

2.17.2 Equipment and Parts Warranty. (04/10) Contractor warrants that Equipment and parts will be new, the latest model and free from material defects in material and workmanship during the Manufacturer's Warranty Period when put into normal Use and service. If Contractor proposes to provide refurbished, reclaimed or remanufactured parts or Equipment to the City, Contractor shall request the City's acceptance in writing in advance of delivery and the City retains the right to accept or refuse Contractor's use of refurbished, reclaimed or remanufactured parts. If the City accepts the use of refurbished, reclaimed, or remanufactured parts or Equipment, Contractor warrants such Products have the same warranty as that of new and current Products and are subject to all the same provisions of this Contract. If Contractor uses refurbished, reclaimed or remanufactured parts without the prior consent required by the City, Contractor may be required, at the City's sole discretion, to replace such parts and Equipment with new and current manufactured parts and Equipment at Contractor's sole expense.

2.17.3 Warranty Against Planned Obsolescence and Reclaimed Parts and Equipment. (04/10) The Contractor warrants that at the time of Delivery of Products, it has no plans in the next 12 months for announcing a line of products to replace the ones delivered pursuant to this Contract or any plans that would result in reduced support for the product line delivered.

2.17.4 Industry Standards. (04/10) The System and all components of the System are compliant with all other generally accepted industry standards at time of any respective Task/Change Order.

2.17.5 Warranty and Representations: Contractor warrants and represents the following:

2.17.5.1 Performance to Specifications. (04/10) The System, including all components and Upgrades supplied by Contractor shall operate in accordance with Acceptance Criteria and all Documentation during the Warranty Period.

2.17.5.2 All Necessary Materials. (04/10) The City has all necessary materials and that no other Equipment, Software, interfaces, applications, or other products and/or services are required to be used in conjunction with the System in order for the System to operate in accordance with the Acceptance Criteria and Documentation.

2.17.5.3 System Compatible. (04/10) The System is compatible with the City's existing data files and systems as may be applicable and identified at the time of a Task/Change Order, and shall run in accordance with the Documentation.

2.17.5.4 No Material Defects or Viruses/Illicit Code. (04/10) The System (A) is free of any defect in material of the media in which it is delivered; and (B) is free of any virus, Trojan horse, spyware, malware, or other program routine designed to erase, disable or otherwise harm the City's hardware, data or other programs that Contractor or any Subcontractor to Contractor knew or should have known was contained in the Software or other code or program.

2.17.5.5 Illicit Code. (04/10) Contractor's Software and Third Party Software shall

not:

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- A) contain any hidden files that Contractor or any Subcontractor to Contractor knew or should have known were contained in the Software or programming
- B) replicate, transmit, or activate itself without the control of an authorized person operating computing equipment on which it resides, unless requested or authorized by the Contract Manager
- C) alter, damage or erase any data or computer programs without the control of an authorized person operating the computing equipment on which it resides
- D) contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under this contract, based on residency on a specific hardware configuration, frequency of duration of use or other limiting criteria (any of the foregoing shall constitute "illicit code")

2.17.6 Documentation Explains Use. (04/10) Contractor warrants that the Documentation shall explain the operation of the System in terms understandable by City Users of reasonable technical competence.

2.17.7 No Third Party Conflict or Infringement. (04/10) Contractor warrants the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract shall not contravene the terms of any contracts with third parties or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision.

2.17.8 Commencing of the Warranty Period. (04/10) Where Contingent Products are ordered and no Acceptance Test is required, the Warranty Period shall not commence until Acceptance by the City of all required or all Contingent Products. The City may, at its election, postpone Services in support of Products so as to coincide with Delivery and Acceptance of all Contingent Products. The City shall not incur any additional fees whatsoever for reordered or replacement Contingent Products.

2.18 Indemnification. (04/10) Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature (including all attorneys' fees and costs), resulting from or arising out of the activities, errors or omissions of Contractor or its officers, employees, Subcontractors, or agents, including intentional acts, under this Contract.

Contractor agrees to hold harmless and indemnify the City and its Affiliates against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City or its Affiliates may be required to pay arising from Products and/or Services provided by Contractor under any Task/Change Order to this Contract. The City of Portland, as a municipal corporation of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

2.19 Force Majeure

2.19.1 (04/10) In the event that either Party is unable to perform any of its obligations under this Contract (including any Task/Change Order(s) or loss of any Software licensed or developed hereunder) due to natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, this Contract and/or any affected Task/Change Order shall immediately be suspended.

2.19.2 (04/10) If the period of nonperformance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Task/Change Order or any license granted hereunder.

2.19.3 (04/10) If delay in delivery due to a Force Majeure Event does not exceed thirty (30) days, such delays in delivery shall automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) days.

2.19.4 (04/10) If delay in delivery due to Force Majeure Event is longer than thirty (30) days, the City shall have the right to terminate this Contract, a Task/Change Order, Maintenance agreement or any license hereunder upon written notice to Contractor, in accordance with this Section.

2.19.5 (04/10) If this Contract involves the acquisition of Equipment or Software that contains personally identifiable information and/or processes credit card transactions, a security breach of Contractor's system shall not be considered a Force Majeure Event.

2.20 Insurance and Bonding. (04/10) Work shall not commence until all insurance requirements listed below have been met and certificates have been approved by the City Attorney and filed with the Auditor. All required insurance must be issued by companies or financial institutions that are financially rated A or better and duly licensed, admitted and authorized to do business in the State of Oregon.

2.20.1 Insurance Certificate. (04/10) As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City prior to or with the return of the signed contract. The certificates shall include a 30-day notice of cancellation clause and a 10-day notice for non-payment. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance. If the insurance is canceled or terminated prior to completion of the Contract, Contractor shall provide a new policy with the same terms. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. Failure to maintain insurance as required by this Contract may be cause for immediate termination of the Contract by the City. Contractor's insurance will cover damages excluded from any limitation of liability to the extent of its policy limits indicated herein.

2.20.2 Additional Insureds. (04/10) The coverage shall apply as to claims between insureds on the policy. The insurance shall be without prejudice to coverage otherwise existing. The insurance certificate shall name as additional insureds "the City of Portland, Oregon, and its officers, agents and employees." Notwithstanding the naming of additional insureds, the

insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

2.20.3 Insurance Costs. (04/10) Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

2.20.4 Required Coverage is as follows: (04/10)

2.20.4.1 Public Liability and Property Damage. (04/10) ☒ **Required** ☐ **Waived by City Attorney.** Contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000.00 (one million U.S. dollars) per occurrence that protects Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from Contractor's work under this Contract.

2.20.4.2 Automobile Liability. (04/10) ☒ **Required** ☐ **Waived by City Attorney** Contractor shall carry automobile liability insurance with a combined single limit of not less than \$ 1,000,000.00 (one million U.S. dollars) each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Contractor.

2.20.4.3 Workers' Compensation. (04/10) ☒ **Required** ☐ **Meets Exceptions in ORS 656.027** Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656. Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under this Contract.

Contractors who are non-subject workers meeting one of the exceptions in ORS 656.027 may not be required to carry workers' compensation insurance. Any Contractor requesting an exemption from the workers' compensation coverage listed above must make that request in writing to the City Attorney, stating Contractor's qualification for exemption under ORS 656.027.

2.20.4.4 Technology Errors and Omissions; Information Security & Privacy Liability. (04/10) ☒ **Required** ☐ **Waived by City Attorney.** Contractor shall maintain liability insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Contract. The coverage shall be placed with an insurer with an AM Best Rating of A or better and shall include the following coverage:

Technology Products & Services E&O - Information Security & Privacy Liability for Service Provided to Others.

Such insurance shall cover any and all errors, omissions and/or negligent acts in the delivery of Products, Services and Software under this Contract. Such errors

and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and infringement of intellectual property, such as copyrights, trademarks, service marks and trade dress.

Such insurance shall include limits of coverage of the local currency equivalent of not less than \$1,000,000.00 (one million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination or expiration of this Contract. Evidence of coverage must be sent to the City for three years following termination or expiration of this Contract.

2.20.4.5 Insurance Requirements for Subcontractors. (04/10) Should Contractor subcontract any part of the Contract, Contractor will require those Subcontractors or Affiliates if not covered under Contractor's insurance, to obtain and keep in force for the duration of the Contract, insurance equal to the minimum values indicated above.

2.20.5 Performance Bond. (04/10) ☐ **Required** ☒ **Not Required** Contractor shall maintain a performance bond in the amount of _____ or percent (_____ %) of the value of this Contract in full force and effect throughout the Initial Term of the Contract and any renewals. The City shall accept only a performance bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney. The surety bond shall have the surety company's seal affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the surety company's seal. The performance bond shall be forfeited to the City if Contractor fails to perform as required under the Contract.

2.21 Ownership of Property. (04/10) Contractor agrees the City will, upon completion of the Initial Term of this Contract, have full ownership of the System. Should the Contract be terminated prior to the completion of the Initial Term of the Contract, the City shall negotiate in good faith with Contractor to resolve the disposition of the System. Contractor warrants that, with the exception of property that is leased or subject to a properly perfected security interest, it shall at all times own Equipment and Software proposed for this Contract, with the exception of Third Party Software, telecommunications services and buildings, and shall keep such property free and clear of any and all security interests, liens, charges, levies, assessments or encumbrances. Any work products produced or created by Contractor for the City shall be understood to be, to the fullest extent of the law, works made for hire unless the Parties have expressly agreed otherwise in writing.

2.22 Proprietary Rights. (04/10) Except Customizations and other Products or Software created as work-for-hire for the City, all trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights in or related to the Product or Service are and will remain the exclusive property of Contractor or its designees.

2.23 Return of Parties' Property. (04/10) When the Contract or any Task/Change Order placed pursuant to the Contract is terminated or expires, each Party shall return to the other all

papers, materials, and properties of the other Party then in its possession. The City will retain one (1) copy of the Documentation for the express purposes of public record archiving.

If the City has paid in full for licensed Product prior to the expiration date of this Contract the City shall retain licenses to Product for which the City may continue to order Maintenance and Upgrades. Terms of this Contract relating to such licensed Product, Maintenance and Upgrades shall survive expiration of the Contract.

- 2.24 Financing of Property. (04/10) If Contractor finances any property, real or personal, that comprises any part of the System, the term of such financing shall not exceed the term of the Contract. If Contractor finances or leases any such property or equipment, Contractor shall ensure that any agreements ancillary to or supporting the principal lease or financing agreement (e.g., hardware, software, maintenance, insurance) are coterminous to the principal financing or leasing arrangement. In addition, if the Contract is terminated, Contractor shall ensure that the City or any successor contractor shall have the right to terminate, renegotiate or be assigned any lease of property or equipment or ancillary agreement (other than, in the case of the City, any financing agreement or insurance).
- 2.25 Disclosure of Litigation or Financial Condition. (04/10) Contractor warrants and represents that there are no suits, actions or other proceedings – pending, or threatened – in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City if, during the term of this Contract or any extension of this Contract, Contractor becomes aware of any lawsuits, actions or proceedings – pending or threatened – in any judicial or quasi-judicial forum that involve Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract or extension of the Contract. For purposes of the disclosure requirement, any litigation, actions or other judicial or quasi-judicial proceedings that, in the aggregate, involve claims against Contractor totaling at least ten percent (10%) of the total amount of this Contract shall be presumed to adversely affect the ability of Contractor to fulfill its duties under this Contract.
- 2.26 Notice of Change in Financial Condition. (04/10) Contractor must maintain a financial condition commensurate with the requirements of the Contract. If, during the Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform, or changes the ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition or change in ownership or control is sufficient grounds for terminating the Contract.
- 2.27 Audits and Access to Records
- 2.27.1 Records Retention. (04/10) Contractor shall maintain current financial records in accordance with professional accounting standards. Contractor agrees to maintain and retain supporting financial and Contract related documents during the term of the Contract and for a period of three (3) years after the date of submission of the final billing or until the resolution of all audit questions or claims, whichever is longer. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by Contractor for a minimum of three (3) years.

- 2.27.2 City Audits. (04/10) The City, either directly or through a designated

representative, may conduct financial and performance audits of the billings and services during the records retention period listed above. City audits shall be conducted in accordance with generally accepted auditing standards. Contractor shall provide the City's internal auditor or external auditor, and their designees with a copy of all reports, including any management letters issued as a result of the specified audits.

2.27.3 Access to Records. (04/10) The City internal auditor or City external auditor, and their designees, shall be given the right, and the necessary access, to review the work papers of Contractor audits if the City deems it necessary. Copies of applicable records shall be made available upon request.

2.28 Overpayment. (04/10) If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of Services is not efficient in accordance with the U.S. Government Accountability Office's Government Auditing Standards, or that the Services are not effective in accordance with these Government Auditing Standards, the City may pursue remedies as provided under Section 2.31, Termination, and Section 2.33, Remedies.

2.29 Confidentiality

2.29.1 Maintenance of Confidentiality. (04/10) Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit and in furtherance of the Products and/or Services provided by Contractor. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees and agents of Contractor who need to know the City Confidential Information in connection with the City Project, (2) exercise reasonable care with respect to the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use Confidential intellectual property of the City without the City's prior written consent.

2.29.2 Scope. (04/10) This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. This Contract shall not apply to City Confidential Information which (1) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of Contractor; (2) Contractor lawfully receives from a third party; (3) was developed independently by and was reduced to writing by Contractor prior to the earlier of the date of this Contract or the date of any access or exposure to any City Confidential Information, or (4) is required to be disclosed under operation of law. Contractor's confidentiality obligations under this Contract shall survive termination.

2.29.3 Equitable Remedies. (04/10) Contractor acknowledges that unauthorized disclosure

of City Confidential Information or misuse of a City computer system or network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

2.29.4 Contractor's Confidential Information. (04/10) During the term of the Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (1) Contractor's Confidential Information later becomes part of the public domain through no act or omission of the City; (2) is required to be disclosed under operation of law; (3) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality; or (4) was developed independently by and was reduced to writing by the City prior to the earlier of the date of this Contract or the date of any access or exposure to any Contractor Confidential Information.

2.29.5 Public Records Request. (04/10) Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. Subject to the following conditions, the City agrees not to disclose any information Contractor submits to the City that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as Confidential. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

2.29.6 City's Obligation to Notify Contractor. (04/10) If the City receives a public records request for information that Contractor has marked CONFIDENTIAL and submitted in confidence, the City shall notify Contractor of the request. The City shall provide Contractor with written notice and a copy of the request. Contractor shall have five (5) business days within which to provide a written response to the City, either consenting to disclosure of the requested Contractor Confidential Information or explaining why the Contractor's Confidential Information is exempt from disclosure under the Oregon Public Records Law or otherwise. If Contractor fails to submit a written response within the time period required, the City may make its own determination regarding disclosure of the information sought by the request. Whether or not Contractor submits any written response to the City, the City shall retain final discretion to determine whether to disclose the requested confidential information. If Contractor contends that the Contractor's Confidential Information is exempt from disclosure, the City shall give Contractor five (5) business days' written notice prior to disclosing such Confidential Information to allow Contractor to pursue whatever legal avenues it deems appropriate.

If the City refuses to disclose the Contractor's Confidential Information pursuant to Contractor's response under the paragraph above, and the requestor files a petition for disclosure pursuant to the Oregon Public Records Act, the City shall provide Contractor with a copy of the petition within two (2) business days of receipt of the petition by the City. Within three (3) business days of delivery of the petition by the City, Contractor will provide the City with a written evaluation of the petition, detailing why the records would be exempt from disclosure under the Oregon Public Records Act. The City shall

provide notice and a copy of the District Attorney's decision on the petition within two (2) business days of receipt of the decision by the City. If Contractor desires the City to contest an order of the District Attorney requiring disclosure, or if an order of the District Attorney upholding non-disclosure is challenged as provided in the Oregon Public Records Act, Contractor shall save, indemnify and hold harmless the City and pay all reasonable costs and expenses, including reasonable attorney fees, incurred by or assessed against the City as a result of contesting or defending a public records order of the District Attorney in circuit court and on appeal. Contractor shall have the right to intervene in any such proceeding, to the extent that Contractor's rights may be affected thereby.

2.29.7 Discovery of Documents. (04/10) In the event a party to litigation seeks discovery of information submitted by Contractor in confidence, the City will notify Contractor of the request. The City shall allow Contractor to participate in the response at its own expense. The City will comply with any effective order issued by the court having jurisdiction over the matter.

2.30 Dispute Resolution. (04/10) Contractor shall cooperate with the City to assure that all claims and controversies which arise during Contractor's performance of Services under this Contract or a Task/Change Order subject to this Contract and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- A) Any dispute between the City and Contractor arising prior to completion of Contractor's services or the earlier termination of the Contract shall be resolved, if possible by the Contract Manager or their designee on behalf of the City and Contract Manager or their designee on behalf of Contractor.
- B) If the Contract Manager or the Contract Manager's designee and Contractor are unable to resolve any dispute within three (3) business days after notice of such dispute is given by either Party to the other, the matter shall be submitted to Bureau of Technology Services Chief Technology Officer on behalf of the City and PNW Region Vice-President on behalf of Contractor for resolution, if possible.
- C) Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- D) Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
- E) Unless ordered by the City to suspend all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services or delivery of Products without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed upon Task/Change Orders that the City may issue regarding the acceleration of all or any portion of the

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Products or Services. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute, in accordance with the provisions of the Contract or Task/Change Order.

- 2.31 Termination. (04/10) The following conditions apply to termination of this Contract. The City, on thirty (30) days written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.

2.31.1 The City and Contractor, by mutual written agreement, may terminate this Contract at any time.

2.31.2 Either Party may terminate this Contract in the event of a Material Breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination. In the event of default under this Contract, the non-defaulting party shall have the option (upon the expiration without cure of any applicable cure period) to: (a) terminate in whole or in part this Contract or any related Task/Change Order, (b) seek remedies pursuant to this Contract (c) seek any other remedies in the Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (d) any combination thereof.

2.31.3 City Termination for Cause. (04/10) In addition to Material Breach, the City may terminate this Contract for the following reasons, which constitute cause for purposes of this Section:

- A) Bankruptcy. The City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) day period; or (d) has wound up or liquidated, voluntarily or otherwise.
- B) Maintenance Default. The City may terminate this Contract if Contractor fails to provide Warranty or Maintenance services or Contractor has not cured its failure to provide Maintenance as provided and paid for in this Contract.
- C) System or Product of Software Performance Default. The City may terminate this Contract if the System or Product exhibits defects causing serious disruption of Use and/or repeated periods of downtime, over a continuous period of six (6) months or more.
- D) Software Code. Inclusion of illicit code as set forth in Section 2.17.5, Warranty and Representations, shall be considered a Material Breach of the Contract and no notice or cure period will apply. In addition to any other remedy available to it under this Contract with respect to any such Material Breach, the City reserves the right to pursue any civil and/or criminal penalties available to it against a Contractor, including without limitation the Deceptive Trade Practices & Consumer Protection Act, the Computer Crimes Law and

- E) Void Assignment. In the event that Contractor assigns its obligations to provide Products and/or Services under this Contract to any third party in a manner other than as set forth in Section 2.15, Assignment, the City shall have the option to terminate this Contract or any Task/Change Order for Products and/or Services, and promptly receive a pro rata refund for fees paid for such Products and/or Services.

2.31.4 Termination for Force Majeure. (04/10) Either party may terminate this Contract due to a Force Majeure event as set forth in Section 2.19, Force Majeure.

2.31.5 City Termination for Contractor Breach. (04/10) In the event of termination by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to the City the amount of the reasonable excess. In the event of any Material Breach by Contractor, which Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law.

2.31.6 Contractor Termination for City Breach. (04/10) In the event of Material Breach of this Contract by the City, then Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in Section 2.12, Payment.

2.32 Waiver. (04/10) No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract.

2.33 Remedies. (04/10) The remedies provided in this Contract are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

2.33.1 Software. (04/10) In the event of Software failure a set out in the General Provisions above, the City shall have the right to one or more of the following non-exclusive remedies: (A) Contractor provide engineering support on site at the City's location with Source Code for the Software, if necessary for resolving the problem causing the breach. The City has the option to assign one or more of its full time employees to assist Contractor's engineer(s) in repairing the problem. Contractor retains copyright and all ownership rights to the Source Code and any changes made during this on-site period if such repair involves Software. The City agrees to maintain confidentiality of the Source Code and all residual know-how and knowledge that may be transferred to City employees as a result of this effort; however, the City shall be entitled to use the Source Code for purposes of error correction or operations continuity, at the City's sole discretion; or (B) the City may terminate this Contract in its entirety or solely as to the affected Task/Change Order and exercise the remedies included in this Contract, in the City's sole discretion.

2.33.2 Maintenance. (04/10) In addition to any other remedies provided for in this Contract or at law or in equity, the City shall have the right to obtain one or more of the following non-exclusive remedies in the event of any Material Breach involving Maintenance under this Contract by Contractor: (a) suspension of contested payment obligations accruing during the period for which Contractor is in Material Breach; (b)

080081 termination of this Contract in its entirety as set forth in Section 2.31, Termination, or of any affected Task Order or Maintenance Request, in the City's sole discretion; and (c) a refund of all fees for Maintenance paid by the City to Contractor for the period beginning from the date of the Material Breach to the end of the Term.

- 2.34 Severability. (04/10) Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.
- 2.35 Rolling Estoppel. (04/10) Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under the Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report from Contractor by the fifteenth (15th) day of the month following the month of the alleged deficiency and Contractor identifies the specific deficiency in the City's fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have affected a specific performance requirement of Contractor.
- 2.35.1 (04/10) Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under the Contract or the Contract price, if Contractor knew of that problem and failed to include it in the applicable report.
- 2.35.2 (04/10) In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's deficiency report should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Managers can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.
- 2.35.3 (04/10) If the problem is one that allows Contractor (within the terms of the Contract) to ask for changes in the Project timetable, the standards of performance, the Project price or all of these elements, the report should comply with the Task/Change Order procedure.
- 2.36 Business License. (04/10) Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to beginning work under this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.
- 2.37 EEO Certification. (04/10) Contractor shall be certified as Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 3.100 of the Code of the City of Portland and maintain their certification throughout the term of the Contract.
- 2.38 Non-Discrimination in Benefits. (04/10) Throughout the term of the Contract, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with the Bureau of Purchases, City of Portland, prior to Contract execution.

- 2.39 Sustainability. (04/10) Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable products or services into its work performance wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
- 2.40 Packaging. (04/10) All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 2.41 Permissive Cooperative Procurement. (04/10) Pursuant to ORS 279A.215, as additional consideration for this Contract, Contractor agrees to extend an option to purchase any Product, Equipment or Services covered under this Contract at the same prices as are specified in Exhibit A for purchase by the City, under the same terms and conditions to all regional public agencies. Each participating agency will execute its own Contract with the Contractor for its requirements.
- 2.42 News Releases and Public Announcements. (04/10) Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. If approval is not issued within ten (10) business days from receipt of the request, the request shall be deemed denied. Contractor shall not use the City seal without specific written permission from the Auditor.
- 2.43 Survival. (04/10) All obligations relating to confidentiality; indemnification; publicity; representations and warranties; proprietary rights; perpetual licenses, including licensing obligations as stated in this Contract or any applicable Task/Change Order; limitation of liability; and obligations to make payments of amounts that become due under this Contract or subsequent Task/Change Orders prior to termination or expiration (except that payments for Services not performed by the date of termination shall be prorated) shall survive the termination or expiration of this Contract or any respective Task/Change Order and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City. Nothing in this Contract shall alter, modify, or supersede the content and survival of such provisions, except as otherwise expressly agreed to in writing by the Parties and with the prior written approval of the City Attorney's office.

SECTION 3 SOFTWARE LICENSE SPECIFIC PROVISIONS

- 3.1 Application. (04/10) In addition to the General Provisions provided in Section 2, these provisions shall apply to all Software, including Updates, Upgrades, Software Enhancements, Customizations, or Software preloaded into Equipment. These Provisions shall not cover any Third Party Software supplied by Contractor except where specifically addressed. Should any ambiguities or conflicts arise between this Section 3 and Section 2 General Provisions, this Section 3 shall prevail over Section 2 in matters of Software, Upgrades, Enhancements, Customizations, and Repairs.
- 3.2 Grant of License. (04/10) Contractor hereby grants the City a non-exclusive, perpetual, irrevocable license to use, access, and operate all Software components of the System, or as may be specified on any respective Task/Change Order, whether or not Contractor is the original manufacturer of the Software, including that which may be preloaded on any Equipment. The City owns the perpetual license regardless of whether or not the City purchases maintenance and support. Contractor shall be responsible for effecting licensure of all Third Party Software required for the System, which shall be subject to the provisions of this Contract. Except as otherwise expressly provided in this Contract or in any applicable Task/Change Order, Contractor grants the right to use, access and operate the Software without restriction, as may be applicable, to any number of City Users, geographic area, market, location, duration, CPU, site, MIPS, or other measurement or platform restrictions, including platform operating systems. If the Software is permanently installed on the hard disk or other storage device of any computer (other than a network server) functioning as a component of the System and one person uses that computer more than eighty percent (80%) of the time it is in use, then that person may also use the Software, subject to the provisions of this Contract, via remote access, on a portable or home computer or other handheld device. In the event that any such person is unable to perform duties or is replaced for any reason whatsoever, all rights and privileges granted in this Contract shall apply to substitute/replacement personnel.
- 3.3 Copies. (04/10) The City may reproduce the Software and Documentation, and any computer-based training modules ("CBTs"), if applicable, provided that each copy thereby produced shall be marked with Contractor's proprietary markings as delivered to the City. Unlimited copies of Software may be used for testing, including testing within a City lab, or other lab as agreed to between the Parties, on a mirrored server for purposes of redundancy, back up, archive, and disaster recovery purposes and in such manner as may be necessary to facilitate the continuation of the City's governmental operations.
- 3.4 Escrow of Source Code. (04/10) The escrow of Source Code for the Software shall be governed by a separately executed Source Code Escrow Agreement, the terms and conditions of which shall be agreeable to the City and which shall be incorporated by reference.
- 3.4.1 (04/10) Within thirty (30) days of the Acceptance Date, Contractor shall, at its own expense deposit, with an escrow agent acceptable to the City, a complete copy of the Source Code for the Software and all current modifications and Upgrades, including Third Party Software. All escrow fees shall be paid by Contractor.
- 3.4.2 (04/10) Contractor covenants to the City that Contractor will continue to promptly deliver to the Escrow Agent all revisions, corrections, Upgrades, Customizations, or other modifications to all versions of the Source Code (the "Changes") so that the Source Code held in escrow constitutes a machine-readable program of the most current release of the Software, as well as any licensed version which may be in use by the City. Contractor shall

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promptly notify the City in writing that the Changes have been made and the Escrow Agent has been provided with all such Changes. For convenience, the Documentation segment of the Source Code may be placed in machine-readable form or in a form suitable for photocopying.

3.4.3 (04/10) Upon release of the Source Code pursuant to the Escrow Agreement, the City shall have the additional right to modify the Source Code. The rights provided for in this Contract are in addition to those granted to the City as licensee.

3.5 Ownership. (04/10) Contractor shall retain all ownership rights, including trademarks, patents, copyrights, and other forms of intellectual property, in pre-existing or independently developed Software.

3.5.1 (04/10) Title to all tangible personal property, including title to the medium or media of delivery of the Software, shall vest in the City upon delivery.

3.6 Credit for Technology Migration (04/10)

3.6.1 The City shall have the right, but not the obligation, to retire any existing Software in connection with a technology migration. If the City exercises this right, Contractor shall credit the City's account with one hundred percent (100%) of fees paid in advance for any Software retired and replaced. The credit shall be applied toward the fee otherwise owing for acquisition of the new Software.

3.6.2 If the City licenses Software for installation on a particular hardware platform, and such Software is available on multiple hardware platforms, if the City elects to migrate to another hardware platform, the City will notify Contractor of the City's intent to migrate such Software and Contractor will assist the City with the migration at no additional licensing or other cost to the City. Contractor shall promptly deliver to the City a version of such Software appropriate to the platform to which the City wishes to migrate and the City will cease to use Software licensed on the initial platform and either (a) return such Software and Documentation therefore to Contractor; or (b) certify destruction of such Software and Documentation, as may be mutually agreed to by Contractor and the City, except that the City may retain one back up copy for archive purposes.

3.6.3 Unless otherwise agreed to by the City and expressly stated in writing in the Task/Change Order for the System or any subsequent Task/Change Order, cessation of use of any Software/Product customized or developed by Contractor for the City under this Contract shall not require return of such Software/Product to Contractor by the City. Contractor shall gain no right whatsoever in any such Software/Product due to the City's cessation of use.

3.7 Substitution of Software at No Charge. (04/10) In the event that Contractor ceases to provide Maintenance for any standard Software, Contractor shall substitute functionally similar new Software, which shall conform in all aspects to the Acceptance Criteria and shall in no way degrade performance or functionality of the System, at no additional cost to the City.

3.8 Infringement Indemnity. (04/10) Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, agents and Affiliates from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of

or in connection with any actual or alleged violation or infringement by the Software of any proprietary right of any person whosoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that prevents the City's continuing use of the Software/Products shall be made without the City's prior written consent. If any third party claim causes the City's use of the Software to be endangered, restricted or disrupted, Contractor shall (i) cause the Software to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Software to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Software and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence or standard of care none of the foregoing alternatives is possible, Contractor will terminate the license and refund to the City license fees actually paid by the City and any direct damages documented by City for the affected Software and Documentation.

- 3.9 Security. (04/10) Contractor shall provide immediate notification to the City's Information Security Manager and the City's Project Manager of any online security breach that affects City systems. Contractor shall provide notification to the City's Project Manager of any incident relating to System integrity such as a computer virus.

3.9.1 (04/10) Contractor shall comply with City of Portland, Bureau of Technology Services Security Standards. Specifically Contractors must comply with Technology Services, Information Security Administrative Rules 2.01, 2.02, 2.08, 2.12 and 2.15. These rules are located at: <http://www.portlandonline.com/auditor/index.cfm?c=26821>.

3.9.2 (04/10) Contractors providing or having access to data containing City confidential or personally identifiable information (as defined in the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628) must maintain and demonstrate compliance with the following:

Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628. Specifically Contractors must develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal of the data. Contractors must also provide immediate notification to the City of a data security breach (as defined) and in cooperation with the City, provide notice to affected consumers. Any costs or fees incurred by the City due to Contractor's data breach, including but not limited to notification, consumer credit reports or fines by the Department of Consumer and Business Services, shall be reimbursed to the City by Contractor.

3.9.3 (04/10) Additionally, any Contractor who provides or has access to Software which processes and /or interacts with credit/debit card information must also be compliant with the following:

3.9.4 (04/10) Payment Card Industry - Data Security Standard (PCI-DSS). The most current version is 1.2. These standards are maintained at www.pcisecuritystandards.org.

SECTION 4 MAINTENANCE SPECIFIC PROVISIONS - (04/10) ☒ Required ☐ or Waived

- 4.1 In addition to the General Provisions provided in Section 2, these provisions shall apply to all Maintenance and Repairs to the System, including any Software, Equipment, and Product(s). These provisions shall cover any Third Party Software supplied by Contractor as components of the System. Should any ambiguities or conflicts arise between this section and Section 2 General Provisions, this section shall prevail over Section 2 in matters of Maintenance and Repair.
- 4.2 Term. (04/10) Contractor's obligations in connection with Maintenance shall commence on the Acceptance Date. The City shall have the option to renew Maintenance support for 12-month periods as long as this Contract is in effect, at the price for annual Maintenance support set forth in this Contract.
- 4.3 Services Included. (04/10) During the Warranty Period and any period of Maintenance, Contractor shall provide solutions, changes and corrections to the System as required to keep the System conforming in all material respects to the Acceptance Criteria and all applicable Documentation, and to correct reported problems that are replicated and diagnosed by the City as defects or Errors in the System. Services shall include the following:
- 4.3.1 Preventative. (04/10) Maintenance shall include preventative services and tools for the System such as, without limitation, (A) the development, release and assistance in installation of Updates and Upgrades which are designed to prevent operational errors, bugs, viruses, and the like; and (B) the monitoring, queue management, evaluation, or any other similar diagnostic applications or tools, and assistance in the installation and operation of same.
- 4.3.2 Repair. (04/10) Within the time specified herein, Contractor shall repair all Errors that have been identified by Contractor or by the City in Maintenance Requests, by (A) if Software, providing patches on diskette, CD ROM or by download or electronic mail; or (B) if Equipment, dispatching a repair team, or authorizing items to be sent to Contractor repair facilities as applicable in which case Contractor shall provide backup Equipment as a hot swap pending repair and/or replacement of the defective component; Contractor shall provide additional or supplementary new Operating System Software code, loaner Equipment or reasonable workarounds to assist the City in reducing the impact of such failure to the City's operations. Contractor shall replace defective Software that cannot be repaired. Contractor shall replace defective Equipment with like equipment if the defect is non-repairable, and or repair costs would exceed the then depreciated value of the Equipment, less any trade-in value. In the event that neither replacement nor Repair can be made, the remedies, as stated within this Contract, at the City's sole discretion shall apply. A work around or patch which temporarily eliminates the symptoms of the particular Error or failure reported, but impairs the efficiency of the City's operations, shall be deemed an "interim repair," not a Repair. An interim repair cannot last longer than seven (7) calendar days, unless otherwise mutually agreed in writing by both Parties.
- 4.3.3 Telephone Helpline/Staffing. (04/10) During the Coverage Hours in Exhibit B, Section 2(e) Contractor shall maintain a no-cost telephone hotline. Contractor shall staff the hotline with competent technical consultants who shall be trained in and thoroughly

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familiar with the System and with the City's applicable configuration. Telephone support and all communication shall be delivered in English.

- 4.4 Response. (04/10) Contractor's support specialists shall respond to a Maintenance Request from City within the times specified in this Contract. Such response times shall be measured from the time a City contact requests support.
- 4.5 New Releases/Upgrades. (04/10) In the event the Software is upgraded, modified, or enhanced, including interim Updates, block releases, patches or fixes of major or minor bugs, Contractor shall automatically provide such Upgrades, Updates, changes, enhancements, or fixes to the City at no additional cost. The Maintenance cost under this Contract is intended to include those Updates/Upgrades listed in the previous sentence and therefore will remain unchanged and will not be increased due to such Upgrades, Updates, enhancements, or fixes.
- 4.6 Training. (04/10) At the City's request, Contractor shall provide the City on-site training in connection with Upgrades or major repairs that change the functional operation of the System or any Software or Equipment component whether repair or alteration is a permanent or interim modification. Training shall be provided at no cost to the City and a time and location convenient to the City's business operations and staff.
- 4.7 Version Support. (04/10) If the City elects not to install any Software or Product Upgrade, Contractor shall, at the City's request, maintain the ability to support up to two (2) earlier versions of the Product(s) in operation. Contractor shall provide the City with at least twelve (12) months prior written notice, before discontinuing Maintenance in support of Product(s) currently in use by the City. After such discontinuation, the City may obtain back-level support upon payment of a fee that shall not exceed one hundred and ten percent (110%) of the annual Maintenance fee for the most current version of the component Product.
- 4.8 Redundant Systems. (04/10) Unless otherwise expressly stated in a Task/Change Order, Contractor shall provide Maintenance for a redundant System/Product on the exact same basis as for a primary System /Product. All rights, obligations, warranties, and other Services which apply and extend to a primary System/Product shall apply and extend to an equal extent to a redundant System/Product.
- 4.9 Other Standard Services. (04/10) Contractor shall, at no additional cost to the City, provide other standard services which Contractor offers to its customers generally or as otherwise described in this Contract or in a specific Task/Change Order.
- 4.10 Severity Level, Escalation, and Response Time. (04/10) Unless otherwise specified in a particular Task/Change Order, Contractor shall provide Maintenance as outlined in this section under the response and resolution times set forth for specific severity levels in the table below. Regardless of Service specifications in a subsequent Task/Change Order, Contractor shall, at a minimum, respond timely to Maintenance Requests by, depending upon the nature of the Error identified, diagnosing the problem on-line; assisting over the telephone; sending patches, code fixes or workarounds; replacing any defective System, Equipment, Software or Product(s), providing loaner Product, installing and testing of the Software and Equipment; or, if necessary, sending personnel to the City's site to deliver Maintenance Service in person. In the event of an Error, the City shall have direct access, without prior

escalation, to competent technical consultants who shall be trained in and thoroughly familiar with the Software, Equipment, or Product and with the City's applicable configuration. Should remote access be required, Contractor will follow all City policies regarding remote access including completion of a Remote VPN Access Form. The Remote VPN Access Form is available at <http://www.portlandonline.com/bts/index.cfm?c=49863>.

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Severity Levels of Errors or Defects

| Severity Level | Response Time | Resolution Time |
|--|---------------|-----------------|
| 1 - Failure (example: affecting payment processing): | 30 minutes | 4 hours |
| 2 - Critical (example: affecting data entry) | 1 hour | 8 hours |
| 3 - Non-critical (example: report fix) | 4 hours | 48 hours |

In the event that Contractor fails to resolve a problem within the time period set forth in Section 4, the following terms and conditions shall apply:

| Failure Severity Level | Contractor's Obligations |
|------------------------|--|
| 1 | Upon the City's notification to Contractor of Contractor's failure to resolve a Severity 1 Error or defect within the resolution time set forth in the previous table, Contractor shall immediately provide expert personnel to resolve the problem, either on-site or by means of secure remote access, at City's sole option. All costs incurred in connection with on-site or remote support shall be borne by Contractor. Contractor shall maintain such expert support until the Error or defect is repaired to the satisfaction of the City. In the event that the failure is not resolved within twelve (12) hours from the time of the City's notification, City may deem Contractor in Material Breach of its obligations under this Contract. |
| 2 | Upon the City's notification to Contractor of Contractor's failure to resolve a Severity 2 Error or defect within the resolution time set forth in the previous table, Contractor shall immediately provide expert personnel to resolve the problem, either on-site or by means of secure remote access, at City's sole option. All costs incurred in connection with on-site or remote support shall be borne by Contractor. Contractor shall maintain such expert support until the Error or defect is repaired to the satisfaction of the City. In the event that the problem is not resolved within ten (10) days from the time of the City's notification, the City shall be entitled, at the City's option, to (a) continue using the System until resolution is achieved, during which time Maintenance shall be at no charge or; (b) require that Contractor replace the System, Equipment, Software, or Product; or (c) return the System, Equipment, Software, or Product to Contractor at Contractor's cost, and receive a refund of all costs paid by the City including the annual Maintenance fee in addition to any other remedies to which the City may be entitled. |
| 3 | Upon the City's notification to Contractor of Contractor's failure to resolve a Severity 3 Error or defect within the resolution time set forth in the previous table, |

| Failure Severity Level | Contractor's Obligations |
|---------------------------|---|
| | <p>the Contractor shall immediately provide expert personnel off-site to resolve the Error or defect. All remote access and off-site assistance shall be at no additional cost to the City.</p> <p>If Contractor cannot resolve the Error or defect off-site within five (5) days after the City's notification, Contractor shall immediately provide a sufficient number of expert personnel, (using remote access via a City-approved secure methodology), on an around-the-clock basis to resolve the problem within 48 hours.</p> <p>If the City elects, the City may also require Contractor to provide simultaneous on-site support. Contractor shall maintain such support until the problem is resolved to the satisfaction of the City. However, in the event Contractor's solution is a work-around or patch, the use of which, in the City's sole opinion, adversely impacts the City's operations, Contractor is required to provide a final resolution to the City's satisfaction.</p> <p>In the event that the Error or defect is not resolved within thirty (30) days from the time of the City's initial notice of failure to resolve the Error or defect, the City is entitled, at the City's option, to (a) continue using the System until resolution is achieved; (b) require Contractor to replace the System or the failed component; or (c) return the System. Equipment, Software, or Product, at Contractor's cost, and Contractor shall promptly refund to the City all costs including the annual Maintenance fee paid by the City, in addition to any other remedies to which the City may be entitled.</p> |

- 4.13 Access to City Facilities. (04/10) Contractor agrees that Contractor's physical or remote access to the City facilities shall be subject to the security interests and controls necessary to protect public property, and the City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

SECTION 5 ACCEPTANCE TESTING

- 5.1 Right to Perform Acceptance Testing. (04/10) Prior to Accepting the System, the City shall have the right to perform Acceptance Testing. Contractor shall cooperate with the City in the development of Acceptance Criteria and the Acceptance Test Plan that shall codify and set forth the location, date, and other specifications of the test.
- 5.2 Procedure and Timetable. (04/10) Unless otherwise specified,
- 5.2.1 The City shall commence the Acceptance Test no later than ten (10) days after Delivery of the System;
- 5.2.2 Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation regarding the System in order to facilitate Acceptance Testing;
- 5.2.3. Acceptance Testing shall not exceed thirty (30) days; and The City will make all reasonable efforts to complete the Acceptance Test within the time period specified. If the Acceptance Test is successful the City shall issue a Certificate of Acceptance, a sample of which is attached as Exhibit F.
- 5.3 Failure of Acceptance Test. (04/10) The City will notify Contractor if the System or a portion of the System, fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After City's notification, Contractor shall correct the System, or the affected portion, within ten (10) days and notify the City that the Correction has been completed. After Contractor's Correction notification, the City shall perform a second Acceptance Test. If the System, or portion of the System, fails to pass the second Acceptance Test, the City shall notify Contractor in writing, and the City may, in its sole discretion: (a) terminate the Contract or Task/Change Order with no further liability; (b) request Contractor to replace the System or defective portion of the System at no additional cost to the City, c) request Contractor make further corrections to prepare for retesting again; (d) accept the System at a reduced cost to be negotiated between the Parties; or (e) issue an Acceptance Certificate entitled "Acceptance with Exception(s)."
- 5.3.1 (04/10) If the City issues an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction. If exceptions are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the System or affected portion(s). If the System passes the Acceptance Tests, the City will issue a Certificate of Acceptance.
- 5.3.2 (04/10) If a System fails a second Acceptance Test (or in the event of a single Acceptance Test, *the* Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the System.
- 5.4 City Acceptance of Failure. (04/10) If the City elects to accept the System or any combination of Products even with the failure(s), then the City may request that Contractor issue a refund to the City in an amount equal to a percentage of the full fee

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- 5.5 Revocation of Acceptance. (04/10) The City shall have the right to revoke "Acceptance with Exception(s)" if the City granted an "Acceptance with Exception(s)" based on Contractor's commitment to correct the defect within a reasonable period of time, but the defect has not been so corrected.

The City shall also have the right to revoke Acceptance if the City accepted the System without discovery of the defect, and the Acceptance was reasonably induced by Contractor's assurances or by the difficulty of discovery of the defect before Acceptance. Revocation is effective only if it occurs within a reasonable time after the City discovers or should have discovered the reasons for revocation.

- 5.6 Termination Based on Failure of Acceptance. (04/10) If the System fails to pass the Acceptance Test(s), the City may terminate this Contract for Material Breach. Contractor shall refund all costs paid for the System or any combination of Products in U.S. Dollars within fifteen (15) Days. The refund shall be in cash or its equivalent and not in the form of future credits from Contractor.

- 5.7 No Waiver. (04/10) Acceptance shall not relieve Contractor from its responsibility under any Warranty. Payment for Products or the System does not constitute Acceptance nor does it constitute a waiver of any Warranty applicable to the City.

SECTION 6 PUBLIC CONTRACTING

- 6.1 Public Contracts. (04/10) Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this Contract, as applicable:

6.1.1 (04/10) Pursuant to ORS 279B.220, on every public contract, Contractor shall make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in the Contract; shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

6.1.2 (04/10) Pursuant to ORS 279B.230(1), in every public contract, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

6.1.3 (04/10) Pursuant to ORS 279B.230(2), in every public contract, all subject

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employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

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6.1.4 (04/10) Pursuant to ORS 279B.235(1), persons may not be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one week when the work week is five (5) consecutive days, Monday through Friday; or b) for all overtime in excess of ten (10) hours in any one day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

Pursuant to ORS 279B.235(3), when performing professional services, the employee shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime

SECTION 7 TRAVEL - ☒ Required ☐ or Waived

7.1 Reimbursement. (04/10) Contractor may be reimbursed, upon advance written approval by authorized City personnel, for certain expenses incurred in connection with personnel assigned to provide services for the City on the City's site. All invoices shall be accompanied by original receipts and any additional backup that may be appropriate, and required by any subsequent Task/Change Order. Reimbursement will be made based on the following guidelines:

7.1.1 Commercial Air Travel (04/10) Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. The City shall reimburse Contractor for one round trip to the subject work location, unless otherwise agreed to by the City in writing. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) days in advance. Direct billing for commercial air travel is NOT permitted; however, City may elect to arrange travel reservations on behalf of Contractor personnel. Weekend travel is not reimbursable, unless otherwise agreed to by the City's Project Manager in writing. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.

7.1.2 Rental Cars/Surface Transportation. (04/10) Contractor shall choose the most economical mode of transportation. Vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager elects to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees. The City will reimburse Contractor personnel for surface transportation such as taxicabs, shuttles, and mass transit, at actual cost when reimbursement requests are accompanied by original receipts.

028481 7.1.3 Lodging. (04/10) Contractor shall arrange for their own lodging,. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA lodging allowances can be found at the U.S. General Services Administration website:
http://www.gsa.gov/HP_01_Requested_perdiem

7.1.4 Meal and Incidental Expenses (M&IE) (04/10) The City will provide per diem for each full day (eight hours) worked for Contractor personnel assigned to deliver Services. The per diem rate will be the same as the one published on the U.S. General Services Administration website, identified as the Meal and Incidental Expenses (M&IE) for the Portland, Oregon area. GSA per diem rates can be found at the U.S. General Services Administration website:
http://www.gsa.gov/HP_01_Requested_perdiem

7.1.5 Personal Entertainment. (04/10) Expenses incurred for personal entertainment while traveling on the City business are not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, birthday gifts, haircuts, etc.

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SIGNATURE PAGE

(04/10)

This Contract, together with all Exhibits, Attachments and those documents which by their reference have been incorporated herein, constitutes the entire Contract between the City and Contractor and supersedes all proposals, oral and written agreements, between the Parties on this subject.

The Parties agree the City and Contractor may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed.

CITY OF PORTLAND

CONTRACTOR

Chief Procurement Officer Date

Christine Moody

Printed Name

Approved as to Form

Office of the City Attorney Date

Authorized Signature Date

Printed Name and Title

Address: _____

Phone: _____

Fax: _____

Exhibit A
Contractor's Price

| Software Development / Implementation Costs | |
|--|------------------|
| Phase | Cost |
| Discovery | \$35,000 |
| Software Development | \$135,000 |
| Final Acceptance | \$20,000 |
| Deployment / Go-Live | \$10,000 |
| Total: | \$200,000 |

| Maintenance and Support Costs | |
|--------------------------------------|-------------------|
| Years 1 - 3 | Cost |
| Warranty | \$0 |
| Maintenance | \$20,000 per year |
| Years 1 - 3 Total: | \$60,000 |
| Years 4 - 7 | |
| Maintenance / Support | \$30,000 per year |
| Years 4 - 7 Total: | \$120,000 |

| Contractor Time and Material Rates for Additional Services | |
|---|----------------|
| Role | Rate |
| Programmer / Analyst | \$95 per hour |
| Project / Account Management | \$120 per hour |
| These time and material rates shall remain in effect for years 0 – 3. Thereafter, the rates for additional services shall be negotiated in good faith by the Parties. | |

1. Summary

FPDR requires a functional replatform of its existing FoxPro database application. The Contractor will be required to review the existing FoxPro database application, FPDR business processes, and requirements, and develop a new database application. The Contractor must implement the new application and migrate the existing FPDR data to the new application. The Contractor must provide ongoing maintenance and support for all Contractor-developed components of this new replatformed system. The replatformed system must comply with the City's BTS Technology Standards.

The project will include providing project planning and management, business process definition and analysis, requirements definition, systems integration, and custom software development and maintenance **using City standard programming languages and tools as defined in the BTS Technology Standards.** These Standards can be found at the following link: <http://www.portlandonline.com/bts/index.cfm?c=26586&a=44978>. Any third party hardware or software licenses that are required for this project will be procured by the City's Bureau of Technology Services.

The City of Portland, Bureau of Fire & Police Disability & Retirement, issued RFP #112886 seeking proposals from individuals, firms, teams or consultants, hereafter called "Proposer(s)," with demonstrated experience in the replatforming of custom database applications to current technology including:

- a. Business requirements definition and needs analysis,
- b. Business process modeling and use-case development,
- c. Software project planning and management,
- d. Custom Software development, testing and quality assurance,
- e. Design and development of Data Models using standard diagramming techniques
- f. Creation of logical Data Models and translation into physical database structures that integrate with existing or proposed database structures,
- g. Construction of relational databases to optimize database performance,
- h. Identifying necessary system use of hardware and software resources,
- i. Database integration including custom software development,
- j. Migration between disparate databases,
- k. Integration with SAP and text file inbound interfaces (See Exhibit G: Current Interface Record Layouts), MS Office Applications, Crystal Reports, Create-A-Check check writing software and EasiTax tax reporting software,
- l. Reporting needs as listed in Exhibit C: New FPDR Database Requirements, and allowing connection to Excel, MS Access and Crystal Reports software.
- m. Database security management, including user access profiles and data field restrictions.
- n. Ongoing maintenance, support and enhancement of any custom software developed by the Contractor as part of the replatformed database application.

2. Scope of Work

The Contractor shall perform the tasks listed below for this project, and shall be expected to work closely with designated City personnel to accomplish these goals:

a. Develop an Overall Project Plan and Timeline

Develop an Overall Project Plan and Timeline, taking into account the New FPDR Database Requirements found in Exhibit C, and the Technical or Required Services and project deliverables outlined below.

b. Document Business Requirements

03088.1

Schema Improvements

Current table names and column names are cryptic and will need to be renamed during this process. The existing FoxPro database contains 95 tables and more than 1400 columns (some of which are no longer used or need to be restructured). There is also an issue with how the FoxPro database derives key column values. Based on these factors it is recommended that the Contractor create a new database from scratch using the legacy database as a reference artifact and write a conversion program to transfer the data to a fresh schema. See Exhibit E: Current FPDR Database Table Listing for more information on the current data tables.

FPDR has a spreadsheet of the existing database tables and columns. Friendly table and column names using full English readable words need to be created. "Camel-case" must be used for multi-word names.

Below is an example of how a table and column name from the existing FoxPro database might appear in the new database application:

| Existing FoxPro Table and Column Name | New Table and Column Name |
|---------------------------------------|----------------------------|
| Medhist.clamt | MedicalHistory.ClaimAmount |

ii. Capture Use-Cases

Use-cases are the basic unit of work that can be quantified and tracked while the new application is being developed. Record the use-cases required to successfully cover all the existing business processes. For example, a use-case could be "Process New Enrollment," with a paragraph describing the following:

- A. The business event that starts the work
- B. Documents or other external resources required to perform the work
- C. The interaction between the user and the system
- D. The point at which the user is done
- E. Any other business processes that this work supports

An analysis of FPDR's existing FoxPro application can answer many of the questions concerning what data is saved and how data is related. The process of documenting the use-cases will require the Contractor to record why the existing application performs the functions it does. In order to make this determination, the Contractor will need to do the following:

- F. Have the City's subject matter expert explain the history of each use-case
- G. Identify and analyze any physical forms that are used in the data entry process
- H. Identify the preceding and trailing processes in the existing workflow that are external to the FPDR system
- I. Review legislation or policy documents, provided by FPDR, that the FPDR system must enforce

Once compiled, the use-cases must each be given a technical complexity rating of simple, medium, or complex. This will provide a construction roadmap of dependent use-cases. The Contractor must compile the complex use-cases prior to initiation of any code development.

iii. Feature Inventory

A full inventory of the features needed to support the use-cases must be compiled. A feature is any process the system needs to perform that completes the sentence: "The application must..." Examples:

- A. "The application must import vendor information from SAP" could translate into a feature named "SAP Vendor Import".
- B. "The application must search existing members" could translate to "Member Search".

Working through the existing FoxPro application and noting all the features will create a complete list. The Feature Inventory must contain all features necessary to support the required use-cases.

iv. **Record Business Rules**

Business rules are discrete pieces of program logic, which can be attached to screen elements. For example, on a data entry screen you may have a textbox labeled "Enrollment Date". The business rules for this textbox could be:

- A. Must be a Date (not a number or a word)
- B. Must be in the past
- C. Is required

c. **Construction Tasks**

Note - The Contractor must utilize City standard programming languages and tools for this project as defined in the BTS Technology Standards. These Standards can be found at the following link:

<http://www.portlandonline.com/bts/index.cfm?c=26586&a=44978>

i. **Provision of Development Environment**

The Contractor will be required to host the development environment. This resource must be available in the Contractor's organization and the Contractor must make arrangements for deploying to the City's test environment. The Contractor will need to provide the City with detailed hardware and software requirements and specifications for the City's test and production environments. The City's Bureau of Technology Services will procure any required hardware or third party software as recommended by the Contractor.

ii. **Model the Business Processes**

The existing user experience does not closely match the current business processes. The scope of work includes not only migrating the existing FoxPro database to a new platform but also reinventing the primary user experience and interfaces to more closely match the business processes. See Exhibit D: Current Process Flowcharts for more information.

Using a UML modeling tool, capture the existing business events that prompt a user/worker to interact with the system, the business process being performed, and the required result. Add any external inputs/outputs like other systems or documents. Make models for use-cases including any additional interfaces discovered during the business process review. In addition, create test use-cases for all the existing business processes.

iii. **Wireframe Prototype**

Use a wireframe UI prototyping tool to build mockups of all screens and general application navigation. FPDR desires to work with a firm that is well versed in web application controls, and to build something that is not heavily customized. Application navigation screens that are intuitive and simple to use are desirable.

iv. **Data Migration and Cleansing**

Create and test data migration scripts to migrate data from the existing FoxPro application to the new database schema. Identify data that needs to be cleansed and any tasks required to accomplish the cleansing. Examples of items that will require cleansing are: empty data fields, data in text formats rather than number formats, redundant key fields, and the same field appearing in multiple tables.

v. **Build and Test the Application**

This task will take most of the construction effort and involve the most internal and external staff. FPDR requires that the Contractor begin testing the new application early and have short iterations of testing and verification against a set of related test use-cases. The Contractor must focus on the most complex use-cases first, and keep the requirements documents synchronized with the new application as it evolves. The Contractor must reconcile effort to hours, and review the timeline at the conclusion of each iteration.

vi. **Validate with City Users**

As part of each testing effort, validate that the new application meets all current business requirements by having the City users test the system using existing FPDR data in the City's test environment. Validate that the business flow has been followed and that the proper input and

outputs are present to support external processes. Gather feedback on application usability and look for ways to simplify and improve the user experience.

vii. **Cutover and Go-live**

Using the same database migration scripts that have been built over the construction phase, export the latest set of data from the FoxPro application to the new City-hosted production database. Deploy the final version of the new application to the production server and verify with the City users that current data is accessible, that the appropriate user access and data security is operating as per specifications, and that all critical functions can be performed. Find a cutover strategy that has the least impact to City users.

d. **Training Tasks**

i. **Train City Users**

Schedule time and training rooms to instruct the City staff members who will be using the new application. Create supporting documents to augment the provided documentation, and encourage staff to take notes. Training and user acceptance will be included as part of the acceptance criteria for the project.

e. **Support Deliverables**

i. **Ongoing Maintenance of Custom Software**

Provide ongoing support and maintenance for any custom software developed by the Contractor that includes, at a minimum:

- A. A comprehensive support model for the new application as configured and/or customized to meet the City's requirements. Timely support and incident response expectations are:

| Support Type | Response Time | Resolution Time |
|---|---------------|-----------------|
| Failure (example: affecting payment processing) | 30 minutes | 4 hours |
| Critical (example: affecting data entry) | 1 hour | 8 hours |
| Non-critical (example: report fix) | 4 hours | 48 hours |

Normal Coverage Hours of 6:30 am to 5:30 pm PST Monday through Friday is required.

- B. The Contractor is responsible for the maintenance, upgrades, and future enhancements of any custom/Contractor developed portions of the new application. The Contractor will need to provide the City with the hardware and software requirements of the production environment and will need to coordinate with the City during the acquisition process for that hardware and software. The City's Bureau of Technology Services will procure any necessary hardware and software.
- C. The City is responsible for hardware maintenance and operating system patches and upgrades. The Contractor will provide a comprehensive software testing plan and environment for application testing for when the City deems hardware upgrades and operating system patches are necessary.

3. Deliverables

Deliverables and schedule for this project shall include:

a. **Overall Project Plan and Timeline**

The Overall Project Plan and Timeline must contain the following information:

- i. Roles and responsibilities of each person on the team
- ii. Formats and schedules for communication and project updates. Items to be communicated must include project schedule, budget, scope updates, change request and risk mitigation, and weekly status updates.

- 284587
- 184986
- iii. Project timeline including each individual task that will be performed
 - iv. The work required for installation, customization, and configuration of the software and hardware infrastructure in accordance with the business, functional and technical requirements as defined in SCOPE OF WORK and EXHIBITS referenced therein.
 - v. A full list of the supplies, services and/or activities that comprise each line item. The plan shall also specify in detail the City of Portland resources (human, material, etc.) needed to implement the plan.

b. Full System Documentation

The System Documentation must include the following:

- i) Complete database model of the new application to include all table and field listings in Excel, relationships of the tables in graphical format, interface processing descriptions, main business process descriptions, all calculations clearly explained in words with mathematical examples, all use-cases and test cases, feature inventories and business rules, internal report examples with the tables and fields from which they were derived and all calculations explained, all screens documented with table notations.
- ii) Other software requirements as appropriate (operating system software, interface software versions such as "MS Access 2003", SQL 2005).
- iii) Hardware technology architecture of proposed solution describing infrastructure, networking and software, and third-party software architecture requirements.

c. End User Documentation

- i. Create easy to follow user manuals that include screen shots and explain the business flow of the primary use-cases in the new application. Document each screen in the system and call attention to important data elements. Make special notes concerning seldom used features. For example, if there is an end-of-year process that needs to occur, describe it in detail so the knowledge is not lost.

d. Support Deliverables

i. Technical Documentation

Create a technical documentation suite that includes:

- A. Configuration management deployment details
- B. A copy of the source code for any custom software that the Contractor develops for the City, to enable the City to make future modifications
- C. Supporting UML Diagrams
- D. Any artifacts and notes created during the construction phases that are still relevant.

ii. Ongoing Maintenance Documentation

Provide ongoing support and maintenance documentation that includes:

- A. Contractor's Business Continuity Plan which demonstrates the Contractor's ability to support the new application for its usable life.
- B. System modifications/version upgrade release notes, system and user documentation updates as appropriate.

All deliverables and resulting work products from this Contract will become the property of the City of Portland. **Any work products produced or created by Contractor for the City shall be understood to be, to the fullest extent of the law, works made for hire unless the Parties have expressly agreed otherwise in writing.**

4. Project Schedule

The preliminary Project Schedule is shown below. A refined project schedule will be provided by the Contractor as part of the Discovery phase:

| Project Task | Scheduled Timeframe |
|---|---------------------|
| Discovery | 10/24/11 – 11/18/11 |
| Infrastructure and Environments | 12/16/11 – 3/30/12 |
| Agile Software Development-Testing Release Schedule | 11/18/11 – 5/11/12 |
| Final Acceptance Testing | 5/11/12 – 6/8/12 |
| Final Deployment / Support / Transition | 4/20/12 – 6/29/12 |
| Project Close | 7/2/12 – 7/6/12 |

5. Status Reports

Contractor shall summarize activities under this Contract in written weekly/monthly status reports submitted to the City Project Manager. The status reports are due on the first day of the week/month and shall include summaries of all activities and deliverables completed in the prior week/month. The report shall include a list of any delayed items, a description of the problem, schedule impact, and a method of resolution. The item shall be carried over onto subsequent reports until the problem is resolved.

A Sample Status Report is included as Exhibit E.

6. Place of Performance

Contractor shall provide City with services at City locations as directed by the City Project Manager. Some portions of the work will be performed at Contractor facilities as agreed with the City Project Manager.

7. Project Management

- 7.1 The City's Project Manager will be Sheri Miller. The City may change City's Project Manager from time to time upon written notice to Contractor.

Contact Information:

Sheri Miller
Bureau of Fire and Police Disability and Retirement
1800 S.W. First Avenue, Suite 450
Portland, Oregon 97201
503-823-2977
Sheri.Miller@portlandoregon.gov

- 7.2 The Contractor's Project Manager will be Bryan Lepine.

Contact Information:

Bryan Lepine
Online Business Systems
315 SW Fifth Ave, Suite 201
Portland, Oregon 97204
503-221.4515
blepine@obsglobal.com

8. Contractor Personnel

City of Portland
Contract # _____

Contractor shall assign the following personnel to do the work in the capacities designated, including all subcontractors.

| Name | Role on project |
|----------------|--|
| David Neufeld | Executive Sponsor, Contract Management |
| Bryan Lepine | Project and Account Management |
| Bradley Newman | Delivery Management |
| Joseph Blank | Developer / Analyst |

9. Acceptance Criteria and Acceptance Test Plan

Acceptance Criteria and the Acceptance Test Plan shall be reviewed jointly by the City's Project Manager and technical experts from the City's Bureau of Technology Services. When agreed, the Acceptance Criteria and Test Plan shall be attached here and incorporated into the Contract as Option 1 with Exhibits XX and XX or as Option 2 with Schedules B-3 and B-4 of the Statement of Work.

A sample Acceptance Certificate is incorporated in this Contract as Exhibit F.

**Exhibit C
Sample Task Order**

| |
|---|
| Task Order No. _____ DPO No. _____ <small>(Leave blank - to be completed by Procurement Services)</small> |
|---|

The Contract No. _____, between the **City of Portland** and
 _____ (name of firm)

- 1) **CITY PROJECT MANAGER** (For this Task Order)
 - a. Bureau:
 - b. Name:
 - c. Phone Number:
- 2) **PROJECT BACKGROUND:** (Information may be provided in an attachment)
- 3) **SPECIFIC SERVICES** - This Task Order identifies the following specific services to be provided by Contractor:
- 4) **DELIVERABLES** - The Contractor shall provide the following:
- 5) **SCHEDULE** - All tasks to be completed by (date)
- 6) **COMPENSATION** - The maximum compensation relating to these services shall not exceed \$_____ without written authorization by the Project Manager. Pricing shall be as indicated in the Contract.

SAP Cost Object:

(Include the hourly compensation rate for all Contractor personnel for this task order as well as the total task order not-to-exceed sum) The hourly rate for services delivered under this Task Order is \$_____ per hour.

7) **Contractor Personnel**

Contractor shall assign the following personnel to do the work in the capacities designated, including all subcontractors.

| Name | Role on project |
|------|-----------------|
| | |
| | |
| | |
| | |

8) **SUBMIT INVOICES TO:**

184986

Name _____
Address _____
City, Zip, State _____

Electronic submittal is acceptable.

ALL OTHER TERMS AND CONDITIONS OF THE CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT. Changes to this Task Order must be made via a Change Order.

In witness hereof, the parties have duly agreed to this Task Order as of the date written below.

CONTRACTOR:

Name:

Title:

Phone:

Fax:

Email:

BY: _____

DATE _____

CITY OF PORTLAND

(Task Order Project Manager)

Bureau:

BY: _____

DATE _____

080081

Exhibit D
Sample Change Order

184986

CHANGE ORDER No.: _____
to
TASK ORDER No.: _____
DPO No. _____
Contract No. _____
for _____

The following are typical Task Order amendment options. Please select and complete the applicable options.

1. Additional time is necessary and the Task Order identified above is hereby extended through * *(insert new end date)*.
2. Additional work is necessary as described in the Scope of Work and deliverables as follows *(identify changes to the scope of work and deliverables)*:
3. Additional compensation is necessary and shall not exceed \$XXX *(the amount of this task order amendment)* for a total task order value of \$XXX *(insert the new Not to Exceed amount)*.

All other terms and conditions of the Task Order shall remain unchanged and in full force and effect.

CONTRACTOR

CITY OF PORTLAND

BY: _____
Name & Title

BY: _____
Project Manager (Name & Title)

DATE _____

DATE _____

Exhibit E

Sample Status Report for Services Provided by Contractor

STATUS REPORT FOR SERVICES PROVIDED BY CONTRACTOR

Week Ending _____ Contract No. _____
Contractor _____ Name and Title _____

1. Key Status Indicators:

| Description | No | Yes | Explanation |
|------------------------------|----|-----|-------------|
| Has scope changed? | | | |
| Will target dates slip? | | | |
| Are there resource problems? | | | |
| Any other issues? | | | |

2. Major Activities Completed For Reporting Week (Key Accomplishments):

| Activity | Comment(s) |
|----------|------------|
| | |
| | |
| | |
| | |

3. Major Activities Planned For Reporting Week and Not Completed:

| Activity | Comment(s) |
|----------|------------|
| | |
| | |
| | |
| | |

4. Major Activities Planned For Next Week:

| Activity | Comment(s) |
|----------|------------|
| | |
| | |
| | |
| | |

5. Status of Key Team Deliverables:

| Activity | Comment(s) |
|----------|------------|
| | |
| | |
| | |
| | |

6. Major Issues Requiring Immediate Attention:

| Issue | Resolution |
|-------|------------|
| | |
| | |
| | |
| | |

7. Weekly Summary of Performance

Individual:

| Scheduled Activities | complete | incomplete | Comment(s) |
|----------------------|----------|------------|------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Individual:

| Scheduled Activities | complete | incomplete | Comment(s) |
|----------------------|----------|------------|------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Individual:

| Scheduled Activities | complete | incomplete | Comment(s) |
|----------------------|----------|------------|------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Individual:

| Scheduled Activities | complete | incomplete | Comment(s) |
|----------------------|----------|------------|------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

*Exhibit F***Sample Certificate of Acceptance****CERTIFICATE OF ACCEPTANCE
(04/10)**

On this day of , 20 , the City certifies Acceptance of (name of System: state combination of Products therefore, if applicable), in accordance with that certain Contract for Procurement of a System dated as of ("the Contract"). This Certificate of Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with defects in the System (*or combination of Products therefore*) described herein.

The City of Portland, Oregon

Signature: _____

Name
(printed): _____

Title: _____

Date: _____