

**SYSTEM
PURCHASE AGREEMENT**

Contractor Name

FOR

City of Bellevue
11511 Main St.
Bellevue, WA 98009

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City of Bellevue Standard Terms and Conditions
For Software Purchase

1. INTRODUCTION

THIS AGREEMENT is made this day of, (the "Effective Date"), by and between THE CITY OF BELLEVUE, a municipal corporation of the State of Washington, referred to as "City", and , a corporation organized and existing under the laws of the State of and authorized to do business in the State of Washington, referred to as "Contractor," with offices at ;

This Agreement shall be effective for an initial term commencing on the Effective Date and extending for () years after City's Final Acceptance of the System.

This Agreement is for the purchase of a System ("System") consisting of software, interfaces, computer equipment, peripheral equipment, and related services (the Project). The System is more fully described in the Statement of Work in Addendum A. The items being purchased under this Agreement are itemized in Addenda B-1 through B-7.

In consideration of the terms, promises, mutual covenants and conditions contained in this Agreement, City and Contractor agree as follows:

2. ADDENDA

The following documents are attached as Addenda to this Agreement and incorporated by reference as though set forth in full:

Addendum A, Statement of Work - The Contractor Statement of Work and Project Plan, including Interface Plans and subcontractor Statement of Work, if any, which is attached thereto

Addendum B-1, Itemized Price list of Contractor Software

Addendum B-2, Itemized Price List of Interfaces

Addendum B-3, Itemized Price List and Specifications for Equipment; and Shipping Instructions

Addendum B-4, Itemized Price List of Third-Party Software Provided by the Contractor

Addendum B-5, itemized Price List of Third-Party Products and Services Provided by Subcontractors

Addendum B-6, Itemized List of Contractor Services & Miscellaneous Items

Addendum B-7, Contract Price Summary and Payment Terms

Addendum C, System Acceptance Test Plan, and Final ATP

Addendum D, Designated Location (Site) Preparation Guide / Requirements

Addendum E, Software Maintenance Agreement

Addendum F, Software License Agreement

Addendum G, Software Escrow Agreement

Addendum H, Equipment Maintenance Agreement

Addendum I, Insurance Requirements

3. DEFINITIONS

Acceptance Criteria - The criteria to be used in performance of Acceptance Tests, as established in **Addendum C, System Acceptance Test Plan, and Final ATP**, and **Addendum A, Statement of Work**.

Acceptance Date - The date on which the parties execute the Completion Certificate for the System.

Acceptance Test Plan or “ATP” - The system Acceptance Test Plan, including without limitation the Final Acceptance Test, that will be added to this Agreement as Addendum C when developed and agreed to as described in the Statements of Work and in accordance with this Agreement. The ATP(s) shall set forth the testing procedure and criteria for evaluating system capabilities or features, or performance standards as agreed to by City and Contractor.

Completion Certificate - A document signed by the parties to this Contract acknowledging that the System has successfully passed the Final System Acceptance.

Contract Price - The total of the purchase and/or license price of the items specified in **Addendum B-6, Contract Price Summary and Payment Terms**, including, as applicable, Equipment, Delivery and Installation and configuration of software, Third-Party Software licenses, Software licenses, System Modifications, Interfaces, other Third Party Products or Services, other fees and expenses as

necessary for City to begin Live Operation of the System, and any applicable sales, use, value added, or other such governmental charges payable by City, as set forth in **Addendum B-6, Contract Price Summary and Payment Terms**.

Contractor – Means the Prime Contractor. “Prime Contractor” shall (a) act as a central point of contact and coordinator with respect to the Project, (b) subcontract with certain vendors, known as subcontractors, to provide the Third Party Software as applicable, and the Third Party Products and Services in connection with the Project, and (c) pass through to City warranties received from vendors of the Equipment, Third Party Software and Third Party Products supplied by Contractor under this Agreement

Deliverable - An item of software, hardware, documentation or services to be provided by Contractor, including without limitation Contractor’s sub-contractor, under this Agreement.

Delivery - With respect to a Phase of the System means physical delivery of substantially all components of such phase to the Designated Location. Delivery of a Phase shall be deemed to have occurred despite the absence of incidental components provided that Installation of the applicable Phase of the System, training, System configuration and Acceptance Testing for such Phase can begin with the items then delivered, and further provided that the absence of such incidental components shall not delay Installation in accordance with the Project Schedule set forth in **Addendum A, Statement of Work**. Delivery with respect to all other deliverables means the physical delivery of the applicable Deliverable to the Designated Location, including all applicable documentation and instructions necessary for Installation and use of the Deliverable. A separate Delivery shall occur with respect to each Deliverable.

Designated Location - Means the physical site at which the System is delivered and installed as specified in **Addendum A, Statement of Work** or otherwise under this Agreement.

Documentation - All user manuals, on-line help or other related instructional and/or reference materials, including release notes issued in connection with Updates provided under this Agreement. In case of a conflict between written documentation (user manuals or release notes in printed or CD-ROM format) and on-line help information, the written documentation will control.

Effective Date – Date on which this Agreement is executed by an authorized representative of City and Contractor.

Enhancement – Any custom-developed software code designed to fill functional gaps or designed to interface with the software at standard interface points that does not change the logic within the source code.

Equipment - The computer System equipment to be provided by City or Contractor or any Contractor subcontractor, as specified in **Addendum B-3, Itemized Price List and Specifications for Equipment**, of this Agreement.

Final System Acceptance -The latest of the date on which (a) all Phases of the System have been used in Live Operations for a period of at least 60 continuous days without significant error; (b) all remaining punch list items have been addressed and completed in accordance with the Specifications; (c) the Final System Acceptance test is deemed complete; or (d) all documents have been signed to that effect.

<footnote: 'significant' is usually replaced with the defined key words for errors such as 'critical' or 'high priority' or 'Priority One'. 'Minor' or 'low' priority errors are usually not considered as significant. The Contractor usually defines these key words in their Maintenance Agreement or some sort of Error Correction Guides. Often the definition of these terms is a negotiated item.>

Functional Design Specifications (FDS) - The detailed plan/document(s) describing new or modified functional processing and operational requirements for the System based upon specifications as initially set forth in **Addendum A, Statement of Work**, along with the associated Documentation.

"Go-Live" - The event occurring when City first uses a Deliverable for Live Operations. A separate Go-Live may take place with respect to each Phase of the System implementation, each interface, each major Modification, and each Third Party Software product.

Installation - With respect to a Deliverable means the process of running the Deliverable under a procedure to verify the components and operability of such Deliverable and to demonstrate the inter-operability of the Deliverable components with all other applicable System components to enable beginning the process of Acceptance Testing of that Deliverable as defined in the Acceptance Test Plan.. "Installation" with respect to the Interfaces, means the process of running each Interface under a procedure to demonstrate basic interoperability of the Interface with the System and the equipment and/or software with which it is interfaced. "Installation" with respect to Third Party Products, means the process of running such Products under a procedure to demonstrate basic interoperability of the Third Party Product

Interfaces - The interface software described in **Addendum A, Statement of Work** or Functional Design Specification. Each individual interface is referred to as an "Interface".

Live Operations - The use of a Delivered, Installed, and acceptance tested System or Phase of the System provided under this Agreement as the primary means of performing the function of the System applicable to such Phase for a

period of at least sixty (60) continuous days. Use of the System, or any Phase of the System, in parallel with the City's existing system for continuous period(s) of up to ninety (90) days, where the existing system is the primary means of performing City's functions for which the new System will provide, and the System is being run in parallel in a test environment shall not be deemed "Live Operations".

Maintenance Service – Services designed to: (a) assist users with software operations; (b) provide Updates, Upgrades, and Enhancements; and (c) correct any errors in the licensed software, including but not limited to telephone support, trouble-shooting, System diagnosis, and regression testing. These services are more fully defined in **Addendum E, Software Maintenance Agreement**.

Modification – Custom-developed software code, or a change in the core software that materially changes the Source Code and/or new features developed specifically for City, as described in **Addendum A, Statement of Work** or such other Functional Design Specifications as may be more fully defined during the Project.

Phase - One of the primary phases of the System implementation as described in the **Addendum A, Statement of Work**.

Project – The System, interfaces, equipment, related services, project plans, and definitions and understandings as described in this Agreement

Project Problem - An issue that is likely to delay Delivery and/or Installation of any Deliverable in accordance with the timeframes specified in the mutually agreed upon Project Schedule.

Project Schedule - A formal document created, using generally accepted project management software such as Microsoft Project, to record the time frame and resources required for specific activities that must be performed in order to produce the Deliverables and sub-deliverables identified in the work breakdown structure and in **Addendum A, Statement of Work**. It includes at least planned start and expected finish dates for performing each activity and planned dates for meeting milestones.

Software – Software product(s) City is licensing from Contractor or subcontractors under this Agreement, including any third-party product(s) embedded or supplied by Contractor as part of the System.

Software Error - Means; (a) an actual software coding error; (b) failure of software to substantially perform a function described in the applicable Specifications; or (c) software whose operation interferes with operation of the System or Third Party Software. A Software Error shall be deemed to exist when the Software is used as provided in the application Documentation and the Software either fails to perform

the intended function as provided in the Specifications or interferes with the use or operation of the System or the Third Party Software.

Source Code - The version of all software-related elements in human-readable language format (non-machine level) as prepared and written by the programmer(s) who developed the applicable elements, together with any build tools (e.g., compilers, linkers and other related tools), compile/link scripts, program comments, installation scripts and other documentation necessary for an ordinarily skilled programmer to recompile the same into fully functioning object code (any instruction or set of instructions of a computer program, including but not limited to, the Software, in machine-readable form) of the applicable elements.

Specifications - The Functional Design Specifications, Documentation for Licensed Software, and any specifications as set forth in **Addendum A, Statement of Work**.

Statement of Work or “SOW” - The document(s) included herein as **Addendum A**, consisting of the Contractor Statement of Work and if applicable, the subcontractor statement of work as well as the Project Plan.

System - Complete automated solution including but not limited to Equipment, and licensed software and documentation, along with any Update, Upgrade, Modification, and Enhancement that City is entitled to receive under this Agreement.

Third Party Products and Services - Means the products and services provided by other Contractors and/or subcontractors, as specified in **Addendum B-5, Itemized Price List of Third Party Products and Services**.

Third-Party Software - Software specified in **Addendum B-4, Itemized Price List of Third Party Software** of this Agreement, the copyright to which is owned by persons or entities other than Contractor.

Update – A new, enhanced, improved, or updated version of the Licensed Software that the Contractor may make generally available, from time to time, to licensees who are under maintenance services and that may change the utility, efficiency, or operating performance of the Licensed Software but that does not alter the software’s basic functionality.

Upgrade – A new release that is a revision to the Licensed Software or to a component designed to provide what Contractor considers to be major functional enhancements

Warranty Service - Means, with respect to the Software, Equipment, Third Party Software, and Third Party Products, those services defined or described by the

Contractor thereof in the applicable warranty statement(s), license agreement(s) or other documents attached hereto and incorporated herein by reference. For all such Software, Equipment, Third Party Software and Third Party Products provided by Contractor and/or under this Agreement, Contractor shall be the primary point of contact for all Warranty Service for all Deliverables and shall be responsible for coordinating the delivery of all such services to City and taking commercially reasonable action to cause such services to conform to and be delivered as provided the applicable warranty statement(s), license agreement(s) or other documents attached hereto and incorporated herein by reference. Without limiting the foregoing, if subcontractor fails to deliver Warranty Services as required, Contractor shall take commercially reasonable action as City may request to enforce the terms of the any subcontract agreement between Contractor and subcontractor including, but not limited to, exercising Contractor's rights under the escrow agreement to obtain the Source Code and, upon release, delivering the Source Code to City.

Warranty Period – The period commencing upon the date of Final System Acceptance, from which the Contractor guarantees the Software will perform to Specifications and will perform Maintenance Service at no additional cost to City. Unless otherwise agreed to in writing, the warranty shall last for one year from Final System Acceptance.

4. PRICE AND PAYMENT

4.1. Invoices.

Payments shall represent the full compensation for all hardware, software, and installation services provided by the Contractor. The Contract Price and terms of payment for the purchased and/or licensed items hereunder are specified in **Addendum B-7, Contract Price Summary and Payment Terms**. City agrees to pay the Contract Price pursuant to invoices submitted by Contractor in accordance with the schedule provided in **Addendum B-7, Contract Price Summary and Payment Terms**. Undisputed invoices shall be due and payable on receipt within 60 days.

4.2. Disputes and Interest.

All undisputed amounts due and payable to Contractor hereunder shall, if not paid when due, bear interest at the rate of one percent (1%) per month, or the highest rate permitted by law, whichever is less, from ninety (90) days after City's Project Manager receives the applicable invoice from Contractor. City shall notify Contractor of any disputed amount within twenty (20) business days of receipt of the applicable invoice by City's Project Manager. The Contractor will delay the imposition of interest penalties until the parties have resolved the disputed invoice. If the parties are unable to resolve a dispute within sixty (60) days of provision of notice thereof to Contractor the

dispute shall be submitted to mediation in accordance with the provisions of the dispute resolution section below as to the disputed invoice only. Neither Contractor nor subcontractor shall delay or suspend performance hereunder pending resolution of any disputed amount.

4.3. Payments to Third Parties.

Contractor agrees City's sole obligation with respect to payments is to pay Contractor the undisputed amounts invoiced under this Agreement and that Contractor shall have the sole obligation to pay any Third Party any amounts due them in connection with products or services delivered under this Agreement. Subject to City's payments hereunder, Contractor shall pay all such amounts as they become due and shall indemnify and defend City from and against any and claims, damages or liability arising out of Contractor's failure to do so.

4.4. Payment Adjustments.

If between the date of this Agreement and Final System Acceptance by City, Contractor should announce a reduction in the price for the System equipment or software contained herein, then the prices for such System equipment or software shall be deemed to be decreased by an amount equal to the general reduction in the price for any such System equipment or software.

Amounts due City as damages may be deducted by City from any money payable to the Contractor pursuant to this Agreement. City shall notify the Contractor in writing of any claim for damages prior to the date City deducts such sums of money payable to Contractor.

5. SOFTWARE LICENSE

Contractor hereby grants City a nonexclusive, non-transferable, perpetual, and irrevocable license to use the System, subject to the terms and conditions of this Agreement.

Except as provided below, and subject to the terms and conditions of the Software License Agreement, Addendum F, upon execution of this Agreement City shall have a non-exclusive, non-transferable, perpetual, irrevocable right and license with respect to the Software to:

(a) use the Software and permit all user to access and use the Software and all of its components;

(b) install, integrate, configure, implement, and operate the Software as necessary to evaluate and test the performance of the Software in accordance with

the Specifications, and as necessary for operation of the System and otherwise as provided herein;

(c) permit affiliated entities to access and use the Software as necessary to evaluate and test the System, and/or the Software, subject to confidentiality rights specified in this Agreement;

(d) use the documentation for purposes of supporting use of the Software by City and affiliated entities and providing training in the use and operation of the System and/or the Software, subject to confidentiality rights specified in this Agreement;

(e) use any Deliverables resulting from services provided by Contractor for purposes of installing operating, configuring, or using the Software, within the scope of the licenses granted in the Software License Agreement, Addendum F;

(f) have third parties operate and/or maintain the Software for City subject to confidentiality rights specified in this Agreement; and

(g) have third parties access and use the Software to conduct business or exchange data with City subject to confidentiality rights specified in this Agreement.

Notwithstanding the proceeding, the license granted to City for Software may be terminated by Contractor as provided in **Addendum F, Software License Agreement**. In addition to the license for the Software, City shall be the licensee for all Third Party Software under the license agreements attached as **Addendum B-4, Itemized List of Third Party Software**.

Title to the Software shall remain with Contractor and title to the Third-Party Software shall remain in the respective owner(s) of such software. Such software is provided to City under the applicable owner's license agreement, which City agrees to be bound by, sign, and return to Contractor for further forwarding to the owner.

Contractor shall provide City with a specified number of copies of the licensed software as described in Addendum B-1, B-4 and or B-5. City has the right to make and maintain reasonable additional copies for internal use as back-up, disaster recovery, development, testing, evaluation, and production use without any additional license fee; provided that each copy shall contain the same copyright notices or other proprietary legends as may appear on the original supplied by Contractor. Copies of the licensed software may be maintained on separate servers without any license fee. City may make reasonable copies of documentation on CD-ROM or hard copy, provided again that any proprietary legends are reproduced.

Contractor shall provide City with software Updates including without limitation, the relevant technical references within thirty days after they are made generally commercially available or earlier if required by any other part of this Agreement. All Updates including any for maintenance that are provided to City shall be deemed a part of the System during the implementation period prior to Final System Acceptance and shall be provided without additional licensing fee. The foregoing does not include any software designated by the parties as new products for which there is a charge to other licensees of the licensed software as a separate software license fee.

The license, granted under this Agreement, includes the right to use all Updates, Upgrades, Modifications, Enhancements, and configurations delivered by Contractor without any additional software license fee.

6. DELIVERY AND INSTALLATION AND RISK OF LOSS

6.1. Contractor Duties

In addition to any other duties set forth in the SOW and in this Agreement, Contractor, subject to any provisions of the Force Majeure Section of this Agreement, shall:

(a) consult with City and sub contractors and select Third Party Products and Services as necessary for the System to conform to the Specifications;

(b) consult with City and sub contractors in the preparation of drafts and final Functional Design Specifications (FDS) and ATPs for the System according to the Statement Of Work and the Project Plan;

(c) obtain license, warranty, and/or service agreements from vendors of Third Party Products and Services provided hereunder and transfer and/or pass through the benefits of such agreements to City;

(d) manage the Delivery and Installation of the System and the performance of all services in connection therewith in conformance with the Project Plan and the Specifications;

(e) prior to installation of the Software, inspect all applicable hardware and equipment, whether supplied by Contractor or City or any other person or entity, to ascertain compliance with **Addendum B-3, Itemized Price List and Specifications for Equipment**, Installation of any Deliverable shall not commence until Contractor has provided City with written certification of such compliance;

(f) verify with City that the products or services due from sub contractors and any other vendor under this Agreement have been delivered or performed in accordance with the terms of this Agreement prior to releasing payments for such products or services.;

(g) assist City in performing preliminary acceptance testing and in determining whether and when the System is ready for use in Live Operations;

(h) assist City in performing the final acceptance testing to determine whether the System conforms to the ATP and is ready for Final System Acceptance;

(i) act as the central point of contact and coordinator for Maintenance Service and Warranty Service during the Warranty Period and the first support year;

(j) take commercially reasonable action to cause sub contractors and all other vendors of Deliverables hereunder to deliver, configure, install and (with respect to first year support only) support the System, the Modifications, Interfaces, and the Third Party Products and Services in accordance with this Agreement and the Specifications;

(k) from the Agreement effective date and provided the City is under software Maintenance Services, during the Warranty Period and the first support year, provide and cause sub contractors to provide City with software Updates, Upgrades, and Enhancements to the System including without limitation relevant technical references, within thirty (30) days after they are made generally commercially available to other licensees of the Software or earlier if required by any other part of this Agreement; All such Updates, Upgrades, and Enhancements including any for maintenance shall be deemed a part of the System prior to Final System Acceptance, and shall be provided without additional fee; Installation of City software and software upgrades on the Equipment, if any, shall be negotiated between City and Contractor as needed;

(l) ensure that all Deliverables are delivered to City free and clear of all liens and encumbrances;

(m) provide Delivery, Installation and implementation of the System at the stated location(s) and in stated quantities, including without limitation all Deliverables, in accordance with the Specifications and the Project Schedule set forth in the Statement of Work, or elsewhere in this Agreement or otherwise mutually agreed upon in writing by City and Contractor; and

(n) following Delivery and Installation of the System, provide City with training as set forth in the Statement of Work. Such training is to be provided on a mutually agreed upon schedule between City and Contractor. If City is not available for training at the scheduled time(s), a revised training schedule will be established based upon the mutual agreement of both parties, and the Project Schedule shall, if necessary, be revised by mutual agreement of the parties. Training materials are to be provided by Contractor in advance of the scheduled training date for review by City.

(o) work in cooperation with City technical staff and/or various other contractors under contract with City. Contractor agrees to coordinate and cooperate with all such contractors as may be necessary to assure timely and successful implementation of the System according to the Project Plan.

6.2. City Duties.

City shall perform or cause to be performed the City required actions described in the **Addendum A, Statement of Work**. Contractor shall not be responsible for any delay in the Project Schedule set forth herein which is directly attributable to City's failure to timely complete such required actions. In the event of delays by City in completing its required actions, or delays beyond both Contractor's and City's control as described in **Addendum A, Statement of Work** of this Agreement, the Project Schedule shall be revised as mutually agreed to in writing by the parties. In the absence of such agreement, the Project Schedule will be adjusted on a day for day basis.

6.3. Risk of Loss.

The risk of loss for the Deliverables hereunder shall pass to City upon the completion of both (a) Delivery of that Deliverable to (i) the Designated Location; or (ii) another location owned or controlled by City and specified by City for such delivery, and (b) the signature of a person authorized to receive the delivery.

7. INSPECTION

Contractor's performance shall be subject to inspection by City on a periodic basis. The Contractor shall assist in any such inspection by City's Project Manager or his/her designee to allow a determination of Contractor's compliance with the Project Plan and Specifications for this Project. Such inspections shall not unduly interfere with Contractor's performance. If City's Project Manager or his/her designee determines that Contractor's performance is not in compliance with the requirements of this Agreement, City may require Contractor to correct the performance at no additional cost to City. If Contractor fails to correct the performance within a reasonable period of time, City shall have the right to correct the performance by whatever means it chooses and may deduct the cost thereof from any sums due to Contractor.

8. SPECIFICATIONS

8.1. Functional Design Specifications Development.

Within **twenty (20)** business days or earlier after the execution of this Agreement, Contractor shall deliver a detailed outline of the Functional Design Specifications (FDS) for the entire System to City for review, correction, and approval. The outline shall contain a detailed description of the contents of the final FDS, including a list of documents to be included in the final FDS and the format for the FDS. City shall review, correct and return for further changes, or approve in writing the outline FDS outline within **twenty (20)** business days or earlier after such delivery. If necessary, Contractor shall work with City to promptly revise the FDS outline to incorporate any changes requested by City and return the outline FDS for approval. Contractor shall then develop and deliver a complete draft FDS to City within **eighty (80)** business days or earlier, if mutually agreed upon, after City approval of the outline FDS. Within **twenty (20)** business days after delivery of the draft FDS to City, City will provide Contractor with additional changes to the FDS, based on a detailed design review with Contractor. Contractor shall deliver the final FDS incorporating all changes required by City within **twenty (20)** business days after receipt of the results of the detailed design review. Customer will review and approve or disapprove the final FDS within **ten (10)** business days.

Upon mutual agreement of City and Contractor, in place of a single FDS, a series of FDS documents may be developed, each one discussing a major Deliverable such as, but not limited to, the core Software, major Modifications or Enhancements, new modules, or Interfaces. Each document may have a separate negotiated delivery date appropriate for a Phased implementation of the Project.

8.2. Acceptance Test Plan Development.

The Contractor shall, in consultation with City, create an Acceptance Test Plan (ATP) containing Acceptance Criteria that will establish test procedures and test criteria, for evaluating system capabilities, functions, and features along with a problem reporting method for use in the system testing.

If the Acceptance Test Plan is attached to this agreement in an 'as to form' format, then the following shall apply. Within **twenty (20)** business days or earlier after the execution of this Agreement, Contractor shall deliver a detailed outline of the Acceptance Test Plan, which includes the Final Acceptance Test Plan (ATP) for the entire System to City for review, correction, and approval. The outline shall contain a detailed description of the contents of the final ATP, including a list of documents to be included in

the final ATP and the format for the ATP. City shall review, correct and return for further changes, or approve in writing the outline ATP outline within **twenty (20)** business days or earlier after such delivery. If necessary, Contractor shall work with City to promptly revise the ATP outline to incorporate any changes requested by City and return the outline ATP for approval. Contractor shall then develop and deliver a complete draft ATP to City within **eighty (80)** business days or earlier, if mutually agreed upon, after City approval of the outline ATP. Within **twenty (20)** business days after delivery of the draft ATP to City, City will provide Contractor with additional changes to the ATP, based on a detailed design review with Contractor. Contractor shall deliver the final ATP incorporating all changes required by City within **twenty (20)** business days after receipt of the results of the detailed design review. Customer will review and approve or disapprove the final ATP within **ten (10)** business days. In any case, the ATP shall be approved by City prior to Installation of the System and any System configuration training as described in the Statement of Work.

Upon mutual agreement of City and Contractor, in place of a single ATP, a series of ATP documents may be developed, each one discussing a major Deliverable such as, but not limited to, the core Software, major Modifications or Enhancements, new modules, or Interfaces. Each document may have a separate negotiated delivery date appropriate for a Phased implementation of the Project.

9. ACCEPTANCE

9.1. General

It is assumed that the core Software system (base software offered by Contractor without modification) and necessary Equipment will be Delivered as a signal Phase. It is also assumed additional Deliverables, if any, such as Enhancements, Modifications, and Interfaces will be Delivered in Phases. As part of ATP, and in alignment with the Project Plan, City and Contractor shall determine the appropriate groupings of Deliverables for testing, referred to hereafter in this Acceptance Section as 'The Deliverables'.

Contractor shall install, configure, and populate the system with test data acceptable to City for acceptance testing.

9.2. System Testing

Unless otherwise stated in the ATP, within sixty (60) calendar days after Installation of, and training on, The Deliverable, City agrees to perform the ATP to test The Deliverable against the Acceptance Criteria set forth therein.

If during such tests City determines that The Deliverable does not perform in accordance with the ATP, City agrees to first follow any error procedures specified in the Software Documentation. If following these error procedures does not correct the non-conformance, or if City is otherwise unable to determine or correct the cause of the non-conformance, City will provide the Contractor with a written description of the aspects in which the system failed to meet the Acceptance Criteria. Within five (5) business days of notification of such a non-conformance, Contractor shall provide to City a proposal for correction of the non-conformance and will proceed to correct it by (i) developing and delivering a correction to the Software, (ii) providing a temporary technical work-around, if reasonably feasible and approved by City, or (iii) in the case of problems that do not materially affect operation of The Deliverable pursuant to the criteria set forth in the Acceptance Test Plan, and if approved by City, providing a future release of an Update to the Software and/or Documentation. If the non-conformance is determined to have been caused by the Equipment, Third Party Software, or other Third Party Products, Contractor shall, until the non-conformance is resolved, work with the manufacturer thereof under the applicable warranties. Within fifteen (15) business days after receipt of a correction, City agrees to retest the corrected function(s) and report any other non-conformance with the ATP.

Upon completion of the acceptance testing without any uncorrected material failures of The Deliverable to meet the Acceptance Criteria, the parties shall jointly acknowledge acceptance of The Deliverable in writing and Contractor shall certify to City that The Deliverable meets the ATP criteria applicable to The Deliverable and may be placed in Live Operations.

If acceptance testing has not been satisfactorily completed by the agreed deadline, City may, at its option: (a) accept The Deliverable despite the documented deficiencies; (b) continue testing, in which case the parties shall negotiate in good faith an equitable adjustment to the amounts paid or due under this Agreement to reflect the deficiencies in The Deliverable and the failure to meet the Project Schedule; or (c) declare The Deliverable as having failed to meet the Acceptance Criteria and Contractor in default of a material obligation.

9.3. Final System Acceptance Test.

Once all Phases of the Project have commenced simultaneous Live Operations, a sixty (60) day period of Final System Acceptance testing for

the entire System, including all Interfaces and Deliverables provided under this Agreement, shall begin, using the SOW, FDS, and ATP provided under this Agreement as the test criteria. Final Acceptance Testing shall occur in a live environment. Any **significant** error(s) as defined in the Addendum E, Software Maintenance Agreement or deviations from the SOW, FDS, or ATP shall be reported to Contractor, and Contractor shall respond thereto, as provided under this Agreement. The Final System Acceptance test shall be deemed completed upon completion of a continuous sixty (60) day period during which no material failure to meet the criteria set forth in the SOW, FDS, or ATP, or **significant** error(s) remain unresolved to the satisfaction of the City.

<footnote: 'significant' is usually replaced with the defined key words for errors such as 'critical' or 'high priority' or 'Priority One'. 'Minor' or 'low' priority errors are usually not considered as significant. The Contractor usually defines these key words in their Maintenance Agreement or some sort of Error Correction Guides. Often the definition of these terms is a negotiated item.>

9.4. Failure

Failure to meet or exceed the Final System Acceptance shall constitute failure to successfully complete Contractor's obligations under this Agreement and Contractor shall be considered in default of a material obligation. In addition to any remedies available to City as specified in the Termination Section, Grounds For Termination Sub-section of this Agreement,, City shall be entitled to a refund of the full amount of the Software license fees paid plus thirty percent (30%) of all amounts paid to date for Contractor services. Any removal of the System will be at Contractor's expense.

10. CONTRACTOR SERVICES/PROJECT CHANGE ORDERS

Contractor will provide the services specified in **Addendum A, Statement of Work**, of this Agreement. Any services desired by City in excess of those specified in this Agreement will be subject to the availability and scheduling of Contractor personnel and to Contractor's then-current rates, plus expenses.

No changes or revisions to the System, and no additional payment therefor, will be made except pursuant to the provisions of this Agreement. However, City may, from time to time, request changes or extensions of the System. Such changes, including an increase or decrease in the amount of Contractor services and/or compensation, shall be mutually agreed in writing between City and Contractor. Such changes shall be incorporated by reference in and made a part of this Agreement.

City may request additional products or services pursuant to this Agreement by submitting for Contractor's acceptance a project addendum. Each project addendum will consist of a brief outline of the new product or services, the Project Manager for City, the agreed upon costs, and other specifics unique to the request. Upon acceptance by Contractor of the project addendum and the mutual written agreement of the parties with respect to proceeding with the project addendum, such addendum shall form an Addendum to this Agreement and shall be subject to its terms and conditions. Contractor's prices and payment terms for such additional products or services shall be quoted at a rate negotiated by Contractor and City.

Contractor may have certain software products associated with the Software that are currently under development and are not yet ready for commercial release. Contractor understands that City is entering into this Agreement with the understanding that Contractor, during the implementation of the System and for a period of two years following Final System Acceptance, will offer to deliver such product(s) as add-ons to the Software within thirty (30) days of first commercial (non-Beta) release of each such product(s); at which time City may elect, at City's sole discretion, to purchase a license to use any or all such products at a price not to exceed the lowest price then charged for each such product to any other similarly situated licensee thereof, and to engage Contractor to install, configure and test such products for use with the System as provided in this Agreement. Accordingly, such products shall not be considered additional products for which a change order is required.

11. SOFTWARE SOURCE CODE

Contractor shall either provide the Software Source Code to City or shall deposit the Source Code and documentation for all Software with an escrow agent mutually acceptable to Contractor and City. City prefers CSI Technology Escrow Services ("DSI"). The source code shall be on disk or CD ROM and shall include: (a) the source code and other materials necessary to maintain, compile, and build binary versions of the System, including documentation, instructions, build files, and all proprietary tools necessary on disk or CD ROM; and (b) identification, including name and version number, of the tool or tools used to translate source code into machine-executable code, and such other information as is necessary such that the source code materials are at all times sufficient to permit a reasonably skilled programmer or analyst to understand and maintain the software programs constituting the System as originally delivered and in use by City. Contractor further represents and warrants that the Software Escrow Agreement will be continuously renewed for the duration of this Agreement and any license granted under this Agreement. Contractor shall identify the escrow agent in **Addendum G, Software Escrow Agreement**.

Contractor shall likewise cause a Source Code escrow to be set up and maintained with escrow agent as described above for the Third Party (software) Products, subject to payment by City of the applicable escrow fees.

Within thirty (30) days after delivery of a Software Update or Upgrade to City, the Source Code for the Update or Upgrade shall likewise be deposited by Contractor in escrow with notice to City, provided that the escrow has been kept in effect. The Source Code Escrow shall be kept in effect until (i) City gives Contractor written notice of termination of the escrow, (ii) the escrow is canceled by the Escrow Agent due to non-payment of escrow charges (unless such non-payment is attributable to Contractor), or (iii) this Agreement is terminated pursuant to the Termination Section of this Agreement.

Provided that a release of Source Code is rightfully made hereunder, City is granted a license to copy and use the Source Code for the sole purpose of software support. For purposes of these Source Code Escrow provisions, the term "software support" means correction of software errors and preparation of software modifications and enhancements. If City creates new and original computer code not derived from the Contractor Software or the processes therein, in the process of software support of the Software, the intellectual property rights (including copyright, patents right and trade secret) in and to that specific new and original code shall be owned by City. No rights to distribute Source Code are granted hereunder.

12. CONTRACTOR AND SUBCONTRACTORS

Contractor may enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations; provided that in no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to City for any breach in the performance of Contractor's duties. Contractor agrees to hold City harmless hereunder for any loss or damage of any kind occasioned by the acts or omissions of Contractor's subcontractors, their agents, or employees.

Contractor shall ensure that City is an intended third-party beneficiary with the right to enforce the terms of any agreement between Contractor and any subcontractor used by Contractor pertaining to the services, products and licenses provided under this Agreement. Contractor shall be responsible for coordinating any response to disputes or issues, and shall use commercially reasonable efforts to ensure that any such dispute or issue is resolved to City's satisfaction.

13. CITY PROPERTY

Contractor shall at all times protect City's property from injury or loss arising in connection with this Agreement.

City shall own all data used and generated by the System, other than internal System data provided by Contractor. Contractor shall not take or do any act that would interfere with City's access to or use of the data.

City may modify or adapt any portion of software or documentation for its own use and at its own expense to meet its specific requirements. Such modifications or adaptations of software or documentation made by City shall remain the property of City.

If provided access, either locally or via remote access, to City's network, Contractor shall prevent loss of files and data on City's servers due to acts of the Contractor or Sub-contractor(s), if any. Contractor shall treat as confidential all information related to remote access, including instructions, user IDs, and passwords. In no case shall Contractor allow a third party to remotely connect to City's network.

14. WARRANTY

Contractor warrants that during the warranty period: (a) the System shall perform substantially in accordance with the Specifications; and (b) the media on which the licensed software, Updates, Upgrades, Enhancements, and Modifications are delivered shall be free of defects.

The following warranties shall be in effect for the warranty period, except where noted otherwise.

14.1. Year 2000 Compliance

Contractor represents and warrants that the System shall at all times be Year 2000 Compliant, which means that: (a) the licensed software and all Upgrades, Updates, Enhancements and Modifications shall, with normal use, record, store, process, and present all calendar dates prior to, through and after January 1, 2000; (b) all leap years shall be calculated correctly; (c) correct results shall be produced in forward and backward date calculation spanning century boundaries.

14.2. Surreptitious Code.

Contractor represents and warrants that at the time of delivery, the System, including during any maintenance term, is free from: (a) viruses or other program routines designed to erase, corrupt, alter, or otherwise harm files, data or other software programs; and (b) back doors that circumvent the System's security by a hardware or software mechanism which is intentionally hidden by designers of the System, often for the purpose of providing access to service technicians or maintenance programmers. Specifically, Contractor warrants to the City that no copy of the licensed Software provided to Purchaser contains or will contain any "self-help code" nor any Unauthorized Code as defined below. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty." As used in this Contract, "self-help code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program

automatically with the passage of time or under the positive control of a person other than a licensee of the Software. "Self-help code" does not include software routines in a computer program, if any, designed to permit an Owner of the computer program (or other person acting by authority of the Owner) to obtain access to a licensee's computer System(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or Equipment components designed to permit unauthorized access: to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include "self-help code". Contractor will defend City against any Claim, and indemnify City against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

14.3. Services

Contractor represents and warrants that all services shall be provided on a timely basis, with a reasonable standard of care, in a workmanlike and professional manner; and each of the human resources assigned to perform services for City shall be fully qualified, experienced, and technically trained and shall perform the services in a reasonably cost-efficient manner. For security purposes, Contractor shall provide written waivers to permit City to conduct background investigations of any its employees assigned to City projects.

14.4. Compatibility.

Contractor represents and warrants that the System is compatible with City's computing environment, including database software, network, and platforms, as described in this Agreement. Contractor further represents and warrants that each Update, Upgrade, Enhancement and Modification shall be compatible with the licensed software delivered by Contractor and will run in City's operating environment.

14.5. Non-infringement.

Contractor represents and warrants that it owns or has the absolute right to sell, license, or otherwise grant the rights in the System conveyed to City herein, and that neither the System nor any of its components (including any third party products), infringes any U.S. patent, copyrights, or other intellectual property right of, or misappropriates the trade secrets of, any person or entity. Contractor shall defend City and City's officers and directors, agents, and employees, against any claim or legal action (whether or not such claim or action is frivolous) brought by a third party arising out of

a claim of infringement of U.S. patent, copyrights, or other intellectual property rights, or misappropriation of trade secrets, in connection with the Use (copying of any portion of the Software from a storage unit or media into a computer or Server and execution of the software thereon) of the System (including third party software incorporated into the Licensed Software by Contractor and Updates) by City or in connection with the Use of the System.

Contractor shall indemnify and hold harmless such parties against all expenses, liabilities, costs, settlements or judgments, including attorney fees at trial and at appeal, in connection with any such third party claims or actions. City agrees to notify Contractor in writing of such claim or suit promptly after the pleading, demand letter, or other notice is served upon City. Contractor shall have the right to conduct any defense and/or settlement in any such action; provided, however, that Contractor shall not enter into any settlement that obligates City to incur any expense, adversely impacts City's rights under this Agreement or interferes with the operation of City's business without City's prior written consent, and further provided, that City shall have the right to be represented at its own expense by independent counsel of City's own choosing in connection with such claim or suit. City shall, at the expense of Contractor, cooperate with Contractor in defense of such suit; provided, however, that shall not be required to take any action which would require City to disclose attorney - City communications, confidential information, or otherwise contrary to City's best interests.

14.6. Quiet Enjoyment

Contractor warrants and represents that the System is the sole and exclusive property of Contractor or that Contractor is authorized to provide full use of the System to the City as provided herein and that System is not subject to any lien, claim, or encumbrance inconsistent with any of City's rights under this agreement and that City is entitled to, and shall be able to enjoy, quiet possession and use of the System without interruption by Contractor or any person claiming under or through Contractor or by right of paramount title.

14.7. Adequate Resources

Contractor represents and warrants that it has the resources, personnel, expertise and corporate infrastructure available to deliver and support the design, delivery, implementation and maintenance of the System and meet any milestones and/or deadlines imposed by this Agreement, as well as performing the services described herein in accordance with the terms and conditions of this Agreement, except upon the conditions or otherwise specified herein.

14.8. Remedy for Nonconformity

If, during the Warranty Period, the System does not perform in accordance with the warranty, the City shall notify Contractor in writing, specifying in reasonable detail the reason for the claimed breach, as soon as practicable after discovery of the breach. Contractor shall then, at its own expense, replace, or make such corrections to the as are necessary to cure the deficiency. Contractor shall notify City when such corrections have been completed, and the Warranty Period shall be extended for a period of time equal to the interval in which the particular module or component of the System was nonconforming or defective; provided, however, that if such module or component does not cause the System to perform in a manner inconsistent with the warranty in such extension shall apply solely for the particular System module or component effected. If Contractor fails to replace or correct the System to City's reasonable satisfaction within sixty (60) days of notice of the defect, or such longer period of time as the Parties may agree, then City may, at its option, notify contractor that it intends to discontinue use of the Licensed Software and, except for one copy to be used for backup and to transition data from the System, return all copies of the Licensed Software to Contractor. Upon return of the Licensed Software, Contractor shall refund all software license fees paid to Contractor under this Agreement plus an agreed upon percentage of the fees paid for Consulting Services. Contractor agrees that, notwithstanding the above, City may continue to use the single retained copy of the Licensed Software solely for backup and transition purposes, but shall not use such copy in Live Operations, and shall return such copy as soon as practicably reasonable after transitioning the data.

14.9. Remedy for Defective Media

If during the Warranty Period, the material of the media on which the Licensed Software is defective, City shall notify Contractor and Contractor shall promptly replace the media.

City shall not be required to pay any additional fees or expenses other than what has been agreed to in writing, including any maintenance fees, for services during the warranty period.

15. NOTIFICATION OF DEFECTS

During the course of the Project and until the Completion Certificate is signed, Contractor agrees to notify City of all material defects in the Software, whether discovered by other parties or by Contractor, within ten (10) business days of their discovery and fix the problem and if unable to fix the problem, then provide a work around acceptable to City. A defect shall be considered material if it has the

potential to delay or inhibit the primary functionality of the System or if said defect has the potential to corrupt System data.

16. NON-DISCLOSURE

While this Agreement is in effect, those parts of the software and documentation specifically designated by Contractor as proprietary shall be treated as confidential and the City will make every reasonable effort to protect the contents of such software and documentation from unauthorized disclosure by its agents or employees in the same manner as City protects its own confidential software and documentation. The City agrees that it will not sell, disclose, or otherwise make available such software or documentation to third parties, unless City is required to make these documents available for public inspection by order of a court of law.

Contractor shall safeguard City's confidential information with, at a minimum, the same degree of care that it would exercise in protecting its own trade secrets. Confidential information may include financial and accounting information, human resources data, employee files, Contractor information, strategies, policies, forecasts, and all other confidential information disclosed by City to Contractor, or to which Contractor gains access, in the course of performing this agreement, whether through an intentional communication or transmission, or through inadvertent disclosure.

17. TERMINATION

This Agreement shall commence on the Agreement Effective Date and shall remain in effect until terminated in accordance with this Agreement. Unless limited in **Addendum F, Software License Agreement**, the licensing rights granted hereunder shall continue in perpetuity unless terminated in accordance with the aforementioned Addendum.

17.1. Grounds For Termination

City may terminate this agreement upon thirty (30) days notice, provided notice is given in writing and City is not in default of its obligations under this Agreement. In the event that Contractor is in default of a material obligation, which default remains uncured more than thirty (30) days after receipt of written notice of default, City, in addition to any other rights available to it under law or equity, may terminate this Agreement by giving written notice to Contractor. Contractor specifically shall be deemed in default if the System continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, notwithstanding Contractor's remedial or maintenance efforts, over a continuous period of ninety (90) days.

Notwithstanding the foregoing, once City has paid in full the agreed license fee for the Licensed Software and all associated implementation work,

hardware and modifications as stipulated in **Addendum A, Statement of Work**. The licensing rights granted hereunder for the Licensed Software, Update, Upgrades, Enhancements, and Modifications shall not terminate, there is a material breach of City's obligations under the licensing grant or non-disclosure sections of this agreement. Furthermore, Contractor may not terminate any license granted under this Agreement due to nonpayment if City (a) reasonably and in good faith disputes the amount that is due; and (b) pays all amounts that are not reasonably in dispute. If the parties are unable to reach a mutual agreement within ninety (90) days, the dispute shall be referred to mediation prior to any lawsuit being filed.

17.2. Acts Of Insolvency

The City may terminate this Agreement by written notice to Contractor if Contractor become insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

17.3. Bankruptcy Or Failure To Provide Service

In the event Contractor shall cease doing business, shall be declared bankrupt or shall fail to perform its obligations under this Agreement, or if any software supplied to City is no longer protected by the laws respecting proprietary interests, then the license granted under this Agreement shall, at the option of City, terminate upon ten (10) days written notice from City, and all right, title, and interest in System software shall immediately be vested in City, without the payment of any compensation to Contractor. Concurrent with the installation of the System at City, Contractor shall deposit with an escrow agent, as identified in **Addendum G, Software Escrow Agreement**, mutually acceptable to Contractor and City, copies of all software (and its documentation) provided thereunder in source language form. If Contractor shall cease doing business, shall be declared bankrupt, or shall fail to perform its obligations under this Agreement, or if any System software is no longer protected by the laws respecting proprietary interest, upon receipt of written instruction from City, the Escrow Agent shall immediately deliver to City the copies of the software in source language form together with all available related documentation, including the development Specifications, and all right, title and interest therein shall immediately vest in City without the payment of any compensation to Contractor.

18. CHOICE OF LAW

Except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed, interpreted and enforced in accordance

with the laws of the State of Washington without regard to its conflict of laws provisions and not including the United Nations Convention on Contracts for the International Sale of Goods if such convention would otherwise be applicable. Any action or proceeding arising under this Agreement shall be subject to the jurisdiction of the State or Federal Courts for King County, Washington.

19. ENTIRE AGREEMENT

This Agreement and its Addenda or Amendment(s) represent the entire agreement between the parties hereto and a final expression of their agreements with respect to the subject matter of this Agreement and supersedes all prior written agreements, oral agreements, representations, understandings or negotiations with respect to the matters covered by this Agreement. Any changes or modifications to this Agreement must be agreed upon and in writing to be effective.

20. WAIVER

The non-enforcement of any provision of this Agreement, or failure to insist on strict compliance with any of the terms, covenants or conditions hereof, shall not be deemed a waiver of any right granted under this Agreement; nor shall any waiver of any right granted hereunder on one occasion be deemed a waiver at any other time.

No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to or waiver of a breach by the other, whether expressed or implied, shall not constitute consent to, waiver of or excuse for any other, different or subsequent breach.

21. SEVERABILITY

In the event that any clause of this Agreement is found by a court validly asserting jurisdiction to be invalid or otherwise unenforceable, that clause will be considered void to the extent it is contrary to the applicable law, but such a finding shall not affect the validity of any other clause of the Agreement, and the rest of the Agreement shall remain in full force and effect

22. SURVIVAL

The representations and warranties of Contractor made pursuant to this Agreement shall survive the delivery of the System, the payment of the purchase price, and the termination of this Agreement. The rights and obligations of the Parties pursuant to the warranty of title, non-disclosure, ownership of data and enhancements, remedies, choice of law and any other provision of this Agreement to the extent that provision creates an indemnity obligation, or provides for rights or remedies after termination, shall survive the termination of this Agreement. In addition, termination

shall not affect City's rights with respect to software or services for which City has already paid Contractor in full and such rights shall survive termination of this Agreement.

23. DELAYS AND REMEDIES

23.1. Remedies

All remedies shall be cumulative and may be exercised concurrently, or separately, which shall not be deemed to constitute an election of any one remedy to the exclusion of any other. In addition to any other remedy provided for herein, or at law or equity, City shall have the right to recover from Contractor all damages reasonably caused by default of any representation or warranty. Contractor shall not employ any "Self-Help" remedies, including but not limited to back door or drop dead devices, whose function is to disable the System remotely. Contractor's remedy is for monetary damages and does not include return of the Software. This paragraph shall not limit City's right to pursue any other remedy available to it in law, at equity or pursuant to this Agreement.

23.2. Liquidated Damages

Delays In Major Milestones: Contractor will provide City with a written Project Schedule with milestone completion dates highlighted and approved by both parties. Contractor acknowledges and agrees that time is of the essence, and agrees to make every reasonable effort to complete the Project in accordance with the Project Schedule and all applicable schedules. City agrees to perform tasks identified in the Project Plan as City's responsibility in a timely manner. Since City will be damaged if the System is not completed according to the Project Schedule, City shall be entitled to compensation for any failure by Contractor to meet its obligations hereunder in strict accordance with such schedules. For any failure to comply with the Project Schedule not resulting from Force Majeure, City shall be entitled to a refund of one-half of one percent (.50%) of the Contract Price for every forty five (45) days past a milestone Project Schedule deadline, in addition to and not in limitation of any other remedies available to City under this Agreement.

Delays In Final System Acceptance: All time limits stated in the Contract are of the essence. Should, by fault of the Contractor, the project not be completed and accepted within thirty (30) days after the scheduled Final System Acceptance date, unless otherwise agreed upon in writing, it is mutually agreed by and between Contractor and City that:

A delay would seriously affect the public and the operation of City; a reduction in the total proposed cost of \$ _____ per calendar day

for each and every day which exceeds the installation time set forth in the Contract is the nearest measure of damages that can be fixed at this time; therefore, City and Contractor hereby agree to \$ _____ per calendar day as damages for breach of agreement. This paragraph shall not limit the City's right to pursue any other remedy available to it in law, at equity or pursuant to this Agreement.

24. PERFORMANCE BOND

Contractor will provide a performance bond in the amount of \$ _____ to secure Contractor's performance of its obligations under this Agreement within fifteen (15) business days after the Agreement execution. The bond shall be conditioned upon full performance of all obligations imposed upon Contractor by this Agreement, including, without limitation, delivery and installation of necessary Equipment and Software, and warranty service. The bond shall not include first year Contractor Software Maintenance and Support, or Source Code Escrow fees.

The bond must be approved by the City Attorney as to form and sufficiency. If the bond is found by the City Attorney to be flawed, Contractor must correct the flaw within twelve (12) business days of written notification to Contractor that the bond is flawed or the contract shall be terminated. The bond must be executed by a company licensed to do business as a qualified surety in the State of Washington.

The performance bond shall provide that in the event (i) City terminates this Agreement for breach by Contractor pursuant to the TERMINATION Section of this Agreement, City may have recourse to the Surety thereunder, on notice to the surety and Contractor, to pay the reasonable costs, losses or damages which City may sustain by reason of such breach, less amounts that Contractor proves could have reasonably been avoided by City.

Upon completion of the post-production Acceptance Test period pursuant to the ACCEPTANCE Section of this Agreement, City shall unconditionally release the bond by written notice to the Surety and Contractor and the Surety shall be exonerated by such Acceptance. In the absence of such written notice, Contractor shall be entitled to present to the surety written evidence of such completion, signed by City, and the bond shall thereupon be deemed released and the Surety exonerated.

25. DISPUTE RESOLUTION

The parties desire, if possible, to resolve disputes, controversies and claims ("Disputes") arising out of this Agreement without litigation. To that end at the written request of a party, each party shall appoint a knowledgeable, responsible management representative to meet and negotiate in good faith to resolve any Dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The discussions shall be left

to the discretion of the representatives. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any action or proceeding arising under or concerning this Agreement without the concurrence of all parties. Documents identified in or provided with such communications, which are not identified as being prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in any such action or proceeding.

If negotiations do not resolve the Dispute within sixty (60) days, the Dispute shall be submitted to the parties' respective legal departments for further action, and the matter shall be submitted to non-binding mediation by a mediator mutually acceptable to the parties, or in the absence of such agreement, with Judicial Dispute Resolution, LLC. Such mediation shall be conducted pursuant to the rules and procedures of mediation promulgated by the American Arbitration Association.

Each party shall bear its own cost of these dispute resolution procedures. The parties shall equally share the fees of the mediation and the mediator.

26. SALES, USE AND PROPERTY TAX

City shall pay sales and use taxes if imposed by local and or state authorities on software licensed thereunder or services provided by Contractor. Contractor shall pay all other applicable state, local or Federal taxes including, but not limited to, state and local Business and Occupational tax, taxes on Contractor's gross or net income and personal property taxes levied or assessed on personal property to which City does not hold title.

Sales, use, value added or similar taxes imposed upon this Agreement by any level of government, and currently known to Contractor, have been included in the Contract Price. If exempt from such taxes, City shall provide to Contractor written evidence of such exemption. City shall also pay any personal property taxes levied by government agencies based upon City's use or possession of the items acquired or licensed in this Agreement.

27. FORCE MAJEURE/EXCUSABLE DELAY

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from unforeseen circumstances, including but not limited to delay of carriers, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, acts of God, war, riot or insurrection, embargoes, acts of government, civil or military authorities, catastrophe, fire, floods, strikes, shortages of transportation, facilities fuel, energy, labor or material acts of a public enemy, or the actions or omissions of the other party or its officers, directors, employees, agents, contractors or elected officials and/or other similar occurrences

beyond the non-performing party's reasonable control. In the event of such delay, Delivery or performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay, provided that such time shall not exceed forty-five (45) days without City's express written consent. Contractor shall notify City of the occurrence of an event or circumstance described in this provision promptly upon receiving actual notice of such event or circumstance. City will be entitled to rely upon the remedies found within this agreement for any material breach.

28. CONSTRUCTION AND HEADINGS

The division of this Agreement into sections and the use of headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

29. ASSIGNMENT

Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by City without the prior written consent of Contractor, which consent will not be unreasonably withheld. For purposes of this Agreement, it is agreed, but not by way of limitation, that Contractor's withholding of consent is not unreasonable if the proposed assignee is a person, company or other entity which competes with Contractor or directly or indirectly, whether itself or through a parent, subsidiary, or entity which is owned or controlled by a competitor of Contractor. Further, Contractor may require the proposed assignee to execute and agree to be bound by this Agreement. Notwithstanding the above, City may assign this Agreement to another government entity or agency provided that the Software is used at only one physical location in King County, Washington. Until Acceptance of all Deliverables, Contractor shall not assign this Agreement except with the prior written consent of City, which consent shall not be unreasonably withheld or delayed. Thereafter, as long as Contractor is providing Maintenance Support services to City under this Agreement, Contractor shall seek City's prior written consent for such assignment, which shall not be unreasonably withheld or delayed. After Contractor's obligations under this Agreement for Maintenance Support services cease, Contractor may assign this Agreement entirely in its discretion upon the express written assumption of the obligations hereunder by the assignee.

30. NOTICES

All notices required to be given under this Agreement shall be made in writing by (a) first-class mail, postage prepaid, certified, return receipt, (b) by regularly scheduled overnight delivery, (c) by facsimile or e-mail followed immediately by first-class mail, or (d) by personal delivery, to the address set forth herein, or such other address as provided in writing. Such notices shall be deemed given three (3) days after mailing a notice or one (1) day after overnight delivery

Notices sent to:

City of Bellevue
Attention: <name of City Project Manager>
Address line 1
Address line 2

<Contractor name>
Attention: <name of Contractor Project Manager>
Address line 1
Address line 2

31. GENERAL TERMS

This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent to any assignment of this Agreement by either party except as provided in the ASSIGNMENT section of this Agreement.

This Agreement shall not become a binding contract until signed by an authorized officer of both parties, and it is effective as of the date so signed.

This Agreement may be executed in any number of identical counterparts, and each such counterpart shall be deemed a duplicate original thereof.

The provisions contained herein shall not be construed in favor of or against either party because that party or its counsel drafted this Agreement, but shall be construed as if all parties prepared this Agreement.

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders.

A facsimile of this Agreement, its exhibits and amendments, and notices and documents prepared under this Agreement, generated by a facsimile machine (as well as a photocopy thereof) shall be treated as an original.

32. DISCRIMINATION AND COMPLIANCE WITH LAWS

Contractor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

Contractor shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement, including where applicable Bellevue City Code § 4.28.143.

Violation of this section entitled "Discrimination and Compliance with Laws" shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

Contractor shall, at its own expense, promptly replace or regenerate from City's machine-readable supporting material, any data which Contractor has lost or damaged, or obtained at Contractor's own expense a new copy of lost or damaged data from City

Contractor, its agents, employees or subcontractors shall conform in all respects with physical, fire, or other published security regulations while on City's premises.

Contractor certifies that it is in compliance with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health act of 1973 (WISHA), and the standards and regulations issued thereunder and certifies that all items furnished or purchased under this Agreement will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless City from all damages assessed against City as a result of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this Agreement to so comply.

33. PROJECT SCHEDULE

The Project Schedule shall be as specified in the attached, **Addendum A, Statement of Work**. It shall be based upon an agreed upon work breakdown structure listing the various tasks/activities of the Project and identify the party (City, Contractor, or sub contractor) responsible for completion of the activity. Change requests to the Project Schedule shall be made according to a schedule management plan agreed to by both parties prior to the commencement of the project.

34. KEY PERSON(S)

34.1. Assignment of Key Person(s)

Contractor Project Team is essential to the services offered pursuant to this Agreement. Therefore, the parties agree that: Contractor will not transfer or reassign such individual or individuals without the express written agreement of City; and should such individual or individuals no longer be employed during the term of this Agreement by Contractor for

whatever reason, City shall have the right to terminate this Agreement on thirty (30) days' written notice.

34.2. Right Of City To Reject Contractor Employees

City shall have the right to reject any of Contractor's employees whose qualifications or performance in City's good faith and reasonable judgment do not meet the standards established by City as necessary for the performance of the services. Such notice shall be provided in writing to the designated location for receipt of notices. Upon receipt of notice, Contractor shall verify receipt of notice and shall meet with City to discuss the problem; and is then responsible for replacing rejected employees, and should do so within ten (10) business days from date of the meeting unless otherwise agreed upon in writing.

34.3. Key Project Personnel

Contractor agrees to identify in writing the members of the project team for both Contractor and sub-contractors, including Contractor Project Manager at the time of the signing of this Agreement. City shall have the right to approve all members of the project team, and to request removal and replacement with cause of any member for any lawful reason. There shall be a single Contractor Project Manager during the course of the engagement who will meet as mutually agreed during the course of the System implementation and who will be the single point of contact for City with Contractor. The duties of Contractor Project Manager shall include providing status reports, including System implementation tracking, progress, plans and issues. Contractor shall notify City in writing if any member of the project team is to be replaced by Contractor. If there is a delay due to replacement or if additional time or money is needed to train or transition the replacement member, Contractor shall bear all of costs associated with such replacement.

City agrees that the following individual shall be the City Project Manager:

____<name & title>_____, Phone: 425-452-____, E-mail:
_____@ci.bellevue.wa.us

or in his/her absence a representative designated by him/her, will represent City in all matters pertaining to this Agreement, will administer this Agreement for City, and shall have the right to approve various implementation Phases and plans on behalf of City.

Contractor agrees that the following individual shall be the Contractor Project Manager:

____ <name & title> _____, Phone: ____ - ____ - _____, E-mail:

will administer this Agreement for Contractor, and shall have the right to approve various change order requests, schedule changes, and other related project management decisions on behalf of Contractor.

Substitutions by a party of any individuals assigned to the Project shall be subject to approval of the other party; such approval not to be unreasonably withheld or delayed.

Contractor shall designate a Project Manager for this project who shall be a qualified employee of Contractor, knowledgeable in the type of System to be installed at City, and who shall have the management of a successful implementation of the Project as their primary responsibility.

35. PROJECT ADMINISTRATION

The Project Schedule shall include tasks for regularly scheduled discussions between the parties, and provision of regular written status reports by Contractor to City as provided below. Whenever reasonably feasible and necessary, face-to-face meetings shall be scheduled to coincide with other Project events for which the Contractor Project Manager will be onsite. Other meetings may be conducted via conference call. In the event that City requests a face-to-face meeting that requires a special trip to City site for the purpose of such meeting, City shall reimburse Contractor for the Contractor Project Manager's (and other required Contractor attendees) travel expenses; if agreed to in writing prior to such meeting; provided that such meeting is not required as a result of failure of Contractor to meet its obligations to City. In such meetings or conference calls, any issue that may impact Delivery and/or Installation of Deliverables in accordance with all applicable schedules, or shall be discussed, including, but not limited to, the failure of City or Contractor to perform any of its obligations; the estimated length of any delays; any potential changes to the Delivery and Installation resulting from a Project Problem; and the reason underlying such Project Problem and the specific steps taken or proposed to be taken to remedy such error or problem.

On a twice monthly basis (known as the reporting period), the Contractor Project Manager shall provide a written Project status report and open issues log, and shall meet in person or remotely with City's Project Manager to discuss the report and other items or issues. Contractor shall submit, during or prior to the first reporting period, the format of the status report and issues log for City review. Review, changes, if any, and approval by City shall be completed by the end of the second reporting period. Status meetings may be held remotely by conference call unless Contractor Project Manager is scheduled to be onsite to conduct other Project business.

36. PROBLEM NOTIFICATION.

With respect to a given reporting period: in the event Contractor does not inform City of any Project Problem in the regularly provided written status report as set forth below, City shall be entitled to presume that no Project Problem arose during said reporting period.

Contractor will promptly notify the City of any events or circumstances of which Contractor receives actual notice that will affect Contractor's performance of its obligations under this Agreement, and/or Delivery or Installation of any Deliverable, or substantially delay completion of the Project. Such notice to be given within ten (10) business days of Contractor receiving actual knowledge of the event or circumstance and of the potential impact thereof on the Project Schedule under this Agreement. For purposes of this Paragraph, "substantial delay" shall mean a delay of more than fifteen (15) business days.

Unless the City has actual knowledge of the Project Problem, if Contractor fails to make such timely notification to the Client of such a Project Problem, Contractor may not utilize such Project Problem as the basis for justifying a delay in the Project Schedule.

37. INDEPENDENT CONTRACTOR RELATIONSHIP

Contractor and City intend that an independent contractor-employer relationship will be created by their relationship. City is interested only in the results to be achieved, and conduct and control of the work will lie solely with Contractor. Contractor shall not be considered an agent or employee of the City for any purpose, and the employees of Contractor are not entitled to any of the benefits that City provides for its employees. Contractor agrees to indemnify City for any liability for taxes or benefits for Contractor's employees.

38. INDEMNIFICATION

Contractor, its employees, subcontractors, or agents, shall indemnify, hold harmless and defend (including reasonable attorney's fees) City, its officers, employees and agents (hereinafter "Indemnified Party") from and against any and all judgments or awards of damages, claims of and liability to, third parties (other than liability solely and entirely the fault of the Indemnified Party) for personal or property damage arising from or in connection with the acts or in any way resulting from negligent acts, or errors or omissions of Contractor or its officers, employees, subcontractors, or agents in performing the work required by this Agreement.

Contractor's obligation to indemnify, hold harmless and defend any Indemnified Party shall survive the expiration or termination of this Agreement by either party for any reason. Contractor shall conduct the defense in any such third party

action arising as described herein and City shall cooperate fully with such defense. In the event that a judgment, in whole or in part, is entered against any Indemnified Party, Contractor promptly shall satisfy and pay such judgment.

39. AUTHORITY

Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

The parties' acceptance is expressly limited to the terms hereof and no different or additional terms contained in any purchase order, confirmation or other writing shall have any force or effect unless expressly agreed to in writing by the parties.

CITY OF BELLEVUE

Accepted By (Signature)

Accepted By (Signature)

Printed Name

Printed Name

Title: (City Manager)

Title

Date

Date

Accepted By (Signature)

Accepted By (Signature)

Printed Name

Printed Name

Title: (Department Director)

Title

Date

Date

CITY OF BELLEVUE

Accepted By (Signature)

Printed Name

Title: (Chief Information Officer)

Date

Accepted By (Signature)

Printed Name

Title: (Finance Director)

Date

ADDENDUM A
STATEMENT OF WORK

Attached

ADDENDUM B

SUMMARY OF CONTENTS

<u>Addendum Number</u>	<u>Description</u>
Addendum B-1,	Itemized Price list of Contractor Software
Addendum B-2,	Itemized Price List of Interfaces
Addendum B-3,	Itemized Price List and Specifications for Equipment; and Shipping Instructions
Addendum B-4,	Itemized Price List of Third-Party Software Provided by the Contractor
Addendum B-5,	itemized Price List of Third-Party Products and Services Provided by Subcontractors
Addendum B-6,	Itemized List of Contractor Services & Miscellaneous Items
Addendum B-7,	Contract Price Summary and Payment Terms

ADDENDUM B-2

**ITEMIZED PRICE LIST OF
INTERFACES**

Quantity	Model Number	Item	Cost
1	N/A		
1	N/A		
1	N/A		
1	N/A		
		Total Interface Software:	

ADDENDUM B-5

**ITEMIZED PRICE LIST OF
THIRD PARTY PRODUCTS AND SERVICES PROVIDED BY
SUBCONTRACTORS**

Qty	Taxable Y/N	Item Description	Cost
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Total Special Products:

ADDENDUM B-6

**ITEMIZED LIST OF
CONTRACTOR SERVICES & MISCELLANEOUS ITEMS**

Quantity	Model Number	Item	Cost
1	N/A		
1	N/A		
1	N/A		
			Total Training Services:
1	N/A		
1	N/A		
1	N/A		
			Total Project Management Services:
1	N/A		
1	N/A		
1	N/A		
			Total Data Conversion Services:
1	N/A		
1	N/A		
1	N/A		
			Subtotal:
WA State Sales tax (8.8%)			
Total Installation / Implementation Services:			
1	N/A		
1	N/A	City of Bellevue Business License	
1	N/A	City of Bellevue B & O Tax (at 0.001496)	
1	N/A	Washington State B & O Tax (at 0.00471)	
			Total Miscellaneous Items:
Total Contractor Services & Miscellaneous Items:			
1	N/A	One Year Equipment Maintenance & Support	
1	N/A	One Year Software Maintenance & Support	
			Contractor Maintenance & Support:
	N/A		
	N/A		

Quantity	Model Number	Item	Cost
	N/A		
			Total Optional Services:

ADDENDUM B-7

CONTRACT PRICE SUMMARY

Item	Cost
Total Contractor Software (Addendum B-1)	
Total Interfaces (Addendum B-2)	
Total Equipment (Addendum B-3)	
Total Third Party Software (Addendum B-4)	
Total Third Party Products and Services (Addendum B-5)	
Total Contractor Services & Miscellaneous Items (Addendum B-6)	
One Year Maintenance and Support (Addendum B-6)	
Total Optional Services (Addendum B-6)	
CONTRACT TOTAL:	

PAYMENT TERMS

Item	% of Item	Cost
Due upon presentation of purchased Equipment Invoices (Addendum B-3)	N/A	
<hr/>		
Item 1 Name		
Due at Contract Signing	5%	
Due upon Delivery and Installation	30%	
Due at "Go-Live" or Pre-production Acceptance	40%	
Due at post-production Final System Acceptance	25%	
<hr/>		
Item 2 Name		
Due at Contract Signing	5%	
Due upon Delivery and Installation	30%	
Due at "Go-Live" or Pre-production Acceptance	40%	
Due at post-production Final System Acceptance	25%	

Note: If payment is tied to Items (Phases or major Deliverables i.e. software, installation, training) of the Project, amounts for each Phase, major Deliverable or Interface should be displayed as line items in dollars based upon the appropriate percentages. All amounts shown here should represent the complete payment due, including applicable taxes, etc.

CONTRACT TOTAL:

ADDENDUM C

FORM OF ACCEPTANCE TEST PLAN, AND FINAL ATP

Attached

ADDENDUM D
SITE PREPARATION GUIDE / REQUIREMENTS

Attached

ADDENDUM E
SOFTWARE MAINTENANCE AGREEMENT

Attached

ADDENDUM F
SOFTWARE LICENSE AGREEMENT

Attached

ADDENDUM G
SOFTWARE ESCROW AGREEMENT

Attached

ADDENDUM H
EQUIPMENT MAINTENANCE AGREEMENT

Attached

ADDENDUM I

INSURANCE REQUIREMENTS

_____, hereafter referred to as 'Contractor', shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by Contractor. Insurance shall meet or exceed the following unless otherwise approved by City. Questions regarding insurance requirements can be discussed with City's Risk Management Office, 425-452-2011.

A. **Minimum Scope of Insurance**

1. Commercial General Liability Insurance or Comprehensive General Liability Insurance on an occurrence basis, and including Products/Completed Operations, and Personal Injury.
2. Insurance Services Office form number CA 0001 (Ed. 12/93), covering Automobile Liability code 1, "any auto", for activities involving other than incidental personal auto usage.
3. Worker's Compensation coverage as required by law for all employees under this contract who may come within the protection of workers' compensation laws.
4. Employers Liability Insurance (or Washington Stop Gap Liability).
5. Consultant's Errors and Omissions or Professional Liability applying to all professional activities performed under the contract.

B. **Minimum Levels of Insurance**

1. Comprehensive or Commercial General Liability: \$2,000,000 per occurrence and \$5,000,000 aggregate for bodily injury, personal injury and property damage.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Consultant's Errors or Omissions or Professional Liability: \$1,000,000 per occurrence and as an annual aggregate.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. In the event the deductibles or self-insured retentions are not acceptable to City, City reserves the right to negotiate with Contractor for changes in coverage deductibles or self-insured retentions; or alternatively, require Contractor to provide evidence of other security guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General or Commercial Liability and Automobile Liability Coverages
 - a. City, its officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officials, employees, or volunteers.
 - b. Contractor's insurance shall be primary insurance as respects City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees, or volunteers.
 - d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall state that coverage shall not be canceled by either party except after thirty (30) days prior written notice has been given to City.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers with a current minimum Bests' rating of A-:VII

F. **Verification of Coverage mike-correct formatting of this paragraph in your copy**

Contractor shall furnish City with certificates of insurance affecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and shall name City as an "additional insured" except for coverages identified in A.5. above. The certificates are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. **Subcontractors**

Contractor shall include all subcontractors as insureds under its policies **or** shall require subcontractors to provide their own coverage.