CONTRACT FOR PROCUREMENT, LICENSING, AND MAINTENANCE
OF AN INTERACTIVE WEB-BASED FAPA RESTRAINING ORDER PETITION-CREATION SYSTEM

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 Integrated Information Systems, Inc. dba Intresys (hereinafter referred to as "Contractor"), a California corporation, by and through their duly authorized representatives. The "Initial Term" of this Contract shall be 26 October, 2011 through 25 October, 2014, with the City's option to extend the Contract for an additional two years at the rate set forth in Exhibit A hereto. 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 during the Initial Term shall be $165,000.

Contractor Contact: Alexander Zilberfayn
1875 South Grant, Suite 130
San Mateo, CA 94402
TEL: (650) 372 - 1790

City of Portland Contact: Martha Strawn Morris
Gateway Center for Domestic Violence Services
10305 East Burnside
Portland, OR 97216
TEL: (503) 988 - 6487

Recitals:

WHEREAS, the City administers the Gateway Center for Domestic Violence Services (hereinafter referred to as "the Gateway Center") which is a one stop service center for domestic violence victims and their children. The Gateway Center co-locates a variety of services including application for Oregon Family Abuse Prevention Act (FAPA) restraining order petitions in cooperation with the Multnomah County Circuit Court. The City received funds from the United States Department of Justice to develop and implement an interactive web-based restraining order process to make the application process less complicated for victims of domestic violence. Currently, applicants must complete by hand 30 pages of application forms. The same information is required to be filled in multiple places;

WHEREAS, the City of Portland desires to develop an electronic document assembly and interactive e-filing system for Family Abuse Prevention Act (FAPA) restraining order petitions. (the "Project"). Once the interactive forms are developed, restraining order petitioners will sit at a computer and respond to a series of carefully worded prompts that will solicit all the information required for the restraining order petition. Once complete, the petition form for obtaining restraining orders, required by the court, will be auto-populated with the information solicited by the interactive process;

WHEREAS, the end users of the process developed by the Project will be petitioners for Family Abuse Prevention Act restraining orders in Multnomah County. The process will be available for use by petitioners at the Gateway Center, and other Multnomah County applicants who choose to use the interactive process in order to complete their restraining order application. The City recognizes that the Oregon Judicial Department ("OJD") is actively engaged in an ongoing project that will result in e-

filing capability as well as the production of similar interactive forms for other court processes. It is possible that OJD or another entity will be better positioned to provide ongoing maintenance for the interactive form that will be developed by this Project. Therefore, as later delineated in this Agreement, the City may assign any license or right to use and access the interactive process developed by this Project to a third party, provided, that upon assignment, the scope of license granted in this Contract shall remain the same as the license scope as set forth in this Contract.

WHEREAS, in its Proposal dated 10 January, 2011 (the "Contractor Proposal") and submitted in response to City RFP # 112160, Contractor represents that it has knowledge, experience, and expertise in the development, implementation, licensing, and maintenance of electronic document assembly and interactive e-filing systems.

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 acceptance of the System pursuant to the terms of Section 5.2 below.

"Acceptance Criteria" shall be attached as Exhibit F to this Contract and   shall take into consideration all specifications, functionality and performance requirements as set forth in the RFP.

"Acceptance Date" means the date on which the System is accepted pursuant to Section 5.2 below.

"Acceptance Test" means the tests conducted in accordance with the procedures set forth in Section 5.2 below that are used to determine whether or not the System operates in accordance with the Acceptance Criteria.

"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 reasonable discretion the Acceptance Criteria have been met or waived.

"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 or under the circumstances of disclosure should reasonably be considered as confidential. 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, designed to run in conjunction with the Products, that contains features unique to the City's governmental purposes prepared, created, or developed by Contractor at the City's request.

"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 Acceptance following delivery of the System.

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

"Equipment" means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the proper execution, installation and acceptable completion of the System or any Task/Change Order hereunder.

"Error" means any defect, problem, condition, bug, or other partial or complete inability of the System to operate in accordance with the applicable Documentation and the Acceptance Criteria.

"Fix" means a correction to Software that does not function or operate in accordance with the Documentation. A Fix is not a Modification, Upgrade or Software Enhancement.

"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 the System operating in accordance with the Documentation. Maintenance includes Contractor's hosting of the Website, incidents resolution, software Upgrades and Updates, any modifications necessary to maintain compliance with jurisdictional requirements that do not require code changes (i.e., changes that are cosmetic in nature and can be administered through the configuration of parameters performed via GUI screens by a business analyst), subject to the resource allowance in Section 4.6 hereof, software troubleshooting, recovery, and backups (excluding data backups).

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

"Maintenance Period" means the time period when Contractor provides Maintenance to the City.

"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, Website, Documentation and Services including 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. The Project is for the development and implementation of an electronic document assembly and interactive e-filing system for Oregon FAPA restraining order petitions.

"Repair" means to fix, patch, reprogram, or replace the System or Software component thereof so as to eliminate Errors .

"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 "TurboCourt Filing User Portal Software as a Service" Contractor hosted FAPA website, access to and use of which is licensed and provided to the City by Contractor pursuant to this Contract, including, without limitation, any custom Software or Customization, configuration, interfaces, 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. "Subcontractor" shall not include providers of general services, such as hosting services, that are not uniquely applicable to the Project.

"System" means collectively all Products, Software, and Services to be provided by Contractor to City under this Contract for the purpose of e-filing FAPA forms.

"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 generic elements of the Software, and related Documentation, which improves its performance or efficiency, but does not alter its core functionality.

"Upgrade" means a newer, better version, change, modification, or enhancement to the generic elements of the Software (including Third Party Software), and related Documentation, which Contractor makes generally 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 test, access, and operate 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 operating or using the System.

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"Website" means the TurboCourt FAPA website hosted by Contractor and using Contractor's Software, as well as the storage, Software backup (excluding data), connectivity, and services necessary to support said website.

"User" means any Multnomah County resident who chooses the use of the interactive process to complete a Family Abuse Prevention Act to obtain restraining order from Multnomah County District Court, as well as 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 in order to provide access and use of the System for the benefit of Multnomah County residents.

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 and Payment Schedule

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, Acceptance Criteria

11. Exhibit G, Acceptance Test Plan

12. Exhibit H, Sample Certificate of Acceptance

13. Exhibit I, Grant Award and Special Conditions

14. City RFP # 112160 (including any addenda issued)

15. 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. The Initial Term of this Contract shall be from October 26, 2011 through October 25, 2014, with the City's option to extend for an additional two years at the rate set forth in Exhibit A hereto

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

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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 at the time indicated herein or on any Task/Change Order. Acceptance shall not relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to 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 commercially reasonable 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, and the delay in delivery was not caused in whole or in part by a failure of the City to perform in accordance with the Contract, 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:

For City of Portland:	For Contractor:
Name: Martha Strawn Morris	Name: Alexander Zilberfayn
Title: Director	Title: Executive Vice President

Address: The Gateway Center for Domestic Violence Services 10305 East Burnside	Address: 1875 South Grant, Suite 130
City, State: Portland, OR 97216	City, State: San Mateo, CA
e-mail: Martha.StrawnMorris@portlandoregon.gov	e-mail: alexz@intresys.com
Copy to: Technology Contracts Procurement Services 1120 SW Fifth Avenue Room 750 Portland OR 97204	Copy to:

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. If Contractor uses any Subcontractors on the Contract, Contractor shall submit a Monthly Sub-consultant Payment and Utilization Report (MUR) reporting ALL Subcontractors employed in the performance of this Contract. The City will enforce all diversity in workforce and M/W/ESB subcontracting commitments. An electronic copy of the MUR may be obtained at: http://www.portlandonline.com/shared/cfm/image.cfm?id=119851.

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 and Payment Schedule 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.

Payment for the first annual subscription Fee for the System shall be due upon Acceptance. Subsequent payments for annual Maintenance fees are due one year after this date and annually thereafter.

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.

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2.14 <u>Independent Contractor/No Duty for the City to Withhold.</u> (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 <u>Assignment.</u> (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 or 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, is not a competitor of Contractor, and agrees in writing to be bound by the terms of this Contract, upon written notice to the other Party, (c) in the event that the City enters into an agreement with the Oregon Judicial Department (OJD) or other governmental entity for the assignment of this Contract, Contractor agrees that the City shall have the right to assign this Contract to that entity, and (d) 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. Notwithstanding the foregoing, upon any assignment of this Contract by City, the scope of the license granted in this Contract (e.g., only for City Users) remain the same as the license scope as set forth in this Contract.

2.16 <u>Delegation of Obligations/Subcontractors.</u> (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, 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, provided that Contractor may redact confidential information and provisions. Notwithstanding the foregoing, the City acknowledges that Contractor uses third party subcontractors to provide servers and other IT infrastructure ("3rd Party Hosting Providers") to host the System which will be provided by Contractor hereunder, approves Contractors usage of such 3rd Party Hosting Providers, and agrees that no provisions of this Contract shall be required hereunder to be included in the associated contracts between Contractor and such 3rd Party Hosting Providers with regard to the provision of such subcontracted services to host the System.

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

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subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Purchasing Agent before such substitutions can be made.

2.17   Warranties; Limitation of Liability. Contractor warrants as follows:*

   2.17.1 Disclosure and Assignment of Manufacturer's Warranties. 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, to the extent assignable. 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 Maintenance.

   2.17.4 Industry Standards. 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. Contractor will make commercially reasonable efforts through the provision of Maintenance so that the System, including all components, Customizations, and Upgrades supplied by Contractor shall operate in accordance with Acceptance Criteria and all Documentation during the Maintenance Period.

      2.17.5.2 All Necessary Materials. 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. The System is compatible with the City's existing data files and systems as may be applicable and shall run in accordance with the Documentation.

      2.17.5.4 No Material Defects or Viruses/Illicit Code. The System (A) is free of any defect in material of the media in which it is delivered; and (B) has been subject to industry standard procedures designed to verify that it 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. Contractor's Software and Third Party Software shall not:

         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")

2.17.5.6 <u>Warranty for Services</u>. Contractor warrants that Services to be provided under this Contract, specifically Software and Website configuration and development, links to other programs, and training, shall meet the standards of skill and diligence normally employed by professional personnel performing the same or similar services. Contractor shall perform such additional work as may be necessary to correct Errors in the work required under this Contract in accordance with Contractor's Maintenance obligations.

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

2.17.7 <u>No Third Party Conflict or Infringement.</u> (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.

2.17.9. <u>WARRANTY DISCLAIMERS</u>. CONTRACTOR MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS CONTRACT WITH RESPECT TO THE PRODUCT, SOFTWARE, SYSTEM OR THE SERVICES. CONTRACTOR EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR AND ITS LICENSORS DO NOT WARRANT THAT THE PRODUCT, SOFTWARE, SYSTEM OR SERVICE WILL SATISFY CITY'S OR ITS END USERS' REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR OR THAT THE PRODUCT'S, SOFTWARE'S, SYSTEM'S AND SERVICE'S OPERATION WILL BE UNINTERRUPTED.

2.17.10 <u>LIMITATION OF LIABILITY</u>. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY AMOUNT IN EXCESS OF   AMOUNTS PAID BY CITY TO CONTRACTOR HEREUNDER. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE LIABLE FOR ANY TYPE OF INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM THE PRODUCT, SERVICES, SYSTEM OR SERVICES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, LOSS OF DATA, REPLACEMENT GOODS, COST OF REPLACEMENT, LOSS OF TECHNOLOGY

RIGHTS OR SERVICES, LOSS OF INFORMATION, MISINFORMATION, INTERRUPTION OR LOSS OF USE OF PRODUCT, SOFTWARE, SYSTEM OR SERVICES, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTORY OR OTHERWISE. THE PARTIES AGREE THAT CONTRACTOR HAS SET ITS PRICES AND ENTERED INTO THIS CONTRACT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

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 negligent activities, errors or omissions of Contractor or its officers, employees, Subcontractors, or agents, including intentional acts, under this Contract, that result in personal injury or tangible property damage to City or its employees.

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, or other causes not under the reasonable control of the affected Party and not the fault of the affected Party (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected shall make all reasonable efforts to give notice within three Days to the other Party and shall do everything commercially reasonable 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.

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

Notwithstanding permitted delays, force majeure does not excuse payment obligations.

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.   Contractor's insurance shall provide that the insurance shall not terminate or be cancelled without a 30-day notice first being given to the City. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the City.

2.20.1   Insurance Certificate. ⟨04/10⟩ As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates, including relevant endorsements, to the City prior to or with the return of the signed contract. 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. Contractor's insurance shall be primary and noncontributory. 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   Commercial General Liability and Property Damage. ⟨04/10⟩ ☒ **Required** ☐ **Waived by City Attorney.** Contractor shall provide and maintain commercial general liability and property damage insurance in the minimum amount of $1,000,000.00 (one million U.S. dollars) per occurrence that covers bodily injury, personal injury, property damages, including damages to premises rented to insured, damges other than by fire, fire damage or fire legal liability, coverage for independent contractor's protection if any work will be subcontracted, premises/oeprations, contractual liability. and products and

completed operations. The insurance shall protect Contractor and the City and its officers, agents and employees.

2.20.4.2   Automobile Liability. (04/10) ☒ **Required**   ☐ **Waived by City Attorney** Contractor shall carry automobile liability insurance with a coverage of not less than $ 1,000,000.00 (one million U.S. dollars) each accident for bodily injury and property damage. The insurance shall include coverage for any automobiles, hire and non-owned automobiles.

2.20.4.3   **Workers' Compensation.** (04/10) ☒ Required   ☐ Meets Exceptions in ORS Chpater 656. -**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.** Any Contractor requesting an exception from the workers compensation coverage must make that request in writing to the City Attorney and demonstrate to the satisfaction of the City that Contractor is exempt under ORS Chapter 656.

2.20.4.4   Technology Errors and Omissions; Information Security & Privacy Liability. (04/10) ☒ **Required**   ☐ **Waived by City Attorney.** Contractor shall maintain professional liability and/or errors and omissions 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 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. ☐ **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. Contractor shall retain ownership of all rights whatsoever in the Software including all Updates, Upgrades, Customizations, reproductions and corrections thereof and all related patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill and intellectual property, including but not limited to, source code, programming code, software license, and joint software development agreements, corporate identifying graphics and marketing strategies. City shall not remove or destroy any copyright, trade secret, proprietary or confidential legends or markings placed upon or contained or embedded within the Software. City shall not license, sell, lease, assign or transfer this license to any third party (including parents, or subsidiaries of City), or disassemble, recompile, reverse engineer or otherwise attempt to derive source code or other trade secrets from the Software, except as is specifically provided herein.

2.22   Proprietary Rights. 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. City shall not decompile, disassemble, or otherwise reverse engineer the Software.

2.23   Return of Parties' Property. 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.

2.24   Financing of Property. 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. 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 or change in control which may adversely affect its ability to perform, 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. Audits shall be paid for by the City. Third party auditors must enter into a confidentiality agreement with Contractor. Audits require reasonable prior notice, must not be performed in a manner that is disruptive to Contractor's business and may not be performed more than once during a 12-month period.

    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 relevant work papers of Contractor if the City deems it necessary, subject to the same conditions set forth in Section 2.27.2. 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. City shall (1) limit disclosure of the Contractor Confidential Information to those directors, officers, employees and agents of City who need to know the Contractor Confidential Information in connection with the City Project, (2) exercise reasonable care with respect to the Contractor Confidential Information, at least to the same degree of care as City employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the Contractor, upon its request, all materials containing Contractor Confidential Information, in whatever form, that are in City's possession or custody or under its control, except as required by law. 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 <u>Public Records Request.</u> (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 <u>City's Obligation to Notify Contractor.</u> (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 ten (10) 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 ten (10) 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 ten (10) 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. 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.

2.29.8 Employee Non-Solicitation. The parties acknowledge that their employees constitute a valuable asset, and that their ability to operate effectively requires employee continuity. If at any point during the term of this Contract, together with a period ending twenty-four (24) months after its termination, one party would like to independently employ or retain the services of any employee of the other party, notice must be provided. Upon such notification and the written approval of the party that currently employs the employee at issue any employee may be hired directly by the other party.

2.30   **Dispute Resolution.** 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 Alex Zilberfayn or his 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 Tania Wasser or her designee 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, subject to receipt of all undisputed payments due under this Contract, 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 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.

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 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 any other remedy at law or equity.

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 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 termination of the Contract and receipt of payment as provided in Section 2.12, Payment, and Contractor shall have the ability to pursue the Contractor's rights as law.

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 as set out in the General Provisions above, the City shall have the right to one or more of the following non-exclusive remedies: (A) 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 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; 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) 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

2.35.1 (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.

2.35.2 (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 (if and to the extent required under applicable law 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   Deleted

2.42   <u>News Releases and Public Announcements.</u> (04/10) Contractor may identify the City as one of its customers in Contractor's website and marketing materials; provided, however, that Contractor shall not use the City seal 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, which approval shall not be unreasonably withheld. . 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   <u>Survival.</u> (04/10) All obligations relating to confidentiality; indemnification; publicity; representations and warranties; proprietary rights; including licensing obligations as stated in this Contract or any applicable Task/Change Order that are intended to extend beyond the term; 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.

2.44   <u>Special Provisions, Office of Justice Programs U.S. Department of Justice, Grant-Funded Acquisitions.</u>   For any Statements of Work that utilize Department of Justice grant funding, the following terms and conditions will apply:

2.44.1   Contractor shall, upon specific request from the City or from the Office of Justice Programs, comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from OMB Circular A-133 audits (and any other audits of OJP grant funds) are not satisfactorily and promptly addressed, as further described in the current edition of the OJP Financial Guide, Chapter 19.

2.44.2   Contractor shall, upon specific request from the City or from the Office of Justice Programs, cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

2.44.3   Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the End-User to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that

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provide results or outputs from the service:

"This Web site is funded [insert "in part," if applicable] through a grant from the [insert name of OJP component], Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)."

The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.

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 provided under this Agreement. 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) The Contractor grants the City, its permitted assignees and Users a non-exclusive, royalty-free license to access and use the Software during the term of this Agreement for the sole purpose of Users petitioning to obtain restraining orders from Multnomah County District Court for Domestic Violence Cases. All such access and use of the Software shall be subject to the terms and conditions hereof, including, without limitation, payment terms. For avoidance of doubt the Software shall be provided by Contractor solely as a hosted software-as-a-service (SAAS) which may be accessed and used by the City and the Users via the Internet by using a web browser. No license shall be deemed to be granted hereunder to allow the City or any User to install any Software Product or other aspect of the System on its own computer systems or the computer systems of any third party.

3.3   Copies. (04/10) The City may reproduce the 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.

3.4   Ownership. (04/10) Contractor shall retain all ownership rights, including trademarks, patents, copyrights, and other forms of intellectual property, in the Software and the System. The City owns and has exclusive rights to all data entered in to the Website by City Users. Intresys retains ownership of registration data input by Users on the website utilized to access and use the System; provided, however, that Intresys shall not retain any ownership of case specific data or information identifying the form of type of case initiated by an individual using the System, including without limitation the data input on forms which are or may be filed with the Multnomah County District Court as contemplated hereunder.

3.5   [INTENTIONALLY DELETED]

3.6   **Infringement Indemnity.** 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) finally awarded to a third party, 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 promptly notify Contractor of the claim, provide reasonable assistance to Contractor, and give Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that imposes liability on the City shall be made without the City's prior written consent, which shall not be unreasonably withheld. 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 Contractor determines that the options set forth in clauses (i), (ii) or (iii) are not commercially practical, Contractor will terminate the license and refund to the City any pre-paid unused license fees actually paid by the City. The foregoing indemnity shall not apply to any claim based upon or arising from (i) use of the Product or System in a manner for which they were not designed or not in accordance with applicable documentation, (ii) modification to the Product or System not made by Contractor or its authorized agents. This indemnification states Contractor's sole liability and City's sole remedy for claims of infringement.

3.7   <u>Security.</u> 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 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 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 an unauthorized disclosure of personal information and in cooperation with the City, provide notice to affected consumers as required under applicable law. Any costs or fees incurred by the City due to Contractor's breach of this Section 3.9.2, 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; provided, that the amount of such reimbursement shall be limited to an amount which is equal to the amount of insurance proceeds recovered by Contractor in connection with the event or events giving rise to such liability which are covered under Contractor's insurance policies.

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 the Website, and any Software, 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 be for term of this Contract, commencing upon Acceptance . 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 Exhibit A, Contractor's Price and Payment Schedule.

4.3   Services Included. (04/10) During the Maintenance Period, 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 make commercially reasonable efforts 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 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 installation and operation of same.

4.3.2   Repair. (04/10) Within the time specified herein, Contractor shall make reasonable commercial efforts to repair all Errors that have been identified by Contractor or by the City in Maintenance Requests. 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.

4.3.3   Telephone Helpline/Staffing. (04/10)   During the Coverage Hours Contractor shall maintain a no-cost telephone hotline. Contractor shall staff the hotline with competent technical

consultants who shall be trained in and thoroughly familiar with the System and with the City's applicable configuration, but such consultants shall not provide any legal advice or assistance. Telephone support and all communication shall be delivered in English. City will assign a single person for the reporting of problems to Contractor.

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 generic elements of the Software are 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   Changes in Jurisdictional Requirements; City Initiated Changes.   In the event that the State of Oregon upgrades, modifies, enhances, or changes the FAPA petition process or documentation in any way, Contractor shall provide any Customizations, changes, enhancements, or fixes, which are necessary to maintain compliance with jurisdictional requirements, and which do not require changes to the Source Code, at no additional cost, provided such effort does not exceed 12 Contractor resource hours in any 12-month period. Additional changes required to be made to the Software arising from City or State of Oregon or any third party initiated changes or activities are not included within standard Maintenance. Services required as set forth in this Section that are not included in standard Maintenance shall be provided by Contractor on a time and materials basis, at Contractor's standard hourly rates.

4.7   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 component whether repair or alteration is a permanent or interim modification. Training shall be provided at to the City at Contractor's standard rates and a time and location convenient to the City's business operations and staff and agreed to by Contractor.

4.8   Other Standard Services. (04/10) Contractor shall, at no additional cost to the City, provide other standard services which Contractor generally offers to its customers at no cost or as otherwise described in this Contract or in a specific Task/Change Order.

4.9   Severity Level, Escalation, and Response Time. (04/10) Unless otherwise specified in a particular Task/Change Order, Contractor shall make commercially reasonable efforts to provide Maintenance as outlined in this section under the response and target resolution times set forth for specific severity levels in the table below. For the avoidance of doubt, Contractor shall not be in breach for not achieving a target resolution time provided Contractor is making commercially reasonable efforts to achieve a target resolution time. Contractor is not responsible for problems arising from causes not under Contractor's control and authority, or from misuse of the Software or System, or from use with incompatible components.

High Level Severity –A critical function is inoperative, causing significant impact to City

operations, and no work-around is available, or there are Errors or defects that cause a significant amount of data to be lost. Technical support will immediately initiate corrective actions and work beyond normal business hours as necessary to fix the problem. Response time shall not exceed one (1) business hour and the target resolution time shall be eight (8) business hours.

Medium Level Severity – A non-critical function or overall performance is materially impaired, or a critical function is impaired but a temporary work-around is available. Technical support will immediately initiate corrective actions and fix the problem as soon as possible during normal business hours. Response time shall not exceed two (2) business hours and the target resolution time shall be three (3) business days.

Low Level Severity – A problem arises which does not materially impair the City's essential operations. Target Resolution Time shall be the next Upgrade scheduled to be released more than thirty (30) days of the problem report.

Information Request - . The City requires information or assistance about product capabilities or installation configuration.

In the event that a Maintenance Request of High or Medium Level Severity is not resolved in the target timelines agreed to above, the City shall send Contractor written notice of such failure to resolve a Maintenance Request. If such Maintenance request is not resolved within thirty (30) days from the time of the City's initial notice to Contractor of Contractor's failure to resolve the Maintenance Request, the City is entitled, at the City's sole option, to (a) continue using the Software until resolution is achieved; or (b) terminate use of the Software, and Contractor shall promptly refund to the City all unused annual Maintenance fees pre-paid by the City, in addition to any other remedies to which the City may be entitled. 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, Software or Product(s), or installing and testing of the Software. 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 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

Level	Definition	Response Commitments	Target Resolution Times
High	A critical function is inoperative, causing significant impact to City operations, and no work-around is available, or errors or defects that cause significant amount of data to be lost.	Response time shall not exceed one (1) business hour. Contractor shall submit progress reports outlining the status of resolution, at least once every two (2) business hours thereafter, unless the Parties agree to written progress reports at some other interval.	**Target** Resolution time shall be eight (8) business hours.
Medium	A non-critical function or overall performance is materially impaired, or a critical function is impaired but temporary work-around is available.	Response time shall not exceed two (2) business hours (counting hours around the clock). Contractor shall submit progress reports at least once every eight (8) business hours thereafter, unless the Parties agree to progress reports at some other interval.	**Target** Resolution time shall not exceed three (3) business days.
Low	A problem arises which does not materially impair the City's essential operations	Response time shall not exceed one (1) business day.	**Target** Resolution time shall be the next Upgrade scheduled to be released more than thirty (30) days after the problem report,.
	The City requires information or assistance about product capabilities or installation configuration.	Response time shall not exceed one (1) business day.	Resolution is not necessary as no defect exists.

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

Failure Severity Level	Contractor's Obligations
High	Upon the City's notification to Contractor of Contractor's failure to resolve a High Level Severity Error or defect within the target 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 Contractor's 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. In the event that the problem is not resolved within twenty-four business hours from the time of the City's notification, the City shall be entitled to return the System, Software, or Product to Contractor and receive a refund of all unused costs pre-paid by the City for Maintenance in addition to any other remedies to which the City may be entitled.
Medium	Upon the City's notification to Contractor of Contractor's failure to resolve a Medium Level Severity Error or defect within the target 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 Contractor's 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. In the event that the problem is not resolved within ten (10) business days from the time of the City's notification, the City shall be entitled to return the System, Software, or Product to Contractor and receive a refund of all unused costs pre-paid by the City for Maintenancein addition to any other remedies to which the City may be entitled.
Low	Upon the City's notification to Contractor of Contractor's failure to resolve a Low Level Severity Error or defect within the target resolution time set forth in the previous table, 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. If Contractor cannot resolve the Error or defect off-site within ten (10) business 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.

Escalation Procedures

Should incidents not have the appropriate response within the agreed timescales the following escalation criteria will be applied.

High Severity-	Contractor Staff
No response after 2 business hours	Support Manager
No response after 4 business hours	Project Manager
No workaround available after 8 business hours	Account Manager
No workaround available after 1 business day	Chief Technical Officer
Medium Severity	
No response after 4 business hours	Support Manager
No response after 6 business hours	Project Manager
No workaround available after 4 business days	Account Manager
No workaround available after 10 business days	Chief Technical Officer

4.10   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.

4.11   Backup of Data. Upon request by City and a Task Order agreed by the Parties, Contractor will make nightly backups of the System database and files and retain backup files for a period of (30) days with daily replacement of the oldest day's database and files.

4.12   Disaster Recovery. Upon request by City and a Task Order agreed by the Parties, Contractor shall provide Disaster Recovery Services for the Website that include the following features: emergency support and hotline access twenty-four (24) hours a day, priority level support (ensuring downtime will not exceed four (4) hours), and use of a remote auxiliary server in the event   of   a   client   server   failure.

SECTION 5   ACCEPTANCE TESTING

5.1   Right to Perform Acceptance Testing. Prior to Accepting the System, the City shall have the right to perform Acceptance Testing.

The Acceptance Criteria shall be attached as Exhibit F to this Contract.   The Acceptance Test Plan shall be attached as Exhibit G.

5.2   Procedure and Timetable. Unless otherwise specified,

5.2.1   The City shall be entitled to perform Acceptance Testing of the System to determine whether the Services comply with the Acceptance Criteria. Customer will have a period of thirty (30) days to conduct the Acceptance Testing which shall commence upon the City's receipt of Contractor's written notice that the System (as described in Exhibit B) has been Delivered and is ready for Acceptance Testing.

5.2.2   Contractor shall assist the City by providing guidance on the composition of the Acceptance Criteria and Acceptance Test Plan. The City shall be responsible for performing the acceptance testing, such as verifying that the correct information is being collected by the Software, verifying that the information is being placed within the correct fields in the petition, verifying that any formulas used produce the correct result. If requested by the City, the Parties will enter into a Task Order at time and materials consulting rates for Contractor to cooperate with the City in the development of Acceptance Criteria and the Acceptance Test.

5.2.3   If the Acceptance Test is successful the City shall Accept the System by issuing a Certificate of Acceptance, a sample of which is attached as Exhibit H; provided, that the System will be deemed to have been Accepted by the City in any event if (i) the City does not provide Contractor with a written notice of nonconformance to the acceptance criteria within ten (10) days after expiration of the applicable testing period or (ii) the Services are utilized for a period of 45 days in a production environment. The City shall appoint a single person to serve as the point of contact with Contractor regarding Acceptance Testing to direct the process and consolidate any comments.

5.3   Failure of Acceptance Test. The City will notify Contractor in writing by the end of the Acceptance Test period if the System or a portion of the System, fails to pass an Acceptance Test based upon the Acceptance Criteria and will specify in reasonable detail the identified failures and reasons for failure. After City's notification, Contractor shall correct the System, within thirty (30) days and notify the City that the Correction has been completed. After Contractor's Correction notification, the City shall perform a second Acceptance Test for a period of fifteen (15) days from the date of such Contractor's Correction notice in accordance with the procedures set forth in Section 5.2 above. If 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 and receive a refund for the fees paid with regard to the rejected System in U.S. Dollars within 30 Days.; (b) request Contractor make further corrections to prepare for retesting again.

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   [INTENTIONALLY DELETED]

5.6   Termination Based on Failure of Acceptance. (04/10) If the System fails to pass the Acceptance Tests, the City may terminate this Contract without penalty or breach by either party.

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

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   <u>Reimbursement</u>. (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   <u>Commercial Air Travel</u> (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 reasonable round trips 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   <u>Rental Cars/Surface Transportation</u>. (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, unless only one (1) Contractor personnel is present, in which case, such personnel may obtain and be reimbursed for a rental vehicle. 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.

7.1.3   <u>Lodging</u>. (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 unless otherwise approved in writing by the City Project Manager; such per diem shall be the same per diem as allowed for City employees. GSA lodging allowances shall 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)   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.   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.

7.2   Travel Expenses Included in Services. All travel-related expenses for one (1) round-trip by the Contractor to the City of Portland shall be included in the cost of the Services and shall not be invoiced to, or reimbursed by, the City.

The remainder of this page intentionally left blank.

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:**
                                            Integrated Information Systems, Inc. dba Intresys

Chief Procurement Officer Date	Authorized Signature Date

Christine Moody

Printed Name	Printed Name and Title

Approved as to Form   Address: _____
                                            Phone: _____
                                            Fax: _____

Office of the City Attorney Date	

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Exhibit A
Contractor's Price and Payment Schedule

1. Customization and Implementation Services

Services	Service Fees
Customization and implementation of the TurboCourt Website for filing Oregon FAPA petitions, including interactive e-forms analysis, customization, and installation	$110,120
Incorporation of Spanish content, provided by the City	$20,000
Total:	**$130,120**

Payment for Customization and Implementation Services shall be due in accordance with the payment schedule.

Contractor's Standard Labor Rates, Estimated Hours and Estimated Costs

	Hourly Rates	Estimated Hours	Estimated Cost
Project Manager	$191	80	$15,280
Business Analyst	$165	140	$23,100
Developer	$165	440	$72,600
Tester	$165	116	$19,140
Total:			**$130,120**

2. Annual Maintenance Fees

Services	Annual Fee
System Maintenance	$10,000

Payment for the first annual Maintenance Fee shall be due upon Acceptance. Subsequent payments for annual Maintenance fees are due one year after this date and annually thereafter.

If the City chooses to exercise its option to extend the contract for an additional two years, the annual maintenance fees shall increase to $20,000 per year for years four and five.

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Exhibit B

Statement of Work

1. Summary

The City operates the Gateway Center for Domestic Violence Services ("Gateway Center"), a multi-purpose service center for victims of domestic violence and their children. Domestic violence restraining orders are critical safety resources for many victims. Yet, restraining order petitions are tedious for petitioners to complete. Further, there is currently only one place to file restraining order petitions in Multnomah County. That filing location—the Multnomah County Courthouse —is perceived as unsafe for many victims. The Gateway Center will be a second place to access and file restraining order petitions. The United States Department of Justice has awarded the City of Portland grant funding to create an easier and more accessible domestic violence restraining order petition process.

Contractor will develop and implement an electronic document assembly and interactive e-filing system for Oregon Family Abuse Prevention Act restraining order petitions. The system will be web-based and will produce FAPA petitions that are complete, statutorily compliant, and legible that can be filed with the court (Oregon Judicial Department, Multnomah County Circuit Court). The interactive process will include a comprehensive guided user interface that meets all statutory requirements.

The Software licensed under the Agreement includes the Turbocourt _EFM Module which is the Software product which supports efiling of documents created by Users in the System. However, the Agreement and initial Work Order does not include services for implementation of such Software module and implementation of the e-filing functionality shall be implemented subject to a separate Task Order to be entered into by the Parties on terms, specifications and rates to be negotiated by the parties.

2. Scope of Work

The System must include a guided user interface with instructions and prompts that solicit statutorily required information, must auto-populate legally mandated forms that have e-filing capability, and are available, at a minimum, in both English and Spanish. The specific forms to be implemented under this Statement of Work are listed below:

OBTAINING A RESTRAINING ORDER

- INSTRUCTIONS for Obtaining a Restraining Order
- CONFIDENTIAL INFORMATION FORM (CIF) FOR PROTECTED PERSON (PETITIONER)
- CONFIDENTIAL INFORMATION FORM (CIF) FOR PERSON RESTRAINED (RESPONDENT)
- PETITION for RESTRAINING ORDER TO PREVENT ABUSE
- RESTRAINING ORDER TO PREVENT ABUSE
- DECLARATION OF PROOF OF SERVICE
- NOTICE to RESPONDENT/REQUEST FOR HEARING
- PETITIONER'S MOTION and ORDER of DISMISSAL
- ORDER AFTER HEARING
- INSTRUCTIONS to CONTEST a Restraining Order

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MODIFYING A RESTRAINING ORDER

- <u>INSTRUCTIONS for Modifying a Restraining Order</u>
- <u>MOTION,</u> AFFIDAVIT and ORDER TO SHOW CAUSE
- <u>DECLARATION OF PROOF OF SERVICE</u>
- <u>ORDER AFTER HEARING</u>
- <u>PETITIONER'S</u> MOTION, AFFIDAVIT , and ORDER FOR LESS RESTRICTIVE TERMS *Ex Parte*
- <u>NOTICE</u> TO RESPONDENT/REQUEST FOR HEARING – LESS RESTRICTIVE ORDER

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. Phase I – Gap Review and Prototyping

   i) Meet with City Project Manager as soon as possible following contract execution.
   ii) Perform a comprehensive review of all forms required by the petition process for FAPA restraining orders in Oregon.
   iii) Review all statutory requirements governing the petition process for FAPA restraining orders in Oregon (Oregon Revised Statutes 107.700 et seq).
   iv) Determine all field requirements.
   v) Prototype/refine interactive questionnaire.
   vi) Design necessary System Customizations to interact with existing components of Oregon Judicial Department legal form filing and storage systems in accordance with the ECF 4.0 standard adopted by OJD.
   vii) Create prototype of the Customized TurboCourt FAPA obtaining the order Website.
   viii) Meet with design team assembled by the City Project Manager and present the proposed configurations, forms, and System Customizations for design team review and feedback.
   ix) Incorporate input from design team into the System.
   x) Work with local and/or statewide judicial department to ensure that the Website-generated forms will be capable of e-filing with Oregon Judicial Department circuit court when e-filing capability becomes available in accordance with the ECF 4.0 standard adopted by OJD.

b. Phase II – Implementation

   i) Deploy Customized TurboCourt FAPA Website that meets Oregon's statutory requirements.
   ii) Host the System for use by City Users.

c. Phase III – Testing and Maintenance

   i) Engage in all necessary testing and quality control to ensure the System can be successfully accessed and utilized by City approved End-users.
   ii) Communicate with design team until general consensus is reached among all members, based upon agreed requirements, that the System has met all deliverables, and statutory and other specified court requirements.
   iii) Incorporate Spanish content translation from FAPA (English) website and provided by the City into the System interface.

3. Deliverables

Deliverables and schedule for this project shall include:

a.   Phase I – Design

   i) Deliver a project management plan that includes timelines for project completion, as soon as possible following the contract kick-off meeting with the Project Manager.
   ii) Deliver a Customized prototype of the TurboCourt FAPA obtaining a restraining order Website, which contains the following features:
      a) help screens containing frequently asked questions;
      b) tutorials for user friendliness;
      c) a status bar so the user can determine how far along they are in the process;
      d) capability for generating electronic or hardcopy of documents that can be filed with the circuit court and saved as an electronic file.
   iii) capability of e-filing with Oregon Judicial Department circuit court when e-filing based on ECF 4.0 adopted by ODJ becomes available; provided that e-filing functionality shall be implemented subject to a separate Task Order to be entered into by the Parties at terms and specifications and rates to be negotiated by the parties.
   iv) Deliver a revised and updated prototype of the Customized Website, which incorporates UAT feedback from design team related to both statutory requirements and usability (including instructions, questions, prompts, etc.). Include Spanish language interface and content provided by the City in this revised and updated Website.

b.   Phase II – Implementation

   i) Deliver a final production Customization of the hosted TurboCourt FAPA obtaining restraining order Website.

c.   Phase III – Testing and Maintenance

   i) Perform ongoing maintenance.
   ii) If Contractor is using Subcontractors, Submit a Monthly Subconsultant Payment and Utilization Report by the 15th of each month (reference Part II, Section C.5 of the RFP).

All physical deliverables and resulting work products from this Contract will become the property of the City of Portland.

4. Project Schedule

The detailed Project Schedule is shown below:

Project Task	Due Date
Kick-off meeting with City Project Manager	within 30 days of NTP
Deliver project management plan to City Project Manager	TBD within 15 days of Kick-off
Deliver Customized prototype of the TurboCourt website	TBD within 90 days of plan delivery
Deliver the final production Customization of the hosted TurboCourt Website	TBD within 60 days of prototype delivery

Project Payment Schedule

Project Task	$ Payment
Kick-off meeting with City Project Manager	$20,000
Deliver project management plan to City Project Manager	$20,000
Deliver Customized prototype of the TurboCourt FAPA website, English	$60,000

| Deliver Customized prototype of the TurboCourt FAPA website, Spanish | $20,000 |
| Deliver the final production Customization of the hosted TurboCourt FAPA Website | $10,120 |

5. Status Reports

Contractor shall summarize activities under this Contract in written status reports, at an agreed frequency, 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 Martha Strawn Morris. The City may change City's Project Manager from time to time upon written notice to Contractor. Contact Information:

Martha Strawn Morris
Gateway Center for Domestic Violence Services
10305 East Burnside
Portland, OR 97216
Phone: (503) 988 – 6487
Martha.StrawnMorris@portlandoregon.gov

7.2   The Contractor's Project Manager will be Alex Zilberfayn.
Contact Information:

8. 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. The Acceptance Criteria and Test Plan shall be attached and incorporated into the Contract as Exhibit F and G, which shall be submitted to Contractor for review and comment before finalization.

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

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Exhibit C
Sample Task Order

Task Order No. _____
DPO No. _____
(Leave blank - to be completed by Procurement Services)

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:**
   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.

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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 _____

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Exhibit D
Sample Change Order

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:_____   BY: _____
    Name & Title   Project Manager (Name & Title)

DATE _____   DATE _____

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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)

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Exhibit F
Acceptance Criteria

To be completed by the City and attached per Section 5.1

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Exhibit G
Acceptance Test Plan

To be completed by the City and attached per Section 5.1

Exhibit H
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: _____

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Exhibit I
Grant Award and Special Conditions

The Grant Award and Special Conditions are provided as a separately attached file.