

CITY OF PORTLAND
AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES

CONTRACT No. _____

SHORT TITLE OF PROJECT:
CITYWIDE TECHNOLOGY ASSESSMENT

This Contract is made effective August 15, 2013, ("Effective Date"), by and between the City of Portland, a municipal corporation of the State of Oregon, and its successors or assigns (hereafter called "City"), and Sierra Systems, Inc., a(n) _____ corporation (hereafter called "Contractor"), by and through their duly authorized representatives. This Contract may refer to the City and Contractor individually as a "Party" or jointly as the "Parties." The City's Project Manager for this contract is _____.

Effective Date and Duration. Unless terminated sooner under the provisions of this Contract, the term of this Contract shall be from August 15, 2013, to December 31, 2013.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed \$215,000.00 for accomplishment of the Project.
(b) Payments shall be made to Contractor according to the schedule identified in Exhibit A, Statement of Work and Payment Schedule.

CONTRACTOR DATA AND CERTIFICATION

Contractor Name: _____ Sierra Systems, Inc.
Address: _____ 111 Market Street NE, Suite 225, Olympia, WA 98501
Employer Identification Number (EIN) _____ 76-0741206
City of Portland Business Tax Registration Number # _____ 745234

Payment information will be reported to the IRS under the name and Employer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to twenty percent (20%) backup withholding.

Business Designation (check one): _____ Individual _____ Sole Proprietorship _____ Partnership Corporation
_____ Limited Liability Co (LLC) _____ Estate/Trust _____ Public Service Corp. _____ Government/Nonprofit

STANDARD CONTRACT PROVISIONS FOR
PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)

1. Definitions

These definitions apply to the entire Contract including Exhibits, subsequent Amendments, and Task Orders:

"Acceptance" means a Deliverable has been delivered, inspected, configured, and tested, as required, to demonstrate, to the City's satisfaction, that the Deliverable conforms and operates according to the standards and requirements of this Contract, applicable Acceptance Criteria or Documentation, and Contractor's representations.

"Acceptance Criteria" means all specifications, functionality and performance requirements as set forth in the Statement of Work or a Task Order (as such specifications, and requirements and Statement of Work or Task Order may be changed from time to time by mutual agreement in writing) and Contractor's representations and warranties. The City's acceptance criteria will be based on reliance on Contractor's experience and expertise. Acceptance criteria may or may not include Acceptance Testing.

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

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

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

“Business Day” means a calendar day of twenty-four hours, excluding weekends and City recognized holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Calendar Day” means a calendar day of twenty-four hours, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

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

“Change Order” means a document, agreed and signed by both Parties, that changes an existing Statement of Work or Task Order.

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

“Confidential Information” means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) Calendar Days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving party’s possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party.

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

“Customization” means (a) any modification to or adaptation of the Software or System, or (b) any new component or accessory or new code, whether prepared, created, or developed by Contractor at the City’s request as a work for hire, by the City, or by the City in conjunction with Contractor.

“Deliverable(s)” means the means the goods or services or documents or other tangible work products described in the Statement of Work or a Task Order, to be provided to the City by Contractor.

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

“Error” means any defect, problem, condition, bug, or other partial or complete inability of a Deliverable to perform either in accordance with the applicable Specifications or in the same manner in which it operated as of the Acceptance Date.

“Fix” means a correction to Software or other Deliverable that does not function or operate in accordance with the applicable Specifications. A Fix is not a Modification or Upgrade.

“Hardware” means any equipment, 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 operation, modification, or support of the System.

“Maintenance” means services provided by Contractor to the City designed to keep Software operating in optimum condition, including Updates and Upgrades and application development to accommodate changes in the business requirements of the City.

“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.

“Operating System Software” means any computer program product that is installed on, and is a component integral to the function and basic operation of the hardware of a specific data-processing system or platform in order to allow Users and application programs to make use of it.

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

“Project” means the overall collection of Deliverables, Services, and activities required under this Contract, any of which Contractor may be providing in whole or in part.

“Repair” means to fix, repair, patch, reprogram, or replace the Software or System or component thereof so as to eliminate Errors or failure to the City’s satisfaction.

“Services” means both ordinary and professional services as required to be performed by Contractor under this Contract for the City as set forth in the Statement of Work.

“Software” means the, including, without limitation, the applications and programs used in the FileNet System as well as any Customization, diagnostic software, Updates, Upgrades and any related Documentation related to this System, as well as any other applications and programs covered by Services supplied by Contractor under this Contract.

“Specifications” means the most current statement of capabilities, functionality and performance requirements as set out in the Acceptance Criteria, the Statement of Work, Documentation, Contractor’s Proposal and Proposal Clarifications, and the City’s Request for Proposals.

“Statement of Work” (SOW) means the written detailed specifications of the Deliverables or Services(s) to be delivered to the City by Contractor subject to the terms and conditions of this Contract.

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

“System” means collectively all products, Hardware, Software, and other tangible components and interfaces.

“System Response Time” means the time required for a representative sample of User transactions to be processed by the System.

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“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. Task Orders shall document the description of goods and/or services, price, payment schedule, project and performance schedule, due dates, milestones and deliverables.

“Update” means a change, modification, or enhancement to the System or 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 System or Software, and related Documentation, which incorporates major new features or increases the core functionality of the System or Software and may be considered a new version.

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

2. Order of Precedence

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 to this Contract
2. This Contract’s terms and conditions
3. Change Orders
4. Task Orders
5. Exhibit A, Statement of Work and Payment Terms
6. Exhibit B, Contractor’s Proposal.

3. Task Orders and Change Orders

- 3.1 The City and Contractor agree that if the City requires additional Services or Products, it may submit a Task Order to Contractor. The scope of work, schedule, Deliverables, and compensation for each project will be defined in the Task Order prior to commencement of the work. 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. Any changes to the scope of work, schedule, Deliverables, or compensation in a Task Order must be agreed upon by Contractor and the City in writing via the Change Order process, outlined below.
- 3.2 Change Orders to a Task Order. 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.
- 3.3 Survival of Orders. 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. The City reserves the right to make changes, at any time to a Task Order in the form of an amendment agreed to 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 City shall execute an Amendment to the Contract, 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.

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3.4 In no case shall a new Task Order be placed by the City or be accepted by Contractor after the expiration date of this Contract.

4. Progress Reports

Contractor shall provide progress reports to the Project Manager as set forth in Exhibit A, Statement of Work.

5. Acceptance Testing

5.1 Prior to Accepting Deliverables, the City shall have the right to perform Acceptance Testing. Contractor shall cooperate with the City in the development of Acceptance Criteria and the Acceptance Test Plan that shall codify and set forth the location, date, and other specifications of the test.

5.2 Procedure and Timetable. Unless otherwise specified, the City shall commence the Acceptance Test no later than ten (10) Business Days after receipt of a Deliverable. Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation regarding the Deliverable in order to facilitate Acceptance Testing. Acceptance Testing shall not exceed thirty (30) Business Days; and The City will make all reasonable efforts to complete the Acceptance Test within the time period specified. If the Acceptance Test is successful the City shall issue a written Certificate of Acceptance.

5.3 Failure of Acceptance Test. The City will notify Contractor if a Deliverable or a portion of a Deliverable, fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After City's notification, Contractor shall correct the Deliverable, or the affected portion, within ten (10) Business Days and notify the City that the Correction has been completed. After Contractor's Correction notification, the City shall perform a second Acceptance Test. If the Deliverable, or portion of the Deliverable, 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 Order with no further liability; (b) request Contractor to replace the Deliverable or defective portion of the Deliverable at no additional cost to the City, c) request Contractor make further corrections to prepare for retesting again; (d) accept the Deliverable at a reduced cost to be negotiated between the Parties; or (e) issue an Acceptance Certificate entitled "Acceptance with Exception(s)."

5.4 If the City issues an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction. If exceptions are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the City will issue a Certificate of Acceptance. If a Deliverable 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 Deliverable.

5.5 If the City elects to accept the Deliverable even with the failure(s), then the City may request that Contractor issue a refund to the City in an amount equal to a percentage of the full fee value of the Deliverable that the Parties mutually determine represents the loss of functionality of the Deliverable.

5.6 The City shall have the right to revoke "Acceptance with Exception(s)" if the City granted an "Acceptance with Exception(s)" based on Contractor's commitment to correct the defect within a reasonable period of time, but the defect has not been so corrected. The City shall also have the right to revoke Acceptance if the City accepted the Deliverable without discovery of the defect, and the Acceptance was reasonably induced by Contractor's assurances or by the difficulty of discovery of the defect before Acceptance. Revocation is effective only if it occurs within a reasonable time after the City discovers or should have discovered the reasons for revocation.

6. Payment.

6.1 Payments shall be made in accordance with the payment schedule set forth in Exhibit A, Statement of Work.

6.2 Payment shall be issued by the City net thirty (30) Calendar 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.

- 6.3 It is the City's policy to pay its vendor invoices via electronic funds transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, vendors shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at: <http://www.portlandonline.com/omf/index.cfm>. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the City to deposit payment for services rendered or goods provided directly into vendor accounts with financial institutions. All payments shall be in United States currency.

7. Warranties

- 7.1 Contractor warrants that the work performed under this Contract will meet the standards of skill and diligence normally employed by professional engineers or consultants performing the same or similar services, that work will be free from errors and from defects in workmanship and materials, and that deliverables shall conform to the performance standards, specifications, functions and other descriptions and standards applicable thereto as set forth in the Statement of Work. Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.
- 7.2 Contractor warrants it has complied and shall comply with all applicable law in connection with the execution, delivery, and performance of this Contract; that the execution, delivery, and performance of this Contract and any Task 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 Contract.

8. Ownership of Work Product

All work products produced by Contractor under this Contract are the exclusive property of the City. "Work product" shall include but not be limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; Contractor and the City intend that such work product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a work product is deemed not to be a "work made for hire," Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications.

9. Access to Records

Contractor shall maintain, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of Contractor which are directly pertinent to this specific Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

10. Audits

- 10.1 The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by section 1, Access to Records. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

- 10.2 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.
- 10.3 If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under Section 12, Early Termination of Contract and Section 15, Remedies.

11. Effective Date and Duration

The Effective Date is set forth in the first page of this Contract. The passage of the Contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

12. Early Termination of Contract

- 12.1 The City and Contractor, by mutual written agreement, may terminate this Contract at any time.
- 12.2 The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.
- 12.3 Either the City or Contractor may terminate this Contract in the event of a 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 of the breach and of the Party's intent to terminate. If the Party has not entirely cured the breach within fifteen (15) Calendar 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.

13. Payment on Early Termination

- 13.1 In the event of termination under Subsection 12.1 or 12.2, the City shall pay Contractor for work performed in accordance with the Contract prior to the termination date.
- 13.2 In the event of termination under Subsection 12.3 by Contractor due to a breach by the City, then the City shall pay Contractor as provided in Subsection 13.1 of this Section.
- 13.3 In the event of termination under Subsection 12.3 by the City due to a breach by Contractor, then the City shall pay Contractor as provided in Subsection 13.1 of this Section, subject to set off of excess costs, as provided for in Section 14.1.
- 13.4 In the event of early termination all of Contractor's work product will become and remain property of the City.

14. Remedies

- 14.1 In the event of termination under Subsection 12.3 by the City due to a breach by Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.
- 14.2 The remedies provided to the City under Section 12, Early Termination of Contract and this Section 14, Remedies for a breach by Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- 14.3 In the event of breach of this Contract by the City, then Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in Subsection 12.3 and Subsection 13.2.

15. Return of Parties' Property

When the Contract or any Task Order placed pursuant to the Contract is terminated or expired, 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)

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copy of the Documentation for the express purposes of public record archiving.

16. Assignment

Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld, except that (a) either Party may assign to any corporate Affiliate pursuant to any merger, consolidation or other reorganization, without the other Party's consent but upon written notice to the other Party, and (b) 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.

17. Subcontracts and Assignment

Contractor shall not subcontract, assign or transfer any of the work scheduled under this Contract, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to Contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this Contract, Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

18. Compliance with Applicable Law

In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the administrative rules. Contractor shall complete the INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT, which is attached hereto and by this reference made a part hereof.

19. Payment of Taxes/Contractor Shall Withhold.

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 for its employees. Contractor shall also assure that any Subcontractor shall comply with the foregoing obligations for its employees.

20. Indemnification and Insurance

20.1 Indemnity - Claims for Other than Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this Contract. Nothing in this section requires Contractor or its insurer to indemnify the City for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the City.

20.2 Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this Contract. Nothing in this section requires Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

20.3 Indemnity - Standard of Care

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If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

20.4 Indemnity – Infringement of Intellectual Property Rights

Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, agents and affiliates from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged violation or infringement by the Software of any proprietary right of any person whosoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that prevents the City's continuing use of the Software or products shall be made without the City's prior written consent. If any third party claim causes the City's use of the Software to be endangered, restricted or disrupted, Contractor shall (i) cause the Software to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Software to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Software and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence or standard of care none of the foregoing alternatives is possible, Contractor will terminate the license and refund to the City fees actually paid by the City and any direct damages documented by City for the affected Software and Documentation.

20.5 Insurance Coverage. During the term of this Contract Contractor shall maintain in force at its own expense, the insurance coverage noted below:

20.5.1 Workers' Compensation Insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

20.5.2 General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract, and shall provide that City of Portland, and its agents, officers, and employees are Additional Insured but only with respect to Contractor's services to be provided under this Contract.

20.5.3 Automobile Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable:

20.5.4 Technology Errors & Omissions (Professional Liability) Insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Contract will be maintained. The coverage shall be placed with an insurer with an AM Best Rating of A-VII or better and shall include the following coverage parts:

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

Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of Products, Services and Licensed Programs 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 intellectual property infringement, 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 USD \$2,000,000 (one Million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination of this Contract. Evidence of coverage must be sent to the City for three years following termination of this Contract.

20.5.5 Insurance Certificate. As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City prior to or with the return of the signed contract. The certificates shall include a 30-day notice of cancellation clause and a 10-day notice for non-payment. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance. If the insurance is canceled, terminated, or expires 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. If requested, complete policy copies shall be provided to the City.

20.5.6 Additional Insureds. The coverage shall apply as to claims between insureds on the policy. The insurance shall be without prejudice to coverage otherwise existing. For liability coverage, 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.

20.5.7 Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

21. Nondiscrimination

In carrying out activities under this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Contractor shall take actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Actions shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices provided by City setting forth the provisions of this nondiscrimination clause. Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, familial status, sexual orientation, or national origin. Contractor shall incorporate the foregoing requirements of this paragraph in all of other agreements for work funded under this Agreement, except agreements governed by Section 104 of Executive Order 11246.

22. 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 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:

- 22.1 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 Erik Willsey on behalf of Contractor.
- 22.2 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 Sierra Systems, Inc. on behalf of Contractor for resolution, if possible.
- 22.3 Unless ordered by the City to suspend all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services 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 Order that the City may issue regarding the acceleration of all or any portion of the Services. During the pendency of

EXHIBIT A

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 Order.

23. Governing Law and Jurisdiction

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.

24. Business License

Contractor shall obtain a City of Portland business license as required by PCC 7.02 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.

25. EEO Certification

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 this Contract.

26. Prohibited Interest

No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. No City officer or employee who participated in the award of this Contract shall be employed by Contractor during the period of the Contract.

27. Payment to Vendors and Subcontractors

Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Contract. Contractor shall not take or fail to take any action in a manner that causes the City or any materials that Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

28. Written Notifications

All notices to, and other written communication between, the Parties to this Contract shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services or by fax transmission with telephone confirmation of receipt. All notices and written communications shall be sent to the Parties set forth below, or to such other places as they may designate by like notice from time to time:

For City:

For Contractor:

Copy to:

City of Portland
Technology Contracts Management
Procurement Services
1120 Southwest Fifth Avenue, Room 750
Portland, OR 97204

29. Conflict of Interest

Contractor hereby certifies that, if applicable, its contract proposal is made in good faith without fraud, collusion or

connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s), that the Contractor as a proposer has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Contractor certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Contractor, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the contract or project to which this contract pertains; ii) has or will participate in evaluation or management of the contract; or iii) has or will have financial benefits in the contract. Contractor understands that should it elect to employ any former City official/employee during the term of the contract then that the former City official/Contractor employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

30. Notice of Change in Financial Condition.

Contractor must maintain a financial condition commensurate with the requirements of the Contract. If, during the Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform, or changes the ownership or control, the City shall be immediately notified 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.

31. Confidentiality

- 31.1 "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 (7) 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.
- 31.2 Maintenance of Confidentiality. 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 Confidential Information exclusively for the City's benefit and in furtherance of the goods 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 Confidential Information. Contractor shall (1) limit disclosure of the Confidential Information to those directors, officers, employees and agents of Contractor who need to know the Confidential Information in connection with the City Project/Network, (2) exercise reasonable care with respect to the 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 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 the City's intellectual property without the City's prior written consent.
- 31.3 Scope. 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 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 rightly receives from a third party, or (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 Confidential Information. Contractor's obligations under this Contract shall survive termination.

- 31.4 Equitable Remedies. Contractor acknowledges that unauthorized disclosure of City Confidential Information or misuse of a City 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.
- 31.5 Contractor's Confidential Information. During the term of the Contract, Contractor may disclose to the City, certain confidential information pertaining to Contractor's business ("Confidential Information"). Contractor shall be required to mark "CONFIDENTIAL" with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (a) Confidential Information later becomes part of the public domain through no act or omission of the City; (b) is required to be disclosed under operation of law; or (c) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality.

32. Public Records Request

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 submits 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 Law. 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.

33. News Releases and Public Announcements

Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion.

34. Amendments

No provision of this Contract may be amended or modified unless such Amendment or modification is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. All changes that would permanently change any provisions of this Contract shall be memorialized in the form of an Amendment. If the requirements for Amendment or modification of this Contract as described in this section are not satisfied in full, then such Amendments or modifications automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

35. Successors in Interest

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

36. Severability

The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

37. Waiver

The failure of the City to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision.

38. Survival

All obligations relating to confidentiality; indemnification; publicity; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Contract prior to termination (except that payments for services not performed by the date of termination shall be prorated) shall survive the termination or expiration of this Contract 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.

39. Security

- 39.1 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:
- 39.2 Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628. Specifically Contractors must develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal of the data. Contractors must also provide immediate notification to the City of a data security breach (as defined) and in cooperation with the City, provide notice to affected consumers. Any costs or fees incurred by the City due to Contractor's data breach, including but not limited to notification, consumer credit reports or fines by the Department of Consumer and Business Services, shall be reimbursed to the City by Contractor.
- 39.3 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>.
- 39.4 Additionally, any Contractor who provides or has access to Software which process and /or interacts with credit/debit card information must also be compliant with the Payment Card Industry- Data Security Standard (PCI-DSS). Current standards are maintained at www.pcisecuritystandards.org

40. Travel Reimbursement

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 amendment. Reimbursement will be made based on the following guidelines:

- 40.1 Commercial Air Travel. Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. The City shall reimburse Contractor for one round trip to the subject work location, unless otherwise agreed to by the City in writing. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) Calendar 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.
- 40.2 Rental Cars/Surface Transportation. Contractor shall choose the most economical mode of transportation. Vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager elects to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees. The City will reimburse Contractor personnel for surface transportation such as taxicabs, shuttles, and mass transit, at actual cost when reimbursement requests are accompanied by original receipts.

- 40.3 Lodging. Contractor shall arrange for their own lodging. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA lodging allowances can be found at the U.S. General Services Administration website: <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>
- 40.4 Meal and Incidental Expenses. 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/Portal/gsa/ep/home.do?tabId=0>
- 40.5 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. 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 execute this Contract and any future amendments by electronic means, including the use of electronic signatures.

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.

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

CITY OF PORTLAND

_____ (CONTRACTOR)

 Chief Procurement Officer Date

Christine Moody

 Printed Name

Approved as to Form

 Office of City Attorney Date

 Authorized Signature Date

 Printed Name and Title

Address: _____
 Phone: _____
 Fax: _____

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

SECTION A

CONTRACTOR CERTIFICATION I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Contractor Signature _____ Date _____ Entity _____

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

ORS 670.600 Independent contractor standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

- 1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

City Project Manager Signature _____ Date _____

SECTION C

Independent contractor certifies he/she meets the following standards:

- 1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor: check four or more of the following:

- A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
D. Labor or services are performed only pursuant to written contracts;
E. Labor or services are performed for two or more different persons within a period of one year; or
F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

**EXHIBIT A
STATEMENT OF THE WORK
AND DELIVERABLE-BASED PAYMENT SCHEDULE**

1. Summary

The City of Portland, Bureau of Technology Services (BTS) seeks a Citywide Technology Assessment and Sierra Systems Inc. (Consultant) has been selected through a competitive solicitation process as the Assessment Consultant.

2. Scope of Work and Compensation

The Contractor shall provide the following services to the City: **Citywide Technology Assessment related to the following seven focus areas:**

Task No.	Description
1	Recommend an IT Organizational Structure, Service Delivery Model and Business Processes
2	Identify Citywide Staff Skills & Competency
3	Determine Citywide State of Technology
4	Provide Recommendations on the BTS Budget
5	Assess, evaluate and report on the IT Governance Model
6	Prepare Baseline Capability Maturity Model Integration (CMMI) Appraisal
7	Deliver Reports, Power Point and/or other Presentations

3. Deliverables

The individual Deliverables for each task are described set forth along with the Acceptance Criteria as described below and on the [chart/pricing proposal, Page 11](#).

Consultant shall provide the following Deliverables:

Perform an assessment of the Bureau of Technology Services (BTS) and Citywide information and communications technology operation. Consultant shall also report findings and provide recommendations and/or best practices regarding the roles, responsibilities and priorities of BTS within the City of Portland (City). The Consultants' recommendations and/or best practices should include ways the City can use technology to strategically increase efficiencies of City operations.

Interviews and meetings with the Chief Administrative Officer (CAO), Chief Technology Officer (CTO), bureau directors, division managers, selected Customer Stakeholder Group (CSG) members, elected officials, Technology Oversight Committee (TOC) members, (business process owners, BTS division staff and other staff as necessary. Interviews are intended to provide an overview of BTS, the Citywide state of technology and identify past, current, or future issues related to these areas.

Review written documents, contact private companies, review other jurisdictions similar to Portland and use any other tools necessary to complete the assessment and to gain information that will aid in the development of findings and recommendations. Based on the information

EXHIBIT A

collected during the assessment process, the Consultant will identify any immediate and long-term opportunities for service improvement, efficiencies and savings within the BTS bureau.

Work will concentrate on six basic categories:

1. Organizational Structure, Service Delivery Model and Business Processes
2. Staff Skills & Competency
3. State of Technology
4. Budget
5. Governance Model
6. Baseline CMMI Appraisal

Each of these six categories will be assessed independently with its own set of findings and recommendations. The Consultant shall also provide an overall assessment of BTS and Citywide technology operation based on the assessment and findings of each of the six categories.

Task I – Organizational Structure, Service Delivery Model and Business Processes

Conduct an assessment, develop findings and provide recommendations regarding the BTS organizational structure, service delivery model and business processes. This assessment should include the following actions on the part of the Consultant:

- Review the current BTS organizational structure and draft revised organizational structures under consideration. Report on strengths and weaknesses of each draft revised organizational structure as it relates to optimizing service delivery.
- Make recommendations related to optimal management span of control taking into consideration levels of technical contributions currently being provided by each manager and supervisor position.
- Make recommendations as to whether or not specific technical functions currently provided centrally by BTS should be decentralized, a hybrid, or centralized.
- Examine organizational business processes and work practices and identify changes that will result in efficiency improvements and optimization.
- Review the current project service delivery model including accountability for project success and make recommendations that will result in more effective outcomes.
- Assess the working relationships between BTS and its customer bureaus.
- Assess the progress made in technology consolidation in regards to expected benefits and outcomes stated in the 2003 consolidation ordinance.

Deliverables for Task I

Current State Assessment Report on organizational Structure, Service Delivery Model & Business Processes	Cost for this Deliverable	\$35,000.00
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Report and Recommendations for Organizational Structure, Service Delivery Model & Business Processes	Cost for this Deliverable	\$30,000.00
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Task II – Staff Skills & Competency

Conduct an assessment, develop findings and provide recommendations regarding BTS staff skills and competencies as they relate to meeting current and emerging customer needs. This assessment should include the following actions on the part of the Consultant:

- Develop and administer an on-line survey to gather and information on current job skills and competencies to determine if current job skills meet the needs of the City and develop the GAP Analysis between what skills exist and what skills are required for optimum job performance.
- Determine what skills are required to provide optimum job performance. Determine what skills employees indicate are required to provide optimum job performance. Develop GAP Analysis for difference between employee required skills and employee desired skills.
- Review technology specific job classifications and determine if they provide sufficient skills and

EXHIBIT A

competencies to meet the needs of the bureau.

- Determine what would be best course of action to ensure that BTS staff receives needed training to effectively maintain current technology systems and implement newly requested technologies.

Deliverables for Task II

Current State Assessment of Staff Skills and Competencies

Cost for this Deliverable \$15,000.00

Report and Recommendations Staff Skills and Competencies and GAP Analysis

Cost for this Deliverable \$15,000.00

Task III – State of Technology Citywide

Conduct an assessment, develop findings and provide recommendations regarding the state of technology usage Citywide. This assessment should include the following actions on the part of the Consultant:

- Examine the state of technology across Citywide as well as current plans (5-year CIP, existing Operating Projects as well as other projects in process such as the PSSRP, BDS ITAP Project, existing EBS division work plan, etc)
- Review existing Citywide inventories of bureau business systems/applications including but not limited to work order management, inventory control, asset management and revenue collection.
- Assess business system/application lifecycles for the City's current application portfolio to identify future opportunities to leverage the City's investment in SAP as a potential replacement platform.
- Review 5-year technology strategy, roadmap and develop a supporting budgetary estimate.
- Assess the readiness of the City to leverage technology platforms for SAAS, CLOUD and Mobility.
- Assess the effectiveness of Citywide coordination efforts to provide visibility and transparency into technology decision making.
- Assess the progress made to establish and adhere to Citywide technology standards and roadmaps.
- Provide recommendation for how the City can leverage its technology investments to meet enterprise needs.

Deliverable for Task III

Report on the State of Technology Citywide

Cost for this Deliverable \$35,000.00

Task IV – Budget

Conduct an assessment, develop findings and provide recommendations regarding the BTS budget. This assessment should include the following actions on the part of Consultant:

- Examine how BTS collects rates for services, analyze the components of the budget and make recommendations for alternate models which address customer concerns related to equity and transparency.
- Recommend areas to reduce operational costs and increase overall efficiency and effectiveness including exploring alternate service delivery models (pay-for-play, cloud computing, etc). Compare the BTS budget against a survey of 2012 government sector budgets to identify possible opportunities.
- Prepare an assessment of the BTS budget including recommendations for alternate cost recovery models and identify areas to reduce operational costs and increase overall efficiency and effectiveness, and strategies for creating a sustainable funding model for ongoing technology lifecycle replacements and major maintenance.

Deliverable for Task IV

Report on the Current State of Assessment Report on the BTS Budget and Financial Management Practices

Cost for this Deliverable \$15,000.00

Task V – Governance Model

Conduct an assessment, develop findings and provide recommendations regarding the existing governance model/framework for Citywide technology investment priorities and decisions. This assessment should include the following actions on the part of the Consultant:

- Identify the current state of the IT governance framework (what do stakeholders think about how IT Governance framework currently operates).
- Gather issues, concerns and vision to formulate a proposed future state of the framework (how would stakeholders like to see IT Governance operating). Include a description of the potential organizational benefits of implementing the proposed future governance state (these benefits may include, for example, efficiencies, transparency, economies of scale, consolidation opportunities, enabling of enterprise architecture, and cost savings/Return on Investment (ROI)).
- Develop an IT Governance Evaluation Framework and Perform the GAP analysis.
- Identify governance specific opportunities that may require rationalization and prioritization.
- Present a framework that will form an agreed upon future state of IT Governance and the roadmap to achieve it.

Deliverable for Task V

Current State Assessment Report on IT Governance (Power Point Presentation)

Cost for this Deliverable \$10,000.00

IT Governance Evaluation Framework

Cost for this Deliverable \$ 5,000.00

Governance Evaluation Report

Cost for this Deliverable \$20,000.00

Task VI – Capability Maturity Model Integration (CMMI) Appraisal

Conduct an appraisal based on the CMMI version 1.3 Model from the Software Engineering Institute at Carnegie Mellon University This appraisal should include the following actions on the part of the Consultant:

- Establish a baseline CMMI maturity level 1-5 for BTS application development by using the Class C Standard CMMI Appraisal Method for Process Improvement (SCAMPI) methods. Complete a SCAMPI C assessment and provide a final report.
- Provide recommendations for targeted next steps to improve organizational process maturity and a GAP analysis between the current maturity and CMMI levels 2 and 3. Include guidelines for effort and costs to implement the recommendations included in the report.
- Provide an assessment of how the BTS CMMI maturity level compares to other government technology organizations of similar size. Include in this report 1) a review against the Published Appraisal Results (PARS) database, and 2) a market scan of similar clients or entities to validate the PARS findings.

Deliverable for Task VI

CMMI Report and Presentation

Cost for this Deliverable \$15,000.00

Task VII – Reports and Presentations

Consultant shall prepare written reports, Power Point and/or other presentation materials to document assessment findings, analysis and recommendations for Citywide. These materials shall be delivered to the City according to the deliverable schedule below:

EXHIBIT A

Deliverable for Task VII

Final Report and Power Point presentation to BTS and Portland City Council

Cost for this Deliverable \$10,000.00

2013 Deliverable Schedule:

- Within 15 days of the Assessment contract start date, Consultant shall provide a Deliverables Expectation Document (DED) for the project. The DED is reviewed and approved by the City to ensure agreed-upon expectations are clearly defined before deliverables are actually developed. The DED includes the schedule for work done by both Consultant and the City.
- Within 12 weeks: DRAFT written assessment report delivered.
- Within 13 weeks: DRAFT assessment summary presentation delivered to the CAO/ CTO.
- Within 14 weeks: Final written assessment report delivered.
- Within 15 weeks: Final assessment summary presentation delivered to bureau stakeholders.
- Within 16 weeks: Final assessment summary presentation delivered to City Council (target Dec 5).
- Submit a Monthly Subconsultant Payment and Utilization Report by the 15th of each month with invoice (reference Part II, Section C.5 of the RFP).

Consultant shall summarize activities under this Contract in written **weekly status reports** submitted to the City Project Manager via e-mail. The status reports are due on the first day of the week and shall include summaries of all activities and deliverables completed in the prior week. 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.

All deliverables and resulting work products from this contract will become the property of the City of Portland. As such, the Consultant and any Subcontractors grant the City the right to copy and distribute (in any and all media and formats) project deliverables for regulatory, project certification/recognition, program development, public education, and/or for any purposes at the sole discretion of the City of Portland.

4. CONSULTANT PERSONNEL

The Consultant shall assign the following personnel to do the work in the capacities designated:

NAME	ROLE ON PROJECT Hourly Rate
Mike Zanon	Sierra Systems Project Manager \$165.00
David Wills	Principal Consultant \$175.00
Stuart Culbertson	Governance Specialist \$180.00
Sherry Campbell	Organization and Competency Specialist \$160.00
Chris Litton	Sierra's Management Consulting IM/IT Strategy Service Lead \$175.00
Shannon Wishloff	Business Consultant \$ 90.00

SUBCONSULTANTS

The Consultant shall assign the following subconsultants to perform work in the capacities designated:

NAME	ROLE ON PROJECT	SUBCONSULTANT AMT
Henry Schneider – Process and Product Quality Consulting LLC	CMMI Appraisal	\$14,400 (\$200/hour)

The City will enforce all social equity contracting and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Consultant in its Proposal. For contracts valued \$50,000 or more, the Consultant shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subconsultants employed in the performance of this agreement. An electronic copy of the MUR may be obtained at: <http://www.portlandoregon.gov/bibs/45475>.

5. COMPENSATION

The maximum that the Consultant can be paid on this contract is \$215,000 (hereafter the “not to exceed” amount). The “not to exceed” amount includes all payments to be made pursuant to this contract, including reimbursable expenses, if any. Nothing in this contract requires the City to pay for work that does not meet the Standard of Care or other requirements of the Contract. The actual amount to be paid Consultant may be less than that amount.

The Consultant is entitled to receive payments based on review and approval for each deliverable as described below for its work pursuant to the Contract as provided in more detail below. The City will pay Consultant based on these invoices for acceptable work performed and approved until the “not to exceed” amount is reached. Thereafter, Consultant must complete work based on the Contract without additional compensation unless there is a change to the scope of work.

Any estimate of the hours necessary to perform the work is not binding on the City. The Consultant remains responsible if the estimate proves to be incorrect. Exceeding the number of estimated hours of work does not impose any liability on the City for additional payment.

If work is completed before the “not to exceed” amount is reached, the Consultant’s compensation will be based on the Consultant’s bills previously submitted for acceptable work performed and approved.

6. PAYMENT TERMS: Net 30 Days

Hourly Rates

The billing rates shall not exceed those set forth in the Consultant Personnel Matrix above/on previous page. **No reimbursable expenses are anticipated or allowed for this project.**

Subconsultant Costs

Compensation for subconsultants shall be limited to the same restrictions imposed on the Consultant. The maximum markup on subconsultant services shall not exceed 0 %.

Adjustment of Labor Rates Due to Inflation

Annual adjustment of hourly rates will be considered upon written request from the Consultant. Approval of a request for rate increases is solely within the City’s discretion and under no circumstances is the City obligated to approve such a request.

Rate increases are subject to the following limitations:

- No increases will be granted before the one-year anniversary of the contract;

EXHIBIT A

- No more than one increase shall be granted per contract year;
- Rate increases may not exceed the then-current average inflation rate for the Portland Metropolitan Area (as determined from the US Department of Labor statistics);
- Rate increases shall not be retroactive.

Other than the impact of inflation as described above, hourly rates may not be increased.

7. Payments for Each Deliverable

Consultant shall submit to the City's Project Manager an invoice for work performed by the Consultant per deliverable as outlined in this contract and the matrix below. The invoice shall contain the City's Contract Number and set out all items for payment including, but not limited to: the name of the individual, labor category, direct labor rate, hours worked during the period, and tasks performed.

Consultant shall stamp and approve all subconsultant invoices and note on the subconsultant invoice what they are approving as "billable" under the contract. The billing from the prime should clearly roll up labor and reimbursable costs for the prime and subconsultants – matching the subconsultant invoices. Prior to initial billing, the Consultant shall develop a billing format for approval by the City. There are no reimbursable expenses anticipated or allowed for this project.

City shall pay all amounts to which no dispute exists within 30 days of receipt of the invoice. Payment of any bill, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved.

Consultant shall make full payment to its subconsultants within 10 business days following receipt of any payment made by the City to Consultant.

Deliverable Payment Schedule

Task No.	Description	Cost Per Deliverable
1.1	Assess current state of IT Organizational Structure, Service Delivery Model and Business Processes	\$35,000
1.2	Make recommendations and report on IT Organizational Structure, Service Delivery Model and Business Processes	\$30,000
2.1	Assess current state of Staff Skills & Competency (Citywide)	\$15,000
2.2	Make recommendations and report on current state of Staff Skills & Competency (Citywide)	\$15,000
3.0	Assess and report on State of Technology (Citywide)	\$35,000
4.1	Assess current state of the BTS Budget and Financial Management Practices	\$15,000
4.2	Report on the BTS Budget and Financial Management Practices	
5.1	Assess current state of IT Governance (Power Point Level)	\$10,000
5.2	Evaluate IT Governance Framework	\$ 5,000
5.3	Report on Governance Evaluation	\$20,000
6.0	Prepare Baseline Capability Maturity Model Integration (CMMI) Appraisal , report and present findings	\$15,000

EXHIBIT A

Task No.	Description	Cost Per Deliverable
7.0	Deliver Reports, Power Points and/or other Presentations	\$10,000
TOTAL COMPENSATION		\$215,000

ACH Payments

It is the City's policy to pay its Consultant invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Consultants shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at <http://www.portlandoregon.gov/bfs/article/409834?>

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered directly into Consultant accounts with financial institutions. All contract amounts are stated in and payments shall be made in United States currency.