



**CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSAL**

RFP NO. 48-2015

Go Boulder Mobile Survey Application

ISSUE DATE: June 18, 2015

DUE DATE: 2:00 PM, Monday, July 6, 2015

CONTACT:

Chris Hagelin, Senior Transportation Planner

hagelinc@bouldercolorado.gov

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**CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSAL
RFP NO. 48-2015
CONSULTING/PROFESSIONALS SERVICES
GO Boulder Mobile Survey Application**

Issued: June 18, 2015

The City of Boulder is seeking one or more consultants to develop a mobile application that will serve as a third method for collecting survey data.

In accordance with the specifications of the RFP, sealed proposals will be received in the office of the purchasing coordinator until 2:00 P.M. Mountain Time, July 6, 2015. Late proposals will not be considered.

A copy of the Request for Proposal (RFP) may be obtained from the Rocky Mountain E-Purchasing (Bidnet) web site at:

www.rockymountainbidsystem.com

Sealed proposals shall be plainly marked 'RFP No. 48-2015, GO Boulder Mobile Survey Application, 2:00 P.M., July 6, 2015. Proposals can be mailed to:

David Bannon
City of Boulder – Purchasing Division
P.O. Box 791
Boulder, Colorado 80306-0791

Hand delivered proposals or those not delivered by the USPS must be delivered to the Purchasing Division, 1777 Broadway, Boulder, Colorado 80302. Proposals shall be prepared at the bidder's expense and becomes a city record and therefore a public record. Please provide 3 hard copies and one electronic copy of the proposal with your submission.

The services upon which proposals are submitted shall equal or exceed the specifications outlined in the RFP. Preference is hereby given to labor, materials, supplies or provisions produced, manufactured or grown in Colorado, quality and price being equal to articles or services offered by competitors outside the State of Colorado. The lowest responsible and best proposal shall be accepted; provided, however, that the city, acting through its duly authorized representatives, shall have the right to reject any and all proposals and waive any informality or irregularity contained in said proposal.

City of Boulder, Colorado
A Municipal Corporation
By: _____
City Clerk

PART I: General RFP Information

BACKGROUND, PROJECT SCOPE, AND PROPOSAL CONTENT

GO Boulder

GO Boulder is the Transportation Division's planning group for the City of Boulder. Its mission is to create sustainable transportation systems for all modes to enhance the quality of life valued by residents, businesses, employees and visitors. GO Boulder's work plan is guided by the city's Transportation Master Plan (TMP) and commitment to environmental, social and economic sustainability. To evaluate our progress towards meeting the city's transportation and sustainability goals, the TMP includes nine measurable objectives. The data for some of these objectives are gathered through two primary surveys that are reported in the city's Modal Shift Report and the Boulder Valley Employee Surveys.

GO Boulder: www.goboulder.net

Boulder's Transportation Master Plan: <https://bouldercolorado.gov/transportation/tmp>

Travel Behavior Surveys

For over two decades, GO Boulder has been systematically collecting survey data on the travel habits of Boulder residents and employees as part of the Transportation Metric Program. The Modal Shift Report's data is derived from a "travel diary" survey of Boulder residents. Approximately 5,000 random households are selected to participate in the survey will over 1,000 completing the survey. The Boulder Valley Employee Survey selects approximately 275 local employers to participate with typically over 1500 completed surveys by their employees. Currently travel behavior and demographic data is collected through a combination of paper and online surveys. It is the desire of GO Boulder to offer a new option for collecting the same data through a smart phone application.

Boulder's Transportation Metrics Program and Survey Reports:

<https://bouldercolorado.gov/transportation/transportation-use-measurements>

Project Summary

GO Boulder would like to develop a mobile application that will serve as a third method for collecting this survey data. It is very important that the mobile application mirrors our historical data collection process so that we can still uncover meaningful trends in the data. At the end of both the Modal Shift Report and the Boulder Valley Employee Survey are the survey instruments and specific questions used to collect data that will need to be replicated in the mobile application in terms of both the demographic and travel behavior data. This application will have to be available on both iOS and Android. The application will also provide a method to export the data in a format that meets survey analyst's needs.

GO Boulder believes that this application will be used by a subset of the randomly selected households and that only these survey respondents will use the first release of the application. As the application functionality expands in the future, we expect to see wider adoption. The first release of this app must be completed by mid-September 2015.

Short-term Goals & Requirements

GO Boulder has immediate needs that can be solved with a mobile application, and we also have larger aspirations. For the first release of the mobile app, we need to duplicate the daily travel diary instrument of the Modal Shift Report and current data collection process. The mobile application will provide a modern alternative option to the existing methods of data collection, although current methods will continue to be used. In 2017, a similar version of the mobile application will be used for the Boulder Valley Employee Survey.

Long-term Goals & Requirements

Below is a list of additional uses for the mobile application that our team has considered, but we are interested in your feedback. The city will ultimately select a partner that can provide suggestions and creativity for the evolution of our product.

- Use the application to collect data on other transportation initiatives and events (e.g., Winter Bike to Work Day and Walk and Bike Month's annual Bike to Work Day),
- Use the mobile application to educate and engage citizens before and after capital projects, such as the construction of a new multi-use path or underpass.
- Encourage users to increase their use of alternative transportation methods, and
- Collect more in-depth data on how Boulder residents and employees travel.

Project Details & Requirements

Application Requirements

General

- Application must be usable on Android and Apple devices. For specific details on this, please reference the Operating System Support, under Web Hosting, Interface, and Management, below.
- Application must be available for download on Google Play and Apple's App Store.
- Application should be intuitive and easy to use. City of Boulder welcomes your ideas about how to achieve this.

Features and Functionality

- Survey collection must insure data integrity and continuity with both past survey data and other forms of survey collection.
- Vendor will work with the City of Boulder and the National Research Center (NRC) to ensure data collection practices conform to survey needs.
- All data must be exportable in a format that meets NRC requirements to conduct analysis.
- Application must enable users to complete the basic demographic survey. All questions represented in the paper and web versions of the survey must be included.

- Data Export
- We must be able to export the data gathered for survey analysis. Data must be exportable into a format that can be then imported into SPSS (e.g, CSV, Excel).
- The Modal Shift Report's Travel Diary
- For the initial pilot study, only 24 consecutive hours of GPS data are needed per participant. Vendor will pose a solution for collecting this data. Purpose of GPS data collection is to understand trips a person takes, the mode(s) used to take those trips (e.g., bus, walk, car), the origin and destination, distance traveled, travel time, and travel purpose.
- Any GPS data collection in the background must strike a balance between detail in data collection, app performance, minimizing data transfer costs of the user, and minimizing impact on device battery life.

Web Hosting, Interface and Management

- Application Hosting
 - Hosting of the backend application (database, data exporting) will be decided via conversations with the City of Boulder and the Vendor. Cloud-based hosting is an option for this application.
- Database Concerns
 - MySQL database is preferred due to City of Boulder IT familiarity. Other databases officially supported by the city IT department are Oracle and MSSQL.
- Operating System Support
 - Survey Application should support as wide an array of users as possible.
 - Android users with operating systems of 4.0.3 and higher should be supported if possible (this represents ~95% of the Android population (<https://developer.android.com/about/dashboards/index.html>)).
 - Apple users with iOS 8 or above should be supported (~84 %), and iOS 7 should be supported if feasible (<https://developer.apple.com/support/appstore/>).
 - Any web-based administrative or data-exporting interface should support modern browsers including Internet Explorer 10 and up.

Government Specific Requirements

Americans with Disabilities Act / Section 508 Compliance

- City of Boulder encourages the Vendor to craft a solution that adheres as best as possible to the guidelines set forth by ADA.
- For details, please refer to the ADA Section 508 Website at <http://www.ada.gov/508>

Security / Data Privacy

- In general, the application should adhere to City of Boulder's privacy policy, found here: <https://bouldercolorado.gov/privacy-policy>
- Personally Identifiable Information (PII) data collected by the app must be securely transmitted and stored.

We will make our decision based on the responses to the topics listed below:

Project Proposal

1. Summarize your understanding of the project.
2. Describe a few risks that you see surrounding this project and what your team would do to minimize those risks.
3. Provide your recommended timeline for this project, and define the different steps or stages that your team will go through in the overall development process.
4. Provide a budget for the project based on your timeline and understanding of our technical needs.
5. Provide an outline and clarification for how the mobile app will be distributed.
6. Describe your approach and interaction with clients.
 - Communication
 - Requirements Definition
 - Estimation
 - Tracking & Reporting
 - Staffing Model and Decisions
7. Explain how your team will support GO Boulder after the initial project.
 - Future Features
 - Bugs & Defects
 - Response Times
 - Hosting & Monitoring
8. Please highlight two of your relevant past projects.
9. Completion of City of Boulder Form 1 (Acceptance of Terms and Conditions) and City of Boulder Form 2 (Fee Schedule and Cost Proposal and Bid Form

Thank you very much for your consideration and your interest in the GO Boulder mobile project. We look forward to reviewing your responses.

PROCUREMENT SCHEDULE

TENTATIVE SELECTION SCHEDULE

RFP issued June 18, 2015
Bids Due..... 2:00pm, July 6, 2015
RFP Award July 8, 2015
Contract Completion.....TBD

PROJECT CONTACT INFORMATION

Upon release of this RFP, all consultant communications concerning the overall RFP should be directed to the RFP Coordinator listed below. Unauthorized contact regarding this RFP with other city employees may result in disqualification. Any oral communications will be considered unofficial and non-binding on the city. Consultants should rely only on written statements issued by the RFP Coordinator.

Name: Project Manager
Chris Hagelin
Address: City of Boulder
Go Boulder – City of Boulder Transportation
PO Box 791
Boulder, Colorado 80306
E-mail: hagelinc@bouldercolorado.gov

PROPOSAL MATERIALS (ENVIRONMENTAL PURCHASING POLICY)

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever applicable (if sheets are printed on both sides, it is considered to be two pages). Color is acceptable, but content should not be lost by black-and-white printing or copying.

FORM 1: ACCEPTANCE OF TERMS AND CONDITIONS

Use this form to indicate exceptions that your firm takes to any terms and conditions listed in the contract boilerplates attached to this RFP, as well as the RFP itself. Proposals which take exception to the specifications, terms, or conditions of this RFP or offer substitutions shall explicitly state the exception(s), reasons(s) therefore, and language substitute(s) (if any) in this section of the proposal response. Failure to take exception(s) shall mean that the proposer accepts the conditions, terms, and specifications of the RFP.

If your proposal uses a cloud based solution, both the Software Procurement Agreement AND the Hosted Services Agreement will need to be reviewed and agreed to for proposal submission.

If your proposal does not utilize cloud storage, then the Software Procurement Agreement only applies and needs to be reviewed and agreed to for proposal submission.

If your firm takes no exception to the specifications, terms, and conditions of this RFP, please indicate so.

List exceptions here:

Signed,

By: _____

Title

Date

For: _____

FORM 2: FEE SCHEDULE AND COST PROPOSAL or BID FORM

RFP PROPOSAL FORM

RFP NO: 48-2015
RFP DUE: 2:00 pm, Monday, July 6, 2015
PROJECT: GO Boulder Mobile Survey Application
OWNER: City of Boulder (hereinafter "the owner")

PROPOSAL SUBMITTED BY: _____
(hereinafter "the bidder") Consultant (PRINT)

_____ Address

_____ Contact

_____ Telephone # _____ Date

PART 1: TERMS AND CONDITIONS

All bids shall be submitted on this form. All bid prices offered for items listed on this page shall be firm bids for equipment furnished complete in compliance with the specifications which are a part of this bid document.

The undersigned Bidder does hereby declare and stipulate that this bid is made in good faith without collusion or connection to any person or persons bidding for the same work, and that it is made in pursuance of, and subject to, all terms and conditions of the Instructions to Bidders, the Specifications and Drawings, and all other Bidding Documents, all of which have been examined by the undersigned.

The City of Boulder reserves the right to make the award on the basis of the bid deemed most favorable, to waive any formalities or technicalities and to reject any or all bids. It is further agreed that this bid may not be withdrawn for a period of sixty (60) calendar days after closing time.

RECEIPT OF ADDENDA: the undersigned Bidder acknowledges receipt of the following Addenda to the Advertisement to Bid, Specifications, Drawings and other Contract Documents.

Addendum No. _____ Dated: _____ By: _____

Addendum No. _____ Dated: _____ By: _____

Attest:

Authorized Signature

Title

Appendices

SOFTWARE PROCUREMENT AGREEMENT

between

CITY OF BOULDER

and

[CONTRACTOR]

Dated _____, 20__

SOFTWARE PROCUREMENT AGREEMENT

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SOFTWARE PROCUREMENT AGREEMENT

This Software Procurement Agreement (this “Agreement”) is made as of this ____ day of _____, 20__, (the “Effective Date”) by and between _____, a __ (STATE OF INCORPORATION) __ (FORM OF ENTITY) __ (“Contractor”), and the City of Boulder, Colorado, a Colorado home rule municipality (the “City”). The City and Contractor may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

- A. The City wishes to obtain software for use by the City in its _____ operations. Contractor is in the business of providing, installing, implementing and supporting such software.
- B. In accordance with the City’s purchasing ordinance, the City has selected Contractor to provide, install, implement and Support the software (the “Project”).

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

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DEFINITIONS

1. Definitions. As used in this Agreement, the following words and phrases shall have the meaning given in this Section. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Section or the attached Statement of Work shall be given their common and ordinary meaning.

- (a) “**Acceptance Date**” means the date on which the Software is accepted by the City, as indicated by execution of the Certificate of Completion.
- (b) “**Acceptance Tests**” means the tests identified by the City to be performed to determine whether the Software meets the Acceptance Test Specifications set forth in the Statement of Work.
- (c) “**Acceptance Tests Specifications**” means the Specifications set forth in the Statement of Work for determining whether the Software performs properly.
- (d) “**Backup**” means copy and store software, electronic files, databases or disk images as a routine task with intent to restore functionality in case of equipment failure or other catastrophe that may interfere with business continuity.
- (e) “**Certificate of Completion**” means a written certificate in substantially the form attached to the Statement of Work as Exhibit 8, signed by authorized representatives of the City and Contractor, stating that (1) the Software has been completely delivered, assembled, installed, and tested at the Site in accordance with this Agreement, (2) as so assembled and installed, the Software meets the Acceptance Tests, and (3) the Software conforms in all material respects to the Specifications.
- (f) “**City Data**” means any data or information of the City that is provided to or obtained by Contractor in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products, consumer markets,

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assets, and finances of the City. City Data also shall mean any data or information created, generated, collected or processed by Contractor in the performance of its obligations under this Agreement, including Software configuration data, data processing input and output, Service Level measurements, asset information, third party service and product agreements, contract charges, and retained and pass-through expenses.

- (g) **“Confidential Information”** shall have the meaning ascribed to it in Section 22 of this Agreement.
- (h) **“Contractor Records”** shall have the meaning ascribed to it in Section 20 of this Agreement.
- (i) **“Corrections”** means modifications to the Software or Documentation intended to address Defects.
- (j) **“Defect”** means any failure of the Software to operate in material conformity with the Specifications.
- (k) **“Documentation”** means user guides, operating manuals, education materials, product descriptions and Specifications, technical manuals, supporting materials, and other information relating to the Software or used in conjunction with the Services, whether distributed in print, magnetic, electronic, or video format, in effect as of the date (1) the Software is accepted by the City, or (2) the Service is provided to the City.
- (l) **“General Terms”** means Sections 1 – 41 of this Agreement.
- (m) **“Improvements”** means all upgrades, modifications, enhancements, extensions, and other changes to the Licensed Software developed by Contractor.
- (n) **“Intellectual Property Rights”** means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, “rental” rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).
- (o) **“Laws”** means all federal, state and local laws, statutes, regulations, rules, executive orders, government directives, government circulars, or binding pronouncements of or by any government (including any department or agency thereof) having jurisdictional authority over a Party.
- (p) **“Licensed Software”** means computer code and programs, in executable code form only, including related data files, rules, parameters and Documentation, which have been created or licensed by Contractor outside the scope of this Agreement. Licensed Software includes computer code and programs identified in the Statement of Work as licensed (or sublicensed) to the City by Contractor in connection with this Agreement, and/or those provided to the City by Contractor in the future under any circumstances, unless provided under a separate licensing agreement.
- (q) **“Losses”** shall mean all damages and claims (including taxes), obligations, demands, assessments, fines and

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penalties (whether civil or criminal), liabilities, bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

- (r) **“Maintenance”** means the provision of new Versions, Releases, and Patches related to the Licensed Software.
- (s) **“Malicious Code”** shall mean (a) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of the software, code, program, or sub-program, itself; (b) any code, program or sub-program that permits any unauthorized person to circumvent the normal security of the software or the system containing the code; or (c) any code, program or sub-program that permits the unauthorized collection of information.
- (t) **“Module”** means a single element of the Licensed Software that provides specific features and functions and may be sold separately from the Licensed Software.
- (u) **“Open Source Software”** means Third-Party Software that is available in source code form for which the source code and certain other rights normally reserved for copyright holders are provided under a software license that permits users to run, copy, study, change, improve and at times also to distribute the software.
- (v) **“Operating Environment”** means the architecture, operating systems, application set and configuration of devices and the network defined in the Specifications on which the Software is

installed and which the Software requires to function properly.

- (w) **“Patch”** means any code, configuration, data or process change made by Contractor (or a third party in the case of Third-Party Products) to permanently fix or temporarily bypass an immediate issue with performance, usability, or security or critical business need.
- (x) **“Products”** means all Software and Documentation provided to Customer by or on behalf of Contractor.
- (y) **“Project Manager”** means the person authorized by a Party to shall act for that Party on all matters related to this Agreement.
- (z) **“Release”** means any Software code component, update, Patch, set of revisions, or bug/permanent fix or temporary bypass solution issued by Contractor or a third party to its customers generally during the term of this Agreement, which provides enhancements and/or error Corrections to the then-current Version or Release. New Releases shall be denoted by an increase to the Version number to the right of the decimal point such as from Release 1.1 to Release 1.2.
- (aa) **“Reseller”** means an entity granted the right to purchase software, code or equipment from its owner and resell it.
- (bb) **“Service Availability”** means the ability of Software to provide full functionality during expected times of operations with reasonable Software Performance to the estimated number of Users established in the Specifications.
- (cc) **“Services”** means any and all consulting services, systems integration services, data conversion services, education services, interface development, development services, Support services, Maintenance services and related services for the City included in the Statement of Work.

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- (dd) **“Site”** means the address of the physical location where the Software is to be installed.
- (ee) **“Site Support Requirements”** means the criteria and schedule for preparation of the Site for the Software, as set forth in the Statement of Work.
- (ff) **“Software”** means the Licensed Software, Open Source Software, and Third-Party Software.
- (gg) **“Software Configuration”** means the setting of parameters to make the Software function according to the Specifications.
- (hh) **“Software Performance”** means the accuracy, completeness and efficiency (in terms of resource use and elapsed time) by which the Software completes work, service or function under a reasonable workload.
- (ii) **“Source Code”** means the Licensed Software written in programming languages, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object code for operation on computer equipment through assembly or compiling, and accompanied by Documentation, including flow charts, schematics, statements of principles of operations, and architecture standards, describing the data flows, data structures, and control logic of the Licensed Software in sufficient detail to enable a trained programmer through study of such Documentation to maintain and/or modify the Licensed Software without undue experimentation.
- (jj) **“Specifications”** means the minimal technical requirements and/or standards with respect to the Software and Services, as provided in the Statement of Work, which are to be provided by the Contractor to Support the Software or Services.
- (kk) **“Subcontractor”** shall have the meaning ascribed to it in Section 10 of this Agreement.
- (ll) **“Subcontracted Services”** shall have the meaning ascribed to it in Section 10 of this Agreement.
- (mm) **“Support”** means the ongoing telephone, on-site, email, web-based and dial-in communications and problem resolution to assist the City in the use of the Software and other Services and Products of Contractor as set out in the Statement of Work.
- (nn) **“Third-Party Products”** means the Software and Documentation provided to Contractor by third parties, listed in the Statement of Work, together with all user manuals and other documents accompanying the delivery of the Third-Party Products, provided that the Third-Party Products shall not include software developed by Contractor.
- (oo) **“Third-Party Software”** means software owned by neither the City nor Contractor.
- (pp) **“Updates”** means changes to the Licensed Software necessary to enable the Licensed Software to operate under new Versions or Releases of the Licensed Software’s then-current operating system(s).
- (qq) **“Version”** means a Release of the Licensed Software providing a particular functionality and/or features. A new Version of the Licensed Software will provide new/additional functionality and/or Improvements to a previous Version. New Versions shall be denoted by a change to the Version number to the left of the decimal point such as from Version 1.0 to Version 2.0.
- (rr) **“Warranty Period”** means a period of time commencing on the Acceptance

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Date and continuing for one (1) year after the Acceptance Date

- (ss) **“Work Product”** means anything created, developed or prepared, documented and/or delivered by Contractor specifically for the City under the terms and conditions of this Agreement, including all associated Intellectual Property Rights.

STATEMENT OF WORK; CHANGE ORDERS; PROJECT MANAGERS

2. Statement of Work. This Agreement consists of the terms found in the General Terms, along with Schedule A, “Statement of Work,” and any exhibits to the Statement of Work, all of which are attached hereto and incorporated herein by this reference. During the term hereof and subject to the terms and conditions contained herein, Contractor agrees to provide the Products and Services described in the Statement of Work. The Statement of Work also includes Acceptance Test Specifications; the basis of compensation and payment schedule; the estimated length of time required to complete the Services and the installation of the Products, including the estimated start/finish dates; Maintenance and Support Documentation; Software implementation guides; Software Specifications; and other relevant information, including any modification of the General Terms.

3. Change Orders and Extra Work

- (a) **Change Orders.** By providing written notice to the Contractor’s Project Manager, the City may request that Contractor perform additional work related to the Project and Contractor agrees to perform such work, consistent with the terms and conditions of this Agreement. If a change causes an increase or decrease in the price or time required for performance as mutually determined by the Project Managers, a negotiated adjustment shall be made in

the price and/or performance schedule and reflected in an amendment to the Statement of Work. Changes outside the general scope of the Project shall be governed by Section 3(b), below.

- (b) **Extra Work.** By providing written notice to the Contractor’s Project Manager, the City may request that Contractor perform extra work that is not directly related to the Project, so long as the cost of such extra work is estimated to be less than Fifty Thousand Dollars (\$50,000). At its option, Contractor may submit, at no charge to the City, a written proposal for such additional work, including a price/cost proposal, expenses related to travel, lodging and meals, a delivery schedule, and any other information reasonably related to such request. Within a reasonable time period requested by Contractor, the City shall accept or reject such proposal. If Contractor chooses not to provide a proposal in response to the City’s request, Contractor shall promptly notify the City. Any extra work agreed upon by the Parties shall be described in an addendum to the Statement of Work, which shall also include the agreed upon price. All other terms and conditions of this Agreement shall be applicable thereto.

- 4. Project Managers.** In the Statement of Work, each Party shall designate one of its employees to be its Project Manager. Each Party shall notify the other in writing of any replacement of a Project Manager. The Project Managers shall meet as often as either one requests to review the status of the Statement of Work.

- 5. Discrepancies.** If anything necessary for the clear understanding of the Project has been omitted from the Specifications or it appears that various instructions are in conflict, Contractor shall secure written instructions from the City’s Project Manager before proceeding with the

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portion of the Project affected by such omissions or discrepancies.

- 6. Resources.** Except as otherwise expressly provided in Statement of Work, Contractor shall be responsible for providing the facilities, personnel, equipment, communications capabilities, Software and other resources necessary to provide the Products and Services.

SOFTWARE; RIGHTS IN WORK PRODUCT; AND THIRD PARTY PRODUCTS

7. Licensed Software

- (a) Grant of License.** Contractor hereby grants to the City a non-exclusive and non-transferable right and license, subject to this Agreement, to install and/or use the Licensed Software, in the manner and for the term stated in the Statement of Work. The City shall not make any copies of the Licensed Software except as necessary for the installation permitted hereby and except for copies of each Module licensed hereunder for training and testing purposes and for Backup purposes. The City may make two (2) archival copies of the Licensed Software, plus as many copies of both the client and server components of the Licensed Software as are necessary and proper under the normal back-up procedures which are utilized by the City. Any License granted under this Agreement permits the City to concurrently (1) use the Licensed Software in a production environment as described in the Request for Proposal and perform disaster recovery, disaster testing, and Backup as the City deems necessary; (2) use the Licensed Software in a test environment, as well as in a separate staging and training environment; and (3) use, copy and modify Documentation for the purpose of creating and using training materials relating to the Project and the Licensed

Software. Access to and use of the Project and the Licensed Software by independent contractors of the City shall be considered authorized use under this Section.

- (b) File Transfer Interfaces.** Contractor shall provide to the City a complete set of the standard file transfer interfaces and database formats for the Licensed Software, and the City shall have a license to use such materials for purposes of developing interfaces to other City database and computer systems, as well as to any third-party software that may be licensed by the City.
- (c) Software Configuration.** Contractor shall provide to the City a complete set of Software Configuration data files and Documentation explaining each configuration and the business requirement met by such configuration.
- (d) Documentation.** Contractor shall provide to the City a complete set of Documentation and keep it updated.
- (e) Modifications to Licensed Software.** Contractor shall modify the Licensed Software at the request of the City at no charge if, upon the determination of the City, these modifications provide reasonable efficiencies to the City.
- (f) Maintenance of Licensed Software.**
- (1) During the Term of this Agreement, Contractor may develop new Patches, Releases and/or new Versions of the Licensed Software. Provided that the City continues to subscribe for Maintenance and Support in respect of a particular Licensed Software product, Contractor shall provide to Customer, either in physical form by mail or courier or in electronic form via the Internet, new Releases and Versions (and appropriate Documentation) for such Licensed

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Software on a when and if available basis.

- (2) Contractor shall provide new Patches, Releases and/or Version of the Licensed Software to meet reasonable requests of the City to resolve inefficiencies or limitations of the Licensed Software or to improve or enhance existing features and function of the Licensed Software in a timely fashion.
- (3) Contractor shall track and monitor all Maintenance and Support requests from the City and respond to the request in a timely fashion as described in the Statement of Work.
- (4) Contractor must provide the City the following notices within the timelines defined below:
 - (i) three (3) years in advance of terminating support for the License Software;
 - (ii) one (1) year in advance of requiring the City to install a new Version or Release;
 - (iii) three (3) months in advance of requiring the City to install a new Patch;
 - (iv) three (3) months in advance of requiring the City to modify Software in the Operating Environment;
 - (v) immediately of any Software requirement changes, including changes to Third-Party Software and/or the operating system;
 - (vi) immediately of changes to Documentation;
 - (vii) immediately of known security threats.
- (5) The City may terminate and suspend all Support and Maintenance for the Licensed

Software without cause and without penalty upon thirty (30) days prior written notice to Contractor, or as otherwise described in the Statement of Work. Contractor may terminate and suspend performance of all Maintenance and Support as described in the Statement of Work.

- (g) Ownership of Licensed Software and Modifications.** The Licensed Software shall be and remain the property of Contractor or third parties which have granted Contractor the right to license the Licensed Software and the City shall have no rights or interests therein except as set forth in this Agreement. Notwithstanding the foregoing, the City shall own all system configuration files and Contractor shall maintain versions of Software Configuration files, provide Documentation for Software Configuration settings and restore previous versions of Software Configuration as requested by the City.
- (h) Modification.** The City shall be entitled to modify the Licensed Software, either with or without Contractor, and to develop software derivative of or interfacing with the Licensed Software. All modifications and software derivative of the Licensed Software developed by the City shall be and remain the property of the City, and Contractor shall have no rights or interests therein.
- (i) Proprietary Markings.** The City shall not remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed Software.
- (j) Duplication of Documentation.** The City may duplicate the Documentation at no additional charge for the City's use so long as all required proprietary markings are retained on all duplicated copies. The City may distribute the

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Documentation, with proprietary markings retained, on-line to City employees, contractors, and the Colorado Government Association of Information Technology members.

(k) Provision of Source Code. The City's ability to utilize adequately the Software will be seriously jeopardized if Contractor fails to maintain or Support such Licensed Software unless complete Source Code for the Licensed Software and related Documentation is made available to the City for the City's use in satisfying the City's Maintenance and Support requirements. Therefore, Contractor agrees that if an "Event of Default" (described below) occurs, then Contractor shall promptly provide to the City one copy of the most current Version of the Source Code for the affected Licensed Software and associated Documentation in accordance with the following:

(1) An Event of Default shall be deemed to have occurred if Contractor: (1) ceases to market or make available Maintenance or Support Services for the Licensed Software during a period in which the City is entitled to receive or to purchase, or is receiving or purchasing, such Maintenance and Support and Contractor has not promptly cured such failure despite the City's demand that Contractor make available or perform such Maintenance and Support, (2) becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings, (3) ceases business operations generally or (4) has transferred all or substantially all of its assets or obligations set forth in this Agreement to a third party which has not assumed all of the

obligations of Contractor set forth in this Agreement.

- (2) Within seven (7) days of making or distributing any change in any component of the Licensed Software, Contractor shall update and supplement the Source Code as necessary with all Corrections, Improvements, Updates, Releases, or other changes developed for the Licensed Software and Documentation. The Source Code shall be in a form suitable for reproduction and use by computer and photocopy equipment, and shall consist of a full source language statement of the program or programs comprising the Licensed Software and complete program Maintenance Documentation which comprise the pre-coding detail design Specifications, and all other material necessary to allow a reasonably skilled programmer or analyst to maintain and enhance the Licensed Software without the assistance of Contractor or reference to any other materials.
- (3) The governing license for the Licensed Software includes the right to use Source Code received under this Section as necessary to modify, maintain, and update the Licensed Software.
- (4) Upon request by the City, Contractor shall deposit in escrow with an escrow agent acceptable to the City and pursuant to a mutually acceptable escrow agreement supplemental to this Agreement, a copy of the Source Code which corresponds to the most current Version of the Licensed Software in use by the City. Contractor shall pay all fees of the escrow agent for services provided. If Contractor currently maintains or enters into an

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escrow agreement for the Source Code for the Licensed Software for the benefit of other customers of Contractor, then Contractor shall provide to the City a current copy of such escrow agreement within ten (10) days of the City's request and if such existing escrow agreement is acceptable to the City, Contractor shall include the City as a third-party beneficiary of such escrow agreement at no charge to the City. In such case, the existing escrow agreement shall be considered a supplemental agreement to this Agreement. If such existing escrow agreement is not acceptable to the City, and the City and Contractor elect not to enter into a separate escrow agreement, the City and Contractor shall enter into an amendment to such existing escrow agreement which provides mutually acceptable terms and conditions; at a minimum, such terms and conditions shall allow the City to conduct an audit of, or shall require that the escrow agent conduct an audit of the copy of Source Code in escrow to ensure that such copy meets the requirements established in this Section. Contractor's entry into, or failure to enter into, an agreement with an escrow agent or to deposit the described materials in escrow shall not relieve Contractor of its obligations to the City described in this Section.

- (5) If, as a result of an Event of Default, Contractor fails to provide required Support Services, then any periodic license fee which the City is required to pay under this Agreement for the Licensed Software shall be reduced to reflect such lack of Support Services. At such time as Contractor commences offering the Support Services described in this

Agreement for the Licensed Software, the City may obtain such Support Services as provided for elsewhere in this Agreement.

- (l) **Rights in Bankruptcy.** Contractor acknowledges that the grant of license is made, and the Agreement is entered into, in contemplation of the applicability of §365(n) of the U.S. Bankruptcy Code

8. Third-Party Software, Products and Services.

(a) Purchase and Sale; Delivery.

- (1) Contractor hereby agrees to sell to the City, and the City hereby agrees to purchase from Contractor, any Third-Party Products listed in the Statement of Work in the volumes and at the prices described therein.
- (2) The City acknowledges that any Third-Party Products supplied by Contractor hereunder may be supplied by Contractor as a Reseller thereof and that the Third-Party Products are subject to the Intellectual Property Rights of the various third-party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark, and patent rights.
- (3) Contractor shall not use Third-Party Software in creating the Products without first: (i) providing the City with a copy of the license terms and conditions applicable to the Third-Party Software program Contractor intends to use; and (ii) explicitly identifying and explaining the function and integration of the Third-Party Software in the Statement of Work.
- (4) Contractor shall notify the City at least ninety (90) days in advance of any planned changes to the Third-Party Software, Product or Service

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that is integrate or used by the Work Product.

(b) Support for Third-Party Products.

Contractor Support for all Third-Party Software is described in the Statement of Work.

(c) Additional Third-Party Products.

With the advice and consent of Contractor, the City may purchase third-party products for use with the Services,, in addition to those listed in the Statement of Work.

SERVICES

9. Performance of Services.

(a) Services Included.

As part of the Project, Contractor shall provide the Services included in the Statement of Work, including but not limited to data conversion, education, the development and installation of Software interfaces, development, Maintenance, and Support.

(b) Collateral Services.

If any collateral services, functions or responsibilities not specifically described in the Statement of Work or an attachment thereto are an inherent, necessary or customary part of the Services or are required for proper performance or provision of the Services in accordance with the Agreement, they shall be deemed to be included within the scope of the Services to be delivered for the base charges, as if such services, functions or responsibilities were specifically described in the Agreement.

(c) Performance.

Contractor shall perform the Services necessary to complete the Project in a timely and professional manner consistent with (i) the Specifications set forth in the Statement of Work; (ii) City security policies (available online at <http://www.bouldercolorado.gov/it/security-policy/connected-partner> and <http://www.bouldercolorado.gov/it/security-policy/admin-guide>); and (iii) in accordance with industry standards. Contractor agrees to exercise the highest degree of professionalism and to utilize its expertise and creative talents in completing the Services.

(d) Delays.

Contractor agrees to notify the City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the Project contemplated by this Agreement and more fully described the Statement of Work. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

10. Staff.

Contractor is an independent contractor and neither Contractor nor Contractor's staff is, or shall be deemed to be employed by the City. The City is hereby contracting with Contractor for the Services described in the Statement of Work and Contractor reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by Contractor or Contractor's staff, and the City shall not be required to hire, supervise or pay any assistants to help Contractor perform the Services under this Agreement. Except to the extent that Contractor's work must be performed on or with the City's computers or the City's existing software, all materials used in providing the Services shall be provided by Contractor.

11. Subcontracted Services.

Contractor shall be permitted to subcontract the performance of certain Services to a third party (each a "Subcontractor"), provided, that: (1) Contractor gives prior written notice to the City of the Subcontractor and the detailed nature and scope of the Services to be subcontracted; (2) the City consents in writing to the subcontracting of

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such Services to such Subcontractor; and (3) Contractor complies with the terms and conditions set forth below. Contractor shall remain responsible to the City in accordance with this Agreement for the Services performed by any Subcontractor (the "Subcontracted Services") to the same extent as if the Subcontracted Services were performed by Contractor's employees, and any completion schedules, Specifications, and security requirements applicable to Subcontracted Services shall continue to apply notwithstanding any such subcontracting. Contractor shall be solely responsible for all payments to any Subcontractor. Under no circumstances (including, without limitation, Contractor's failure to make timely and full payments to a Subcontractor) shall the City be liable to any Subcontractor for payment of any amounts. Contractor shall indemnify, defend and hold harmless the City from and against any loss, expense, obligation or liability incurred by the City arising out of claims made by any Subcontractor related to its performance of the Subcontracted Services or any matters related thereto. Contractor shall not permit any Subcontractor to perform any Services for the City or its affiliates unless and until Contractor has entered into a subcontract with such Subcontractor containing provisions at least as favourable to the City as those in this Agreement. Contractor shall use commercially reasonable efforts to obtain from Subcontractor and provide to the City any information concerning the Subcontractor reasonably requested by the City, including information regarding the Subcontractor's financial condition and ability to perform the Subcontracted Services.

ACCEPTANCE TESTING; INSPECTION; DEFECTS

12. Acceptance Testing.

Following installation of the Software by Contractor at the Site, Contractor shall conduct the Acceptance Tests in order to

confirm that the Software, as installed at the Site, satisfies the Acceptance Test Specifications in all material respects. Contractor shall give the City notice of its intent to conduct the Acceptance Tests at least ten (10) days before such tests are scheduled to commence, and shall permit City personnel of the City's choosing to observe the Acceptance Tests and verify the results thereof. If, in the sole discretion of the City, the Software does not meet the requirements of the Acceptance Test Specifications, the City may (1) permit Contractor to repair or replace the Software so that the same meets the Acceptance Test Specifications in all material respects, all at no additional expense to the City, or (2) return the Software to Contractor, at Contractor's expense and without liability to the City, and any amounts paid by the City for the Software shall be promptly refunded by Contractor to the City. Upon satisfactory completion of the Acceptance Tests, Contractor and the City shall execute a Certificate of Completion.

13. Acceptance. The City shall be deemed to have accepted the Software only upon the City's execution and delivery of the Certificate of Completion. Acceptance of the Software does not waive any warranty or other rights provided in this Agreement for the Software or Services.

14. Inspection. Payment for any part or parts of the Software provided hereunder, or inspection or testing thereof by the City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. The City may inspect the components of the Software when delivered and reject upon notification to Contractor any and all portions of the Software that do not conform to the Specifications or other requirements of this Agreement. Components of the Software that are rejected shall be promptly corrected, repaired, or replaced by Contractor in accordance with Contractor's warranty obligations under Section 23, to

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ensure that the Software conforms to the Specifications and the other requirements of this Agreement. If the City receives components of the Software with Defects or non-conformities not reasonably apparent on inspection, then the City shall have the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations under Section 23 following the discovery of such Defect or nonconformity.

- 15. Notification of Defects.** Upon becoming aware of any Defects in the Software or the Documentation, Contractor shall promptly notify the City of such Defects that cause the Software or Documentation to deviate from the Specifications. Contractor shall promptly provide Corrections to the City. Contractor shall also provide to the City all operational and Support assistance necessary to cause the Software to perform in accordance with its Specifications and remedial Support designed to provide a by-pass or temporary fix to a Defect.

CITY OBLIGATIONS

- 16. City Obligations.** The City shall provide Contractor or its designated representative, within requirements of City security policies, appropriate access to City personnel, systems and information, in a timely manner upon reasonable advanced notice by the Contractor, required for Contractor to perform its obligations hereunder. The City shall provide to Contractor performing its obligations hereunder at the City's premises, without charge, a reasonable work environment in compliance with all applicable Laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services.

- 17. Site Support Requirements.** Except as expressly set forth in this Agreement, Contractor shall not assume or plan that

any significant level of resources from the City shall be dedicated to any of the activities to be performed under this Agreement. The City, at its expense, agrees to prepare the Site in accordance with the applicable Site Support Requirements. Contractor agrees to provide to the City, at no additional charge, reasonable consultation and assistance regarding Site planning and preparation as may be necessary to enable the City to prepare the Site as specified in the Site Support Requirements. An authorized Contractor site preparation engineer shall review and approve the Site prior to delivery and installation of the Software at the Site, in order to confirm that the Site has been prepared by the City in accordance with the Site Support Requirements. If Contractor's site preparation engineer finds that the Site has not been so prepared, Contractor shall notify the City in writing in what respects the Site fails to conform to the Site Support Requirements. The City shall promptly correct such non-conformity. Contractor shall be responsible for all costs and expenses attributable to alterations or modifications to the Site necessitated by incomplete or erroneous Site Support Requirements or advice provided to the City by Contractor, unless such advice was reasonable and appropriate at the time it was given.

PAYMENTS TO CONTRACTOR

- 18. Invoices and Payment.**

(a) Software. Unless otherwise provided in the Statement of Work, the City shall pay Contractor for the Software the amounts agreed to in the Statement of Work within thirty (30) days following the acceptance by the City of the work called for in the Statement of Work. Acceptance procedures shall be outlined in the Statement of Work. If the City disputes all or any portion of an invoice for charges, then the City shall pay the undisputed portion of the

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invoice by the due date and shall notify Contractor of the disputed portion of the invoice. The City shall notify Contractor as soon as possible of the specific amount disputed and shall provide reasonable detail as to the basis for the dispute. The Parties shall then attempt to resolve the disputed portion of such invoice as soon as possible. Upon resolution of the disputed portion, the City shall pay to Contractor the resolved amount.

(b) Services. The City shall contract for Maintenance and Support Services for the Software as described in the Statement of Work. Contractor shall, during all periods for which the City has contracted for Maintenance and Support Service, provide Support to the City as described in the Statement of Work.

- (1) City payment for Maintenance and Support Services shall be paid in quarterly installments.
- (2) Annual increases for Maintenance and Support Services shall be capped at 3 percent unless otherwise provided in the Statement of Work.

(c) Disputes. The City may withhold payment of fees and charges that the City disputes in good faith. If the City in good faith disputes any fees and charges under this Agreement, the City shall notify Contractor of such disputed amount and the basis for the City's dispute together with any appropriate information supporting the City's position. If the City withholds any disputed fees and charges, the City shall pay the undisputed portion of such fees and charges when due, and the City shall notify Contractor of the basis for the City's dispute prior to the date on which such disputed amount would otherwise be due. The Parties shall then attempt to resolve the disputed

portion of such invoice as soon as possible. Upon resolution of the disputed portion, the City shall pay to Contractor the resolved amount.

Neither the failure to dispute any fees or charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right the City may otherwise have to dispute any fee or charge or amount or recover any amount previously paid.

19. Taxes. The City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be included in quoted prices. The City shall not be obligated to pay or reimburse Contractor for any taxes attributable to the sale of any Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Contractor. Upon written notification by the City and subsequent verification by Contractor, Contractor shall reimburse or credit, as applicable, the City in a timely manner, for any and all taxes erroneously paid by the City. The City shall provide Contractor with, and Contractor shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

20. Out of Pocket Expenses. Contractor shall be reimbursed only for expenses that are expressly provided for in a Statement of Work or which have been approved in advance in writing by the City, provided Contractor has furnished such documentation for authorized expenses as the City may reasonably request.

21. Audits. Contractor shall maintain, and shall cause its Subcontractors to maintain, complete and accurate records of and supporting documentation for all transactions, financial and non-financial, that result from or are created in connection with Contractor's performance

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of its material financial and operational obligations under this Agreement (“Contractor Records”). With respect to the amounts chargeable to and payments made by the City under this Agreement, Contractor Records shall be kept in accordance with generally accepted accounting principles applied on a consistent basis. Contractor shall, and shall cause its Subcontractors to, provide to the City (and internal and external auditors, inspectors, regulators and other representatives that the City may designate from time to time) access at reasonable hours to Contractor personnel, to the facilities at or from which Services are then being provided and to Contractor Records and other pertinent information, all to the extent relevant to the Services and Contractor’s obligation under this Agreement. Such access shall be provided for the purpose of performing audits and inspections of the City and its businesses, to (1) verify the accuracy and completeness of Contractor’s invoices, (2) examine the systems that process, store, support and transmit that data, (3) examine the controls (e.g., organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery and back-up practices and procedures; (4) examine Contractor’s performance of the Services; (5) verify Contractor’s reported performance; (6) examine Contractor’s measurement, monitoring and management tools; and (7) enable the City to meet applicable legal, regulatory and contractual requirements. Contractor shall provide any assistance reasonably requested by the City or its designee in conducting any such audit.

TERM AND TERMINATION

22. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall continue unless (i) the annual charge for the purchased

Services is equal to or greater than \$50,000 or (ii) this Agreement is terminated as provided in this Section.

(a) Convenience. The City may, without cause and without penalty, terminate the provision of Services under the Statement of Work upon thirty (30) days prior written notice. Upon such termination, the City shall, upon receipt of an invoice from Contractor, pay Contractor for Services actually rendered prior to the effective date of such termination. Charges shall be based on time expended for all incomplete tasks as listed in the applicable Statement of Work, and all completed tasks shall be charged as indicated in the Statement of Work.

(b) Material Breach. If either Party materially defaults in the performance of any term of this Agreement, the Statement of Work or a specific addendum to the Statement of Work (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement, including the Statement of Work and any addenda thereto, by providing ten (10) days prior written notice of termination to the defaulting Party.

(c) Bankruptcy or Insolvency. Either Party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other Party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency Laws; or

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(4) files a petition seeking relief or reorganization under any bankruptcy or insolvency Laws is filed against that other Party and is not dismissed within sixty (60) days after it was filed.

(d) Return of Property. In the event this Agreement is terminated, then within a timeframe agreed upon by the Parties

(1) The City shall:

- (i) Return to Contractor all physical copies of Products delivered by Contractor to the City that are in the City's possession or control, not owned by the City;
- (ii) If expressly permitted by Contractor, destroy all physical copies of the Products not owned by the City or returned to Contractor and delete all such electronic copies of the Products from its systems and certify in writing to Contractor that such actions have all been completed; and
- (iii) Return to Contractor all of Contractor's property, including any Confidential Information that the City may have in its possession or control.

(2) Contractor shall:

- (i) Return to the City the City Data in Contractor's possession or control, in an Oracle standard database export format, along with all documentation describing the data table structure and data table relationship. If the City wishes to receive data in any other format, the City shall be responsible for the additional time and materials required to accommodate this request. All special requests shall be scoped by Contractor and an initial estimate shall be provided to the City. Within

three (3) days of written receipt from City for City Data, Contractor shall provide written notice that all City Data in the possession of Contractor has been deleted;

- (ii) If expressly permitted by the City, destroy all physical copies of the City Data and delete all electronic copies of the Products from its systems and certify in writing to the City that such actions have all been completed;
- (iii) Destroy all access and information to internal City networks;
- (iv) Return all Documentation and information of City systems and business processes;
- (v) Vacate all City premises, and
- (vi) Return to the City all of the City's property, including any Confidential Information that Contractor may have in its possession or control.

CONFIDENTIAL INFORMATION

23. CONFIDENTIAL INFORMATION

(a) Obligations.

- (1) Records maintained by the City are subject to public disclosure pursuant to the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.* ("CORA"). Certain confidential business and other records are exempt under CORA or do not meet the definition of public records. If Contractor provides to the City documents that include trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, including social security numbers, or if the City provides documents to Contractor that it considers

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confidential or otherwise not subject to disclosure under CORA ("Confidential Information"), the Party disclosing Confidential Information (the "Discloser") shall segregate any documents including Confidential Information from other documents provided to the Party receiving Confidential Information (the "Recipient") and shall clearly identify such documents with a stamp, watermark or other clear mark identifying the documents as Confidential Information.

- (2) Subject to the provisions and exceptions set forth in CORA, the Recipient (i) shall use such Confidential Information only in order to fulfill its obligations under this Agreement (the "Purpose"); (ii) shall reproduce such Confidential Information only to the extent necessary for the Purpose; (iii) shall restrict disclosure of such Confidential Information to its and its affiliates' employees and agents who need to know such Confidential Information to carry out the Purpose and who are not direct competitors of the Discloser and shall require such employees and agents to undertake confidentiality and use obligations at least as restrictive as those Recipient assumes herein; (iv) shall not disclose such Confidential Information to any other party without prior written approval of the Discloser; and (v) shall protect such Confidential Information with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, which shall be no less than reasonable care. If Recipient discloses Confidential Information to an employee, affiliate, or other person in accordance with the terms of this Agreement, any

subsequent disclosure or use of such Confidential Information by such employee, affiliate, or other person shall be deemed a disclosure or use by Recipient and Recipient shall be responsible for such disclosure or use.

- (3) The restrictions on use and disclosure of Confidential Information shall not apply unless such Confidential Information, when in tangible, electronic or viewable form, is marked confidential or proprietary by Discloser, or when disclosed only orally is both identified as confidential or proprietary at the time of disclosure and summarized in a writing so marked and provided to Recipient within thirty (30) days following the oral disclosure; except that (i) any unmarked material and any verbally disclosed information that Recipient knows or reasonably should know to contain Confidential Information of the Discloser and all written or oral pricing and contract proposals exchanged between the Parties shall be subject to the use and disclosure restrictions of this Agreement. Within the 30-day period referenced above, all Confidential Information communicated only orally shall be subject to the use and disclosure restrictions of this Agreement.
- (4) Each Party shall ensure that its employees, agents, representatives, and independent contractors are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section. Further, each Party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the

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ownership of any part of such Confidential Information by the other Party. A Party shall undertake to immediately notify the other Party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement.

- (5) Notwithstanding the foregoing, nothing in this Agreement shall restrict either Party with respect to information or data identical or similar to that contained in the Confidential Information of the other Party, but which (1) that Party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that Party; (3) is subsequently furnished rightfully to that Party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law; provided that the disclosing Party shall exercise reasonable efforts to notify the other Party prior to disclosure.
- (6) Contractor shall notify the City if Contractor: (i) permits any person to review or gives to any person any document, photograph, tangible thing, or Products referred to in this Agreement if such person has not been authorized by the City in writing to review or receive such document, photograph, tangible thing, or Products; or (ii) receives a request for inspection, a request for production, a subpoena, a court summons, or a court order relating to any document, photograph, tangible thing, or Products referred to in this Agreement.

(b) Know-How. Notwithstanding anything to the contrary herein, each Party and its respective personnel and contractors shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information of the other Party.

(c) Remedies. Each of the Parties agrees that if either of them, their officers, employees or anyone obtaining access to the Confidential Information of the other Party by, through or under them, breaches any provision of this Section, the non-breaching Party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching Party, its officers or employees directly or indirectly realize or may realize as a result of or arising out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section, the Parties agree that the non-breaching Party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching Party arising from a violation of this Section would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the Parties agree that the non-breaching Party shall be entitled to temporary and permanent injunctive relief against the breaching Party, its officers or employees and such other rights and remedies to which the non-breaching Party may be entitled to at law, in equity or under this Agreement for any violation of this Section. The provisions

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of this Section shall survive the expiration or termination of this Agreement for any reason.

REPRESENTATIONS WARRANTIES; INDEMNITIES AND IMMUNITIES

24. Representations and Warranties.

(a) **Authority.** Contractor represents and warrants that: (1) Contractor has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (2) the execution of this Agreement by Contractor, and the performance by Contractor of its obligations and duties hereunder, do not and will not violate any agreement to which Contractor is a party or by which it is otherwise bound under any applicable law, rule or regulation; (3) when executed and delivered by Contractor, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; (4) neither Contractor nor any director, employee or agent of Contractor or its Subcontractors or contractors shall, without prior written notification thereof to City, enter into any business relationship with any employee or agent of City unless such person is acting for and on behalf of City; and (5) Contractor acknowledges that the City makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement

(b) **Product Warranties.** Contractor represents and warrants that:

- (1) The City shall be entitled to use the Software without disturbance;
- (2) No portion of the Software contains, at the time of delivery, any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," or other computer software routines

or hardware components designed to (1) permit access or use of either the Software or City's computer systems by Contractor or a third party not authorized by this Agreement, (2) disable, damage or erase the Software or data, or (3) perform any other such actions;

- (3) The Software and the design thereof shall not contain preprogrammed preventative routines or similar devices which prevent the City from exercising the rights set forth in this Agreement or from utilizing the Software for the purposes for which it was designed;
- (4) The Software shall, during the Warranty Period, function properly under ordinary use and operate in conformance with the Specifications;
- (5) Based on Contractor's studies of City's existing systems which are to be replaced by the Software, and the demonstrations, conversations, correspondence, and the Request for Proposal documents, Contractor has gained a good understanding of City's requirements. Based on this in-depth understanding and combining it with Contractor's knowledge and experience with other municipal organizations, Contractor warrants that the proposed Software has been sized to meet the City's current needs and accommodate growth in the near future;
- (6) The Software does not infringe on any intellectual property rights of any third party;

(c) **Warranty Service.** During the Warranty Period, Contractor shall provide warranty Service to the City at no additional cost and shall include all Services or replacement products or product media necessary to enable

GENERAL TERMS

Contractor to comply with the warranties set forth in this Agreement. Contractor shall pass through to the City any manufacturers' warranties which Contractor receives on Third-Party Software and, at the City's request, Contractor shall enforce such warranties on the City's behalf.

- (d) **Third-Party Products.** Contractor warrants that it has the right to deliver the Third-Party Products, if any, subject to any Documentation accompanying such Third-Party Products at the time of delivery and/or any licensing mechanisms, physical, electronic or otherwise, included in any Third-Party Products that are Software.
- (e) **Performance Warranty.** Contractor warrants that its employees and contractors shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.
- (f) **Personnel.** Unless a specific number of employees are set forth in the Statement of Work, Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement or as set forth in the Statement of Work. During the course of performance of Services, the City may, for any or no reason, request replacement of an employee or a proposed employee. In such event, Contractor shall, within five (5) working days of receipt of such request from the City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies.
- (g) **Compensation and Benefits.** Contractor shall provide for and pay the

compensation of employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. The City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold the City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

- (h) **Malicious Code.** Contractor represents and warrants that it shall take commercially reasonable actions and precautions to prevent the introduction and proliferation of any Malicious Code into Contractor's information technology environment or any system used by Contractor to provide the Software. Without limiting Contractor's other obligations under this Agreement, Contractor covenants that, in the event any Malicious Code is found in the Software, (a) if such Malicious Code originated in the Software or other resources provided by Contractor under this Agreement, Contractor shall remove such Malicious Code at its expense and indemnify the City for all Losses incurred by the City as a result of such Malicious Code, and (b) in any case (wherever such Malicious Code originated), Contractor shall exercise commercially reasonable efforts at no additional charge to eliminate, and reduce the effects of, the Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, to mitigate such Losses and restore such data with generally accepted data restoration techniques.

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25. Indemnification.

(a) Contractor Indemnification.

Contractor shall indemnify, defend and hold harmless the City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the "City Indemnitees") from and against all Losses suffered or incurred by a City Indemnitee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by Contractor or its representatives in the performance of Contractor's obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of Contractor contained in this Agreement.

(b) Infringement.

Contractor shall indemnify, defend, and hold the City harmless from all Losses arising from any third-party claims that any Products or Services supplied by Contractor infringes or misappropriates any Intellectual Property Rights of any third party; provided, however, that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on: (1) use of the Products in combination with products or services not provided by Contractor to the extent that such infringement or misappropriation would have been avoided if such other products or services had not been used; (2) any modification or enhancement to the Products made by the City or anyone other than Contractor or its Subcontractors; or (3) use of the Products other than as permitted under this Agreement.

(c) Indemnification Procedures.

Notwithstanding anything else contained in this Agreement, no obligation to indemnify which is set forth in this Section shall apply unless

the City notifies Contractor as soon as practicable to avoid any prejudice in the claim, suit or proceeding of any matters in respect of which the indemnity may apply and of which the City has knowledge. The City shall have the right to participate in any legal proceedings to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys. No settlement or compromise of an asserted third-party claim other than the payment/money may be made without the prior written consent of the City.

(d) Immunity.

The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to the City, its officers, or its employees.

INSURANCE REQUIREMENTS

26. Insurance.

(a) Limits: The Contractor shall procure and maintain in force during the term of this Agreement, at its own cost, the following minimum coverages:

- (1) Workers' Compensation and Employers' Liability:
 - State of Colorado: Statutory
- (2) General Liability:
 - (i) General Aggregate Limit: \$2,000,000
 - (ii) Each Occurrence Limit: \$1,000,000
- (3) Automobile Liability:

GENERAL TERMS

Bodily Injury & Property Damage
Combined Single Limit:¹
\$1,000,000

(4) Third Party Fidelity Including
Employee Dishonesty While on City
Premises:

Each Loss: \$1,000,000

(5) Technology Services Errors and
Omissions, Technology Products,
Network Security Liability and
Privacy Liability.

(i) Per Loss \$3,000,000

(ii) Aggregate \$3,000,000

(b) Coverage. Insurance required by this Agreement shall:

- (1) Be primary coverage;
- (2) Include the City its officials and employees as additional insureds as their interest may appear (except for Worker’s Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability;
- (3) Include a waiver of subrogation for General Liability coverage.
- (4) Be issued from a company licensed to do business in Colorado having an AM Best rating of at least A-VI; and
- (5) Be procured and maintained in full force and effect for duration of work.

(c) Certificates. Certificates of Insurance shall be forwarded to the City’s Purchasing department.

(d) Cancellation. Within seven days after receiving insurer’s notice of

cancellation or reduction in coverage, Contractor, or its insurance broker, shall notify the City. In either such case, Contractor shall promptly obtain and submit proof of substitute insurance complying with the City’s insurance requirements.

MISCELLANEOUS PROVISIONS

27. TABOR. The Parties understand and acknowledge that each Party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City’s current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

28. Relationship of Parties. Contractor is acting only as an independent contractor and does not undertake, by this Agreement, any Statement of Work or otherwise, to perform any obligation of the City, whether regulatory or contractual, or to assume any responsibility for the City’s business or operations. Neither Party shall act or represent itself, directly or by implication, as an agent of the other, except as expressly authorized in a Statement of Work.

¹ Applicable only if Contractor, its agents, employees, or representatives will be using motor vehicles in Colorado while performing the Services.

GENERAL TERMS

- 29. Complete Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to the matters covered herein.
- 30. Time of Performance.** Time is expressly made of the essence with respect to each and every term and provision of this Agreement.
- 31. Applicable Law.** Contractor shall comply with all applicable Laws in performing the Services, but shall be held harmless for violation of any governmental procurement regulation to which it may be subject but to which reference is not made in the Statement of Work. This Agreement shall be construed in accordance with the Laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Boulder County, Colorado and each Party consents to jurisdiction and venue before such courts.
- 32. Scope of Agreement.** If the scope of any provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.
- 33. Notices.** Any notice provided pursuant to this Agreement shall be in writing to the Parties at the addresses set forth in the Statement of Work and shall be deemed given (1) if by hand delivery, upon receipt thereof, (2) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested or (3) one (1) day after deposit with a nationally-recognized overnight courier, specifying overnight priority delivery. Either Party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other Party.
- 34. Assignment.** This Agreement may not be assigned by Contractor without the prior written consent of the City. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.
- 35. Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any person or entity not a party to this Agreement.
- 36. Headings.** The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth on the first page of this Agreement are incorporated into the body of this Agreement. The exhibits referred to throughout this Agreement and any Statement of Work prepared in conformance with this Agreement are incorporated into this Agreement.
- 37. Waiver.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.
- 38. Media Releases.** Except for any announcement intended solely for internal distribution by Contractor or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Contractor, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Contractor or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of the City, shall be coordinated

GENERAL TERMS

with and approved in writing by the City, at the City's sole discretion, prior to the release thereof. Contractor shall not represent directly or indirectly that any Services provided by Contractor to the City has been approved or endorsed by the City or include the name, trade mark, or symbol of the City on a list of Contractor's customers without the City's express written consent.

39. No Requirements Contract. Nothing in the Agreement shall be construed as a requirements contract, and notwithstanding anything to the contrary contained herein, this Agreement shall not be interpreted to prevent the City from obtaining from third parties, or providing to itself, any or all of the Services described in the Statement of Work or any other services.

40. Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties. Neither the course of conduct between the parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.

41. Survival. Any and all provisions of this Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement

SCHEDULE A - STATEMENT OF WORK

1. GENERAL

This Statement of Work (“SOW”) is referenced in and incorporated into to the Software Procurement Agreement between [legal name of Contractor], a [state of incorporation] [corporate form, such as corporation, limited liability company, partnership] (“Contractor”), and the City of Boulder, a Colorado home rule municipality (the “City”), dated _____ (the “Agreement”).

2. SUMMARY OF PURPOSE

The purpose of the Agreement is to define the terms and conditions pursuant to which Contractor will provide, install, implement and Support the Software (the “Project”). This Statement of Work supplements the General Terms of the Agreement.

3. NAMES OF PROJECT COORDINATORS

Contractor’s Project Manager: _____

The City’s Project Manager: _____

4. NOTICES

Any notice provided pursuant to this Agreement shall be in writing to the Parties at the following addresses:

If to Contractor:

*
*
*

If to the City:

*
*
*

5. DEFINITIONS

[NOTE: use the first sentence if there are additional words defined in the SOW. If there are no additional definitions, strike both this NOTE and the first sentence.] As used in this Statement of Work, the following words and phrases shall have the meaning given in this Section. Words not defined in this Section shall be given the meaning assigned to them in the General Terms, or if undefined in the General Terms, their common and ordinary meaning. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive.

A. [Applicable?]

B. [Applicable?]

6. LOCATION OF WORK FACILITIES

[Insert Contractor's location]

The City shall provide City office space and support as it agrees may be appropriate, at its facility located at 1777 Broadway, Boulder, Colorado.

7. AUTHORIZED SUBCONTRACTORS, IF ANY

[Applicable?]

8. ADDITIONAL SECURITY MEASURES, IF ANY

[Applicable?]

9. CITY OBLIGATIONS

A. Equipment. The City shall provide computers for city staff to access the Software.

B. Site Support Requirements.

[Anything Else?]

10. SOFTWARE

A. Licensed Software. Contractor shall provide the Licensed Software listed on **Exhibit 1**, attached hereto.

B. Third-Party Software. Contractor shall provide the Third-Party Software listed on **Exhibit 2**, attached hereto and incorporated herein by this reference. Open Source Software shall be identified as such on Exhibit 3. Exhibit 3 also includes an explanation of the function and integration of the Third-Party Software.

C. Licenses. Licenses for the Third-Party Software is attached hereto as **Exhibit 3**.

11. THIRD-PARTY PRODUCTS

Contractor shall provide the Third-Party Products listed on **Exhibit 4**, attached hereto and incorporated herein by this reference. The City may purchase additional third-party products for use with the Software upon consultation with and the agreement of Contractor.

12. SPECIFICATIONS

A. Software. Software Specifications are attached hereto as **Exhibit 5** and incorporated herein by this reference.

B. Services. Services Specifications are attached hereto as **Exhibit 6** and incorporated herein by this reference.

13. MAINTENANCE SERVICES

- A. Maintenance of Software.
 - i. Licensed Software. [Include here anything beyond what is required in Section 6 of the Agreement.]
 - ii. Third-Party Software. [Include here anything beyond what is required in Section 7 of the Agreement.]
- B. Post-installation Review of Work Product. At no cost to the City, Contractor, at the request of the City, shall review the Work Product, City needs, and identify possible additional enhancements, integrations, or other application Module considerations that will allow the City to optimize the performance and return on its investment.

14. SUPPORT SERVICES

- A. Consulting. [Insert details, if applicable, or say "Not applicable."]
- B. Software Integration. [Insert details, if applicable, or say "Not applicable."]
- C. Data Conversion. [Insert details, if applicable, or say "Not applicable."]
- D. Education. [Insert details, if applicable, or say "Not applicable."] Contractor shall schedule online training with the City two-weeks in advanced of actual training. Contractor shall assign product trainers who will work with City staff on developing agenda for full training on _____ Software. Training will be ___ hours and conducted via City WebEx and may be recorded by the City for use by the City.
- E. Interface Development. [Insert details, if applicable, or say "Not applicable."]
- F. Development. [Insert details, if applicable, or say "Not applicable."]
- G. Third-Party Products. [Insert details, if applicable, or say "Not applicable."]
- H. Project Management
 - i. Contractor shall provide project management and installation services which will include the following tasks in order
 - ii. _____
 - iii. _____
 - iv. _____
 - v. _____

- I. Tracking System. Contractor shall maintain a tracking system in which the City may enter all service requests with date and time of request and correspondence and remediation of issues and/or requests.
- J. Other Related Services.
- K. Term and Termination of Support Services. Contractor shall provide Support Services for the Licensed Software for a period of not less than five (5) years from the expiration of the Warranty Period. The City may discontinue such Support Services at any time by providing thirty (30) days' advance written notice to Contractor. If such Support Services were provided by Contractor for an open-ended term, the City shall promptly receive a refund of pre-paid Support Charges which reflects the amount for discontinued Support Services after the effective date of the notice.

15. AMENDMENTS TO THE GENERAL TERMS OR OTHER SPECIAL TERMS, IF ANY

16. PAYMENT TERMS AND CONDITIONS; OUT OF POCKET EXPENSES; METHOD OF PAYMENT

- A. Payment Terms and Conditions. The City shall pay Contractor the price listed for each of the items listed in the Price Chart, attached hereto as **Exhibit 7** and incorporated herein by this reference. The City shall pay Contractor for the work in accordance with the Payment Schedule. All payments to Contractor are contingent on Contractor's satisfying the Deliverables/Milestones set forth in the Payment Schedule. Payment for all custom design work will be due upon the City's completion of the Functional Acceptance Documentation.
- B. Out of Pocket Expenses. Contractor's charge for the Services includes all out-of-pocket expenses, with the exception of travel expenses. Travel arrangements will be made by Contractor, but only City pre-approved travel expenses will be reimbursed.
- C. Method of Payment. The City shall pay by check payable to Contractor, except in those instances where the City and Contractor mutually agree that payment will be by credit card.

17. PAYMENT SCHEDULE [Insert deal points re: payment.]

18. SCHEDULE AND PERFORMANCE MILESTONES

This schedule sets forth the target dates and performance milestones for the preparation and delivery of the Deliverables by Contractor.

Performance Milestone	Responsible Party	Target date

19. ACCEPTANCE TESTS, ACCEPTANCE TEST SPECIFICATIONS AND ACCEPTANCE TESTING PROCEDURES

20. MAINTENANCE AND SUPPORT DOCUMENTATION

A. Maintenance

B. Support

- i. Contractor shall provide online Documentation for the Work Product at https://na1.salesforce.com/sfc/p/300000000cWxSJa_RgJiOld_uU3LbXA.1fgQpC4= and Work Product Support pursuant to the SLA.
- ii.

EXHIBIT 1
Licensed Software

*

EXHIBIT 2

Third-Party Software

[Identify Open Source Software. Include an explanation of the function and integration of the Third-Party Software into the System.]

*

EXHIBIT 3

Licenses for Third-Party Software

[Applicable?]

*

EXHIBIT 4
Third-Party Products
[Applicable?]

*

EXHIBIT 5
Software Specifications

*

EXHIBIT 6
Services Specifications

*

EXHIBIT 7
Price Chart

Pricing: Item	Up-Front Cost	Monthly Cost
Open Platform Suite*	\$	\$
Shipping	\$	\$
Tax	\$	\$
Grand Total	\$	\$
Professional Service	Per hour cost	\$

EXHIBIT 8
Certificate of Completion

The Parties hereby agree that:

1. The System has been completely delivered, assembled, installed, and tested at the Site in accordance with this Agreement;
2. As so assembled and installed, the System meets the Acceptance Tests;
and
3. The System conforms in all material respects to the Specifications.

DATED THIS ___ day of _____, 20__.

CONTRACTOR:

CITY OF BOULDER:

Contractor's Project Manager

City's Project Manager

HOSTED SERVICES AGREEMENT

between

CITY OF BOULDER

and

[CONTRACTOR]

Dated _____, 20__

HOSTED SERVICES AGREEMENT

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HOSTED SERVICES AGREEMENT

This Hosted Services Agreement (this "Agreement") is made as of this ___ day of _____ 20___, (the "Effective Date") by and between [insert Contractor's legal name], a [insert state of incorporation] [insert corporate form, such as corporation, LLC, partnership] ("Contractor"), and the City of Boulder, a Colorado home rule municipality (the "City"). Contractor and the City may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

- A. The City desires that Contractor, from time to time, provide certain hosted software services, maintenance and support services, consulting services, systems integration services, data conversion services, training services, and/or related services as described herein (the "Project").
- B. Contractor desires to perform such services on behalf of the City on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

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DEFINITIONS

1. **Definitions.** As used in this Agreement, the following words and phrases shall have the meaning given in this Section. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and "may" is permissive. Words not defined in this Section or the attached Statement of Work shall be given their common and ordinary meaning.

- (a) **"Backup"** means copy and store software, electronic files, databases or disk images as a routine task with intent to restore functionality in case of equipment failure or other catastrophe that may interfere with business continuity.
- (b) **"City Data"** means any data or information of the City or any User (including any and all User Information) that is provided to or obtained by Contractor in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products,

consumer markets, assets, and finances of the City or any User. City Data also shall mean any data or information created, generated, collected or processed by Contractor in the performance of its obligations under this Agreement, including User Information, data processing input and output, Service Level measurements, asset information, third-party service and product agreements, contract charges, and retained and pass-through expenses.

- (c) **"Confidential Information"** shall have the meaning ascribed to it in Section 30 of this Agreement.
- (d) **"Contractor Records"** shall have the meaning ascribed to it in Section 27.
- (e) **"Device"** means any computer hardware including but not limited to desktops, laptops, smart phones, and personal digital assistant, attached to a local or wide-area network (including an Intranet), that can access the Licensed Software or Enterprise Database.
- (f) **"Documentation"** means user guides, operating manuals, education materials, product descriptions and

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Specifications, technical manuals, supporting materials, and other information relating to the System or used in conjunction with the Services, whether distributed in print, magnetic, electronic, or video format, in effect as of the date (1) the System is accepted by the City, or (2) the Service is provided to the City.

- (g) **“Enterprise Database”** means the MSDE, MS SQL Server, or Oracle database files containing City Data and that are accessed by the Licensed Software.
- (h) **“General Terms”** means Sections 1 – 48 of this Agreement.
- (i) **“Hosted Software”** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by Contractor and are identified as licensed (or sublicensed) to the City by Contractor in connection with this Agreement, and which reside on Contractor’s servers and are accessible by the City’s staff or Users via the Internet or virtual private network (“VPN”).
- (j) **“Improvements”** means all upgrades, modifications, enhancements, extensions, and other changes to the Licensed Software developed by Contractor.
- (k) **“Intellectual Property Rights”** means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, “rental” rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).
- (l) **“Internet Browser”** means Third-Party Software that enables Users access to online Software via the Internet.
- (m) **“Internet Server”** means a single server computer which enables Users access to the Software and/or Services via an Intranet or the Internet, having a minimum configuration, which may included but is not limited to firewalls, ports and security certificates, as set out in hardware Specifications in the Statement of Work and as applicable to the Licensed Software to be installed and used upon it.
- (n) **“Laws”** means all federal, state and local laws, statutes, regulations, rules, executive orders, government directives, government circulars, or binding pronouncements of or by any government (including any department or agency thereof) having jurisdictional authority over a Party.
- (o) **“Licensed Software”** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by Contractor and are identified in the Statement of Work as licensed (or sublicensed) to the City by Contractor in connection with this Agreement, and/or which are provided to the City by Contractor in the future under any circumstances, unless provided under a separate licensing agreement.
- (p) **“Losses”** shall mean all damages and claims (including taxes), obligations, demands, assessments, fines and

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- penalties (whether civil or criminal), liabilities, bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
- (q) **"Maintenance"** means the provision of new Versions, Releases, and Patches in respect of the Licensed Software.
- (r) **"Malicious Code"** shall mean (a) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of the software, code, program, or sub-program, itself; (b) any code, program or sub-program that permits any unauthorized person to circumvent the normal security of the software or the system containing the code; or (c) any code, program or sub-program that permits the unauthorized collection of User Information.
- (s) **"Module"** means a single module element of Licensed Software that provides specific features and functions and may be sold separately from the Licensed Software.
- (t) **"Online Services"** means services that are available to Users via the Internet.
- (u) **"Open Source Software"** means Third-Party Software that is available in source code form for which the source code and certain other rights normally reserved for copyright holders are provided under a software license that permits users to run, copy, study, change, improve and at times also to distribute the software
- (v) **"Patch"** means any code, configuration, data or process change made by Contractor (or a third party in the case of Third-Party Products) to permanently fix or temporarily bypass an immediate issue with performance, usability, or security or critical business need.
- (w) **"PCI Standards"** means, collectively, (i) the Payment Card Industry Data Security Standard (PCI DSS), (ii) the PIN Transaction Security (PTS) Security Requirements, (iii) the Payment Application Data Security Standard (PA-DSS). and (iv) any additional standards that may be issued by the PCI Security Standards Council or its successors, as the same may be supplemented, revised or replaced from time to time.
- (x) **"Products"** means everything provided to the City by or on behalf of Contractor including but not limited to all Licensed Software, Hosted Software, Third-Party Products and Documentation.
- (y) **"Release"** means any release, update, Patch, set of revisions, or bug/permanent fix or temporary bypass solution issued by Contractor or a third party to its customers generally during the term of this Agreement, which provides enhancements and/or error corrections to the then-current Version or Release. New Releases will be denoted by an increase to the Version number to the right of the decimal point such as from Release 1.1 to Release 1.2.
- (z) **"Reseller"** means an entity granted the right to purchase software, code or equipment from its owner and resell it.
- (aa) **"Service Availability"** means the ability of Software to provide full functionality during expected times of operations with reasonable Software performance to a reasonable number of Users.
- (bb) **"Service Levels"** means the qualitative and quantitative performance standards for the Services, Software Performance and Service Availability set forth in Statement of Work.

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- (cc) **“Software”** means the Licensed Software, Hosted Software, Open Source Software, and Third-Party Software, as defined elsewhere in this section.
- (dd) **“Services”** means any and all applicable consulting services, systems integration services, data conversion services, education services, interface development, development services, Support services, Maintenance services and related services for the City included in the Statement of Work.
- (ee) **“Site”** means the address of the physical location where the System is to be installed.
- (ff) **“Site Support Requirements”** means the criteria and schedule for preparation of the Site for the System, as set forth in the Statement of Work.
- (gg) **“Software”** means the Licensed Software, Hosted Software, Open Source Software and Third-Party Software.
- (hh) **“Software Performance”** means the accuracy, completeness and efficiency (in terms of resource use and elapsed time) by which the Software completes work, service or function under a reasonable workload.
- (ii) **“Specifications”** means the minimal technical requirements and/or standards with respect to the hardware, network, database, and system architecture, as provided in the Statement of Work, which are to be provided by the Contractor to Support the Software or Services.
- (jj) **“Subcontractor”** shall have the meaning ascribed to it in Section 8 of this Agreement.
- (kk) **“Subcontracted Services”** shall have the meaning ascribed to it in Section 8 of this Agreement.
- (ll) **“Support”** means the ongoing telephone, on-site, email, web-based and dial-in communications and problem resolution to assist the City in the use of the Software and other Services and Products of Contractor as set out in the Statement of Work.
- (mm) **“Third-Party Products”** means those hardware, firmware and/or software products, provided to Contractor by third parties, listed in the Statement of Work, together with all user manuals and other documents accompanying the delivery of the Third-Party Products, provided that the Third-Party Products shall not include software developed by Contractor.
- (nn) **“Third-Party Software”** means software owned by neither the City nor Contractor.
- (oo) **“Transfer Assistance Period”** shall have the meaning ascribed to it in Section 29(f) of this Agreement.
- (pp) **“User”** means a person that accesses and uses any of the Products in any manner whatsoever.
- (qq) **“User Information”** means data regarding any User, including the User’s personal data and data regarding the User’s use or interaction with the Software or any Services either received, viewed, used or stored by Contractor.
- (rr) **“Version”** means a Release of the Licensed Software providing a particular functionality and/or features. A new Version of the Licensed Software will provide new/additional functionality and/or Improvements to a previous Version. New Versions shall be denoted by a change to the Version number to the left of the decimal point such as from Version 1.0 to Version 2.0.
- (ss) **“Work Product”** means anything created, developed, prepared, documented and/or delivered by Contractor pursuant to this Agreement, including all associated Intellectual Property Rights.

STATEMENT OF WORK; CHANGE ORDERS; PROJECT MANAGERS

2. Statements of Work. This Agreement consists of the terms found in the General Terms, along with Schedule A, the "Statement of Work," and any exhibits to the Statement of Work, all of which are attached hereto and incorporated herein by this reference. During the term hereof and subject to the terms and conditions contained herein, Contractor agrees to provide the Services. In addition to describing the Services, the Statement of Work includes Specifications; the basis of compensation and payment schedule; the estimated length of time required to complete the Services, including the estimated start/finish dates; Maintenance and Support documentation; Software implementation guides; Software Specifications; and other relevant information, including any modification of the General Terms.

3. Change Orders and Extra Work

(a) Change Orders. By providing written notice to the Contractor's Project Manager, the City may request that Contractor perform additional work related to the Project and Contractor agrees to perform such work, consistent with the terms and conditions of this Agreement. If a change causes an increase or decrease in the price or time required for performance as mutually determined by the Project Managers, a negotiated adjustment shall be made in the price and/or performance schedule and reflected in an amendment to the Statement of Work. Changes outside the general scope of the Project shall be governed by Section 3(b), below.

(b) Extra Work. By providing written notice to the Contractor's Project Manager, the City may request that Contractor perform extra work that is not directly related to the Project, so long as the cost of such extra work is estimated to be less than Fifty

Thousand Dollars (\$50,000). At its option, Contractor may submit, at no charge to the City, a written proposal for such additional work, including a price/cost proposal, expenses related to travel, lodging and meals, a delivery schedule, and any other information reasonably related to such request. Within a reasonable time period requested by Contractor, the City shall accept or reject such proposal. If Contractor chooses not to provide a proposal in response to the City's request, Contractor shall promptly notify the City. Any extra work agreed upon by the Parties shall be described in an addendum to the Statement of Work, which shall also include the agreed upon price. All other terms and conditions of this Agreement shall be applicable thereto.

4. Project Managers. In the Statement of Work, each Party shall designate one of its employees to be its Project Manager. Each Party shall notify the other in writing of any replacement of a Project Manager. The Project Managers shall meet as often as either one requests to review the status of the Project.

5. Discrepancies. If anything necessary for the clear understanding of the Project has been omitted from the Specifications or it appears that various instructions are in conflict, Contractor shall secure written instructions from the City's Project Manager before proceeding with the performance of the portion of the Project affected by such omissions or discrepancies.

6. Resources. Except as otherwise expressly provided in Statement of Work, Contractor shall be responsible for providing the facilities, personnel, equipment, communications capabilities, Software and other resources necessary to provide the Services and any Work Product.

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SERVICES AND SOFTWARE

7. Performance of Services.

- (a) **Services Included.** As part of the Project, Contractor shall provide the Services included in the Statement of Work.
- (b) **Collateral Services.** If any collateral services, functions or responsibilities not specifically described in the Statement of Work or an exhibit thereto are an inherent, necessary or customary part of the Services or are required for proper performance or provision of the Services in accordance with the Agreement, they shall be deemed to be included within the scope of the Services to be delivered for the base charges, as if such services, functions or responsibilities were specifically described in the Agreement.
- (c) **Performance.** Contractor shall perform the Services in a timely and professional manner consistent with (i) the Specifications, if any, set forth in the Statement of Work; (ii) the City Security Policies (available online at <http://www.bouldercolorado.gov/it/security-policy/connected-partner> and <http://www.bouldercolorado.gov/it/security-policy/admin-guide>); and (iii) in accordance with industry standards. Contractor agrees to exercise the highest degree of professionalism, and to utilize its expertise and creative talents in completing the Services.
- (d) **Delays.** Contractor agrees to notify the City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement or any Statement of Work. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

8. **Staff.** Contractor is an independent contractor and neither Contractor nor Contractor's staff is, or shall be deemed to be employed by the City. The City is hereby contracting with Contractor for the Services described in a Statement of Work and Contractor reserves the right to determine the method, manner and means by which the Services shall be performed. The Services shall be performed by Contractor or Contractor's staff and the City shall not be required to hire, supervise or pay any assistants to help Contractor perform the Services under this Agreement. Except to the extent that Contractor's work must be performed on or with the City's computers or the City's existing software, all materials used in providing the Services shall be provided by Contractor.
9. **Subcontracted Services.** Contractor shall be permitted to subcontract the performance of certain Services to a third party (each a "Subcontractor"), provided, that: (1) Contractor gives prior written notice to the City of the Subcontractor and the detailed nature and scope of the Services to be subcontracted; (2) the City consents in writing to the subcontracting of such Services to such Subcontractor; and (3) Contractor complies with the terms and conditions set forth below. Contractor shall remain responsible to the City in accordance with this Agreement for the Services performed by any Subcontractor (the "Subcontracted Services") to the same extent as if the Subcontracted Services were performed by Contractor's employees, and any completion schedules, Specifications, security requirements and Service Levels applicable to Subcontracted Services shall continue to apply notwithstanding any such subcontracting. Contractor shall be solely responsible for all payments to any Subcontractor. Under no circumstances (including, without limitation, Contractor's failure to make timely and full payments to a Subcontractor) shall the City be liable to any Subcontractor for payment of any

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amounts. Contractor shall indemnify, defend and hold harmless the City from and against any loss, expense, obligation or liability incurred by the City arising out of claims made by any Subcontractor related to its performance of the Subcontracted Services or any matters related thereto. Contractor shall not permit any Subcontractor to perform any Services for the City or its Affiliates unless and until Contractor has entered into a subcontract with such Subcontractor containing provisions at least as favourable to the City as those in this Agreement. Contractor shall use commercially reasonable efforts to obtain from Subcontractor and provide to the City any information concerning the Subcontractor reasonably requested by the City, including information regarding the Subcontractor's financial condition and ability to perform the Subcontracted Services.

10. Licensed Software.

(a) Grant of License. Contractor hereby grants to the City an irrevocable, fully paid, royalty-free, perpetual, non-exclusive and non-transferable right and license, subject to this Agreement, to install, use, execute, store, reproduce, modify, transfer to a replacement hardware system, create derivative works of, publicly perform and publicly display, by all means now known or later developed, the Licensed Software, in the manner and for the term stated in the Statement of Work. The City shall not make any copies of the Licensed Software except as necessary for the installation permitted hereby and except for copies of each Module licensed hereunder for training and testing purposes and for Backup purposes.

(b) Maintenance of Licensed Software.

(1) During the Term of this Agreement, Contractor may develop new Patches, Releases and/or new Versions of Licensed Software. Provided that the City continues to

subscribe for Maintenance and Support in respect of a particular Licensed Software product, Contractor shall provide to Customer, either in physical form by mail or courier or in electronic form via the Internet, new Releases and Versions (and appropriate documentation) for such Licensed Software products on a when-and-if-available basis.

(2) The City may terminate and suspend all Maintenance and Support without cause and without penalty upon thirty (30) days prior written notice to Contractor, or as otherwise described in the Statement of Work. Contractor may terminate and suspend performance of all Maintenance and Support as described in the Statement of Work.

11. Hosted Software and Services.

(a) Rights and Access. Contractor shall provide Users with the appropriate rights and access to Hosted Software identified in the Statement of Work and associated Online Services, and Contractor hereby grants to the City a limited, non-exclusive, non-transferable license to use the Hosted Software in accordance with the applicable documentation.

(b) User Support. Contractor shall, during all periods in respect of which Customer has subscribed for Hosted Software, provide Support to the City (and, where applicable, directly to Users of the City's own services and products who access the Hosted Software) in accordance with applicable sections of the Statement of Work.

(c) Information Security and Privacy. Contractor may only collect the personal information from Users (such as names, addresses, gender, phone numbers, email addresses, birth dates, and credit card information) that is

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specifically provided for in the Statement of Work. Contractor shall store such information using industry best practices and reasonable safeguards in accordance with the City's online privacy policy published at www.bouldercolorado.gov, and in compliance with all applicable Laws, codes of practice, and other legal obligations associated with the collection, use, and disclosure of personal information. Upon request Contractor shall make such information available to the City within five (5) business days via e-mail, fax or airmail with appropriate encryption and other security measures as described in the Statement of Work. The City and/or Users shall exclusively own the personal data collected by Contractor in connection with the Hosted Software; provided, however, Contractor is granted a royalty-free, non-exclusive right and license to use and adapt the collected data as is necessary for Contractor to perform its obligations under this Agreement.

(d) Security Breach Notification and Cooperation. Contractor shall notify the City of a security breach of or relating to the Service as soon as law enforcement and contractual obligations to other subscribers and payment entities require and/or allow, whichever occurs first. Contractor shall cooperate with law enforcement and assist with the investigation of any security breach of or relating to the Service.

12. Third-Party Software, Products and Services.

(a) Purchase and Sale; Delivery.

(1) Contractor hereby agrees to sell to Customer, and the City hereby agrees to purchase from Contractor, any Third-Party Products listed in the Statement of Work in the volumes and at the prices described therein.

- (2) The City acknowledges that any Third-Party Products supplied by Contractor hereunder may be supplied by Contractor as a Reseller thereof and that the Third-Party Products are subject to the Intellectual Property Rights of the various third party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark, and patent rights.
- (3) Contractor shall ship all or any part of the Third-Party Products to the City as stated in the Statement of Work.
- (4) Contractor shall not use Third-Party Software in creating any Work Product without first: (i) providing the City with a copy of the license terms and conditions applicable to the Third-Party Software program Contractor intends to use; and (ii) explicitly identifying and explaining the function and integration of the Third-Party Software in the Statement of Work.
- (5) Contractor shall notify the City at least ninety (90) days in advance of any planned changes to the Third-Party Software, Product or Service that is integrate or used by the Work Product.
- (6) Upon consultation with Contractor, the City may purchase third party products for use with the Services, in addition to those listed in the Statement of Work.

(b) Support for Third-Party Products. Contractor Support for all Third-Party Software is described in the Statement of Work.

(c) Additional Third-Party Products. The City may purchase third-party products for use with the Services, in addition to those listed in the Statement of Work. Contractor shall advise the City with

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regard to the purchase of such third-party products.

(d) Business Continuity. As part of the Services, Contractor shall implement and manage disaster recovery plans and Backup plans for the equipment and operating environment on which the Services will be provided. Contractor shall (1) at least semi-annually during the term of this Agreement, update and test the operability of the disaster recovery plan in effect at that time; (2) upon the City's request, certify to the City that the disaster recovery plans are fully operational and are in accordance with the relevant sections for business continuity and contingency planning stated in the current ISO 27002 standards and the NIST SP-800 standards; and (3) upon discovery by Contractor, promptly provide the City with a notice of a disaster and implement the disaster recovery plans upon the occurrence of any such disaster affecting the provision or receipt of the Services.

13. Service Levels. Contractor agrees that its performance of the Services shall meet or exceed each of the applicable terms of the Service Levels set forth in Statement of Work. Contractor recognizes that its failure to meet the Service Levels will have a material adverse impact on the business and operations of the City and that such damages would be difficult to calculate. Accordingly, if Contractor fails to meet any such Service Level, then the City shall be entitled to recover liquidated damages if such damages are provided for in the Statement of Work. If Contractor fails to provide Services in accordance with the Service Levels and this Agreement, Contractor shall (1) promptly investigate and report on the causes of the problem; (2) provide a root cause analysis of such failure as soon as practicable, after such failure or the City's request; (3) initiate remedial action acceptable to the City to correct the problem and to begin meeting the Service Levels as soon as practicable;

and (4) advise Customer, as and to the extent requested by Customer, of the status of remedial efforts being undertaken with respect to such problem and provide the City reasonable evidence that the causes of such problem have been or will be corrected on a permanent basis. In no event shall the period for the completion by Contractor of the root cause analysis exceed fifteen (15) days. Contractor shall implement measurement and monitoring tools and metrics as well as standard reporting procedures to measure and report Contractor's performance of the Services against the applicable Service Levels. Contractor shall provide the City with access to Contractor's on-line databases containing up-to-date information regarding the status of service problems, service requests and User inquiries. Contractor also shall provide the City with information and access to the measurement and monitoring tools and procedures utilized by Contractor for purposes of audit verification. The City shall not be required to pay for such measurement and monitoring tools or the resource utilization associated with their use.

14. Promotions and Marketing. Contractor is prohibited from advertising, soliciting, marketing or promoting products, services or giveaways on hosted websites without written consent from the City. City Data cannot be disclosed to Third Parties for marketing or promotional use without the written express consent of the City.

15. Branding. The City has the exclusive control to brand all hosted websites. Contractor shall not be permitted to include logos or brands without express written consent of the City.

16. Rights in Work Product.

(a) Work-for-Hire. Except as specifically agreed to the contrary in any Statement of Work, any Work Product produced by Contractor as a deliverable under this Agreement, as well as such other Work Product as may be reasonably

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necessary for the City to utilize any required deliverable, shall be considered a work-for-hire and shall be the property of the City.

- (b) Open Source Software.** Contractor shall not use Open Source Software in creating any Work Product without first (i) providing the City with a copy of the Open Source Software license terms and conditions applicable to the Software program Contractor intends to use and (ii) receiving the express, written consent of the City to incorporate the Open Source Software into the Work Product. To the extent Open Source Software is incorporated in any Work Product, such Open Source Software is expressly included within Contractor's responsibilities under the license granted pursuant to this Agreement. Contractor represents and warrants that the use of such Open Source Software shall not materially affect the City's use of the Work Product.
- (c) Proprietary Software.** With respect to any proprietary software created by Contractor outside the scope of this Agreement, but used in providing the Work Product, Contractor unconditionally and irrevocably grants to the City a non-exclusive, perpetual, worldwide, fully paid and royalty-free license to use such software.
- (d) Documents.** All documents created by Contractor in developing any Work Product, including without limitation meeting minutes, project plans and timelines, draft documents, design materials, questionnaires and surveys or any other written, electronic, or recorded information collected by Contractor in the course of developing the Work Product, regardless of the media used, shall be the property of the City. Contractor, upon request by the City, agrees to provide documents or any other materials developed specifically for the System in an electronically editable

format (for example, Word or Excel). Contractor shall not provide copies of any documents or other material prepared under this Agreement to any other party without the prior written consent of the City.

- (e) City Assets.** All assets acquired in the creation of the Work Product, including without limitation brands and web site URLs, shall be owned by the City.

17. Ownership of City Data. Contractor agrees that all data relating to City Data that are received, used or stored in connection with the Services provided hereunder or otherwise is, or shall be, and shall remain the exclusive property of the City and shall be deemed Confidential Information of the City. Contractor hereby waives any interest, title, lien or right to any such data. City Data shall not be (a) used by Contractor other than in connection with providing the Services, (b) disclosed, sold, assigned, leased, or otherwise provided to third parties by Contractor, except for Subcontractors, so long as such Subcontractors are bound by written confidentiality provisions as least as restrictive as those that are set forth in this Agreement. Such Subcontractors may include but are not limited to organizations such as the payment card processing banks and credit card brands (e.g. Visa, MasterCard, etc.); or (c) commercially exploited by or on behalf of Contractor, its employees, Subcontractors or agents. City Data shall be furnished to the City, in such format as the City shall reasonably request, immediately upon the termination or expiration of this Agreement for any reason whatsoever.

PCI Compliance

18. PCI Compliance. If Contractor will process, transmit or store User Cardholder Data (as defined in the PCI Standards) as part of the Services, Contractor understands and acknowledges its obligation to adhere to the PCI Standards for the protection of Cardholder Data

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throughout the term of this Agreement and any renewal terms. The PCI Standards may be found at www.pcisecuritystandards.org. Contractor further understands that it is responsible for the security of Cardholder Data in its possession or control or in the possession or control of any Subcontractors that it engages to perform under this Agreement. In support of this obligation, Contractor shall provide appropriate documentation to demonstrate compliance with the PCI Standards by Contractor and all identified Subcontractors who have access to Cardholder Data. Failure to discharge this obligation may be considered by the City to be a material breach of this Agreement.

19. Business Continuity. As part of the Services, Contractor shall implement and manage disaster recovery plans and Backup plans for the equipment and operating environment on which the Services will be provided. Contractor shall (1) at least semi-annually during the term of this Agreement, update and test the operability of the disaster recovery plan in effect at that time; (2) upon the City's request, certify to the City that the disaster recovery plans are fully operational and are in accordance with the relevant sections for business continuity and contingency planning stated in the current ISO 27002 standards and the NIST SP-800 standards; and (3) upon discovery by Contractor, promptly provide the City with a notice of a disaster and implement the disaster recovery plans upon the occurrence of any such disaster affecting the provision or receipt of the Services.

20. Offshoring. If Contractor will process, transmit or store User Cardholder Data (as defined in the PCI Standards) as part of the Services, Contractor agrees that it shall not perform, nor engage any third party to perform, any of the Services hereunder except in the United States or countries with data security Laws comparable to those of the United States. In addition, Contractor shall not use nor provide access to City Data at locations outside of the

United States, except for those countries with data security Laws comparable to those of the United States. Further, Contractor shall not subcontract any Services hereunder to any non-U.S.-based individuals or entities regardless of whether the non-U.S. based entity is an affiliate or subsidiary of Contractor or is an affiliate or subsidiary of an entity organized under the Laws of the United States, any state of the United States, the District of Columbia or any territory of the United States, unless the country in which such individual or entity is located has data security Laws comparable to those of the United States.

21. Financial Statements. Upon the City's request, Contractor shall promptly furnish its financial statements as prepared by or for Contractor in the ordinary course of its business. Financial information provided hereunder shall be used by the City solely for the purpose of determining Contractor's ability to perform its obligations under this Agreement. To the extent any such financial information is not otherwise publicly available, it shall be deemed Confidential Information of Contractor. If the City's review of financial statements causes the City to question Contractor's ability to perform its duties hereunder, the City may request, and Contractor shall provide to Customer, reasonable assurances of Contractor's ability to perform its duties hereunder. Failure by Contractor to provide such reasonable assurances to the City shall be deemed a material breach of this Agreement. Furthermore, Contractor shall notify the City immediately in the event there is a change of control or material adverse change in Contractor's business or financial condition.

22. Background Investigations. The City may conduct a background investigation of Contractor and its principals, and may conduct such other investigations as it may from time to time believe appropriate, and Contractor shall cooperate with the City in connection therewith.

CITY OBLIGATIONS

23. City Obligations. The City shall provide Contractor or its designated representative within requirements of City security policies appropriate access to City personnel, systems and information, in a timely manner upon reasonable advanced notice by Contractor, required for Contractor to perform its obligations hereunder. The City shall provide to Contractor performing its obligations hereunder at the City's premises, without charge, a reasonable work environment in compliance with all applicable Laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services.

24. Site Support Requirements. Except as expressly set forth in this Agreement, Contractor shall not assume or plan that any significant level of resources from the City shall be dedicated to any of the activities to be performed under this Agreement. The City, at its expense, agrees to prepare the Site in accordance with the applicable Site Support Requirements. Contractor agrees to provide to the City, at no additional charge, reasonable consultation and assistance regarding Site planning and preparation as may be necessary to enable the City to prepare the Site as specified in the Site Support Requirements. An authorized Contractor site preparation engineer shall review and approve the Site prior to delivery and installation of the System at the Site, in order to confirm that the Site has been prepared by the City in accordance with the Site Support Requirements. If Contractor's site preparation engineer finds that the Site has not been so prepared, Contractor shall notify the City in writing in what respects the Site fails to conform to the Site Support Requirements. The City shall promptly correct such non-conformity. Contractor shall be responsible for all costs and expenses attributable to alterations or modifications to the Site necessitated by

incomplete or erroneous Site Support Requirements or advice provided to the City by Contractor, unless such advice was reasonable and appropriate at the time it was given.

PAYMENTS TO CONTRACTOR

25. Invoices and Payment.

(a) Payment. Unless otherwise provided in the Statement of Work, the City shall pay the amounts agreed to in a Statement of Work within thirty (30) days following the receipt of an invoice from Contractor for work that has been accepted by the City. Acceptance procedures shall be outlined in the Statement of Work.

(b) Services. The City shall contract for Maintenance and Support Services for the Licensed Software as described in the Statement of Work. Contractor shall, during all periods for which the City has contracted for Maintenance and Support Service, provide Support to the City as described in the Statement of Work.

(1) City payment for Maintenance and Support Services shall be paid in quarterly installments.

(2) Annual increases for Maintenance and Support Services shall be capped at 3 percent unless otherwise provided in the Statement of Work.

(3) Quarterly payments for Maintenance and Support Services shall be the amount due minus Service Level Credits accumulated during the previous quarter.

(c) Disputes. The City may withhold payment of fees and charges that the City disputes in good faith. If the City in good faith disputes any fees and charges under this Agreement, the City shall notify Contractor of such disputed amount and the basis for the City's dispute together with any appropriate information supporting the City's

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position. If the City withholds any disputed fees and charges, the City shall pay the undisputed portion of such fees and charges when due, and the City shall notify Contractor of the basis for the City's dispute prior to the date on which such disputed amount would otherwise be due. The Parties shall then attempt to resolve the disputed portion of such invoice as soon as possible. Upon resolution of the disputed portion, the City shall pay to Contractor the resolved amount.

Neither the failure to dispute any fees or charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right the City may otherwise have to dispute any fee or charge or amount or recover any amount previously paid.

26. Taxes. The City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be included in quoted prices. The City shall not be obligated to pay or reimburse Contractor for any taxes attributable to the sale of any Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Contractor. Upon written notification by the City and subsequent verification by Contractor, Contractor shall reimburse or credit, as applicable, the City in a timely manner, for any and all taxes erroneously paid by the City. The City shall provide Contractor with, and Contractor shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

27. Out of Pocket Expenses. Contractor shall be reimbursed only for expenses that are expressly provided for in a Statement of Work or have been approved in advance in writing by the City. Prior to reimbursement, Contractor shall furnish such documentation for authorized expenses as the City may reasonably request.

28. Audits. Contractor shall maintain, and shall cause its Subcontractors to maintain, complete and accurate records of and supporting documentation for all transactions, financial and non-financial, that result from or are created in connection with Contractor's performance of its material financial and operational obligations under this Agreement ("Contractor Records"). With respect to the amounts chargeable to and payments made by the City under this Agreement, Contractor Records shall be kept in accordance with generally accepted accounting principles applied on a consistent basis. Contractor shall, and shall cause its Subcontractors to, provide to the City (and internal and external auditors, inspectors, regulators and other representatives that the City may designate from time to time) access at reasonable hours to Contractor personnel, to the facilities at or from which Services are then being provided and to Contractor Records and other pertinent information, all to the extent relevant to the Services and Contractor's obligation under this Agreement. Such access shall be provided for the purpose of performing audits and inspections of the City and its businesses, to (1) verify the accuracy and completeness of Contractor's invoices, (2) verify the integrity of City Data, (3) examine the systems that process, store, support and transmit that data, (4) examine the controls (e.g., organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery and back-up practices and procedures; (5) examine Contractor's performance of the Services; (6) verify Contractor's reported performance against the applicable Service Levels; (7) examine Contractor's measurement, monitoring and management tools; and (8) enable the City to meet applicable legal, regulatory and contractual requirements. Contractor shall provide any assistance reasonably

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requested by the City or its designee in conducting any such audit.

TERM AND TERMINATION

29. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall continue unless (i) the annual charge for the purchased Services is equal to or greater than \$50,000 or (ii) this Agreement is terminated as provided in this Section.

(a) Convenience. The City may, without cause and without penalty, terminate the provision of Services upon thirty (30) days prior written notice. Upon such termination, the City shall, upon receipt of an invoice from Contractor, pay Contractor for the Services actually rendered prior to the effective date of such termination. Charges shall be based on time expended for all incomplete tasks listed in the Statement of Work and all completed tasks shall be charged as indicated in the Statement of Work.

(b) Material Breach. If either Party materially defaults in the performance of any term of this Agreement (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten (10) days prior written notice of termination to the defaulting Party.

(c) Bankruptcy or Insolvency. Either Party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other Party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition

seeking relief or reorganization under any bankruptcy or insolvency Laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency Laws is filed against that other Party and is not dismissed within sixty (60) days after it was filed.

(d) Return of Property. Upon termination of this Agreement, both Parties agree to return to the other all property (including any Confidential Information) of the other Party that it may have in its possession or control within a reasonable timeframe.

(e) Return of City Data. Upon termination of the Services, Contractor shall, at the City's request, return the City Data, in an Oracle standard database export format, along with all documentation describing the data table structure and data table relationship. If the City wishes to receive data in any other format, the City shall be responsible for the additional time and materials required to accommodate this request. All special requests shall be scoped by Contractor and an initial estimate shall be provided to the City. Within three (3) days of written receipt from City for City Data, Contractor shall provide written notice that all City Data in the possession of Contractor has been deleted.

(f) Transitional Assistance. Upon the expiration or termination of this Agreement by Contractor for any reason other than non-payment by the City, Contractor shall continue to provide access to the software, products and Services to the extent requested by Customer for a period at least two (2) months at the then-current fees under this Agreement (the "Transfer Assistance Period"). In addition to the foregoing, upon City's request, Contractor shall transfer all records, files, reports and other data relating to City which are received, used or stored in connection with the

GENERAL TERMS

Services as of the date of such expiration or termination in a format to be mutually determined by the Parties.

30. Confidential Information.

(a) Obligations.

- (1) Records maintained by the City are subject to public disclosure pursuant to the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.* ("CORA"). Certain confidential business and other records are exempt under CORA or do not meet the definition of public records. If Contractor provides to the City documents that include trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, including a social security numbers, or if the City provides documents to Contractor that it considers confidential or otherwise not subject to disclosure under CORA ("Confidential Information"), the Party disclosing Confidential Information (the "Discloser") shall segregate any documents including Confidential Information from other documents provided to the Party receiving Confidential Information (the "Recipient") and shall clearly identify such documents with a stamp, watermark or other clear mark identifying the documents as Confidential Information.
- (2) Subject to the provisions and exceptions set forth in CORA, the Recipient (i) shall use such Confidential Information only in order to fulfill its obligations under this Agreement (the "Purpose"); (ii) shall reproduce such Confidential Information only to the extent necessary for the Purpose; (iii) shall restrict disclosure of such Confidential Information to its and its affiliates' employees and agents who need to know such Confidential Information to carry out the Purpose

and who are not direct competitors of the Discloser (and shall require such employees and agents to undertake confidentiality and use obligations at least as restrictive as those Recipient assumes herein); (iv) shall not disclose such Confidential Information to any other party without prior written approval of the Discloser; and (v) shall protect such Confidential Information with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, which shall be no less than reasonable care. If Recipient discloses Confidential Information to an employee, affiliate, or other person in accordance with the terms of this Agreement, any subsequent disclosure or use of such Confidential Information by such employee, affiliate, or other person shall be deemed a disclosure or use by Recipient and Recipient shall be responsible for such disclosure or use.

- (3) The restrictions on use and disclosure of Confidential Information shall not apply unless such Confidential Information, when in tangible, electronic or viewable form is marked confidential or proprietary by Discloser, or when disclosed only orally is both identified as confidential or proprietary at the time of disclosure and summarized in a writing so marked and provided to Recipient within thirty (30) days following the oral disclosure; except that (i) any unmarked material and any verbally disclosed information that Recipient knows or reasonably should know to contain Confidential Information of the Discloser and all written or oral pricing and contract proposals exchanged between the Parties shall be subject to the use and

GENERAL TERMS

disclosure restrictions of this Agreement. Within the 30-day period referenced above, all Confidential Information communicated only orally shall be subject to the use and disclosure restrictions of this Agreement.

- (4) Each Party shall ensure that its employees, agents, representatives, and independent contractors are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section. Further, each Party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other Party. A Party shall undertake to immediately notify the other Party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement.
- (5) Notwithstanding the foregoing, nothing in this Agreement shall restrict either Party with respect to information or data identical or similar to that contained in the Confidential Information of the other Party but which (1) that Party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that Party; (3) is subsequently furnished rightfully to that Party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing Party shall exercise reasonable

efforts to notify the other Party prior to disclosure.

- (6) Contractor shall notify the City if Contractor: (i) permits any person to review or gives to any person any document, photograph, tangible thing, or work product referred to in this Agreement if such person has not been authorized by the City in writing to review or receive such document, photograph, tangible thing, or work product; or (ii) receives a request for inspection, a request for production, a subpoena, a court summons, or a court order relating to any document, photograph, tangible thing, or work product referred to in this Agreement.
- (b) Know-How.** Notwithstanding anything to the contrary herein, each Party and its respective personnel and contractors shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information of the other Party.
- (c) Remedies.** Each of the Parties agrees that if either of them, their officers, employees or anyone obtaining access to the Confidential Information of the other Party by, through or under them, breaches any provision of this Section, the non-breaching Party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching Party, its officers or employees directly or indirectly realize or may realize as a result of or arising out of, or in connection with any such breach. In addition to, and not in limitation of the

GENERAL TERMS

foregoing, in the event of any breach of this Section, the Parties agree that the non-breaching Party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching Party arising from a violation of this Section would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the Parties agree that the non-breaching Party shall be entitled to temporary and permanent injunctive relief against the breaching Party, its officers or employees and such other rights and remedies to which the non-breaching Party may be entitled to at law, in equity or under this Agreement for any violation of this Section. The provisions of this Section shall survive the expiration or termination of this Agreement for any reason.

REPRESENTATIONS, WARRANTIES, INDEMNITIES AND IMMUNITIES

31. Representations and Warranties.

(a) Authority. Contractor represents and warrants that: (1) Contractor has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (2) the execution of this Agreement by Contractor, and the performance by Contractor of its obligations and duties hereunder, do not and will not violate any agreement to which Contractor is a party or by which it is otherwise bound under any applicable law, rule or regulation; (3) when executed and delivered by Contractor, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (4) neither Contractor nor any director, employee or agent of Contractor or its Subcontractors or contractors shall, without prior written notification thereof to City, enter into any business relationship with any

employee or agent of City unless such person is acting for and on behalf of City; (5) Contractor acknowledges that the City makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement.

(b) Software Warranties. Contractor represents and warrants that:

- (1) No portion of the Licensed Software contains, at the time of delivery, any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," or other computer software routines or hardware components designed to (1) permit access or use of either the Service or City's computer systems by Contractor or a third party not authorized by this Agreement, (2) disable, damage or erase the Service or data, or (3) perform any other such actions;
- (2) The Licensed Software shall function properly under ordinary use and operate in conformance with the Specifications;
- (3) The Licensed Software does not infringe on any intellectual property rights of any third party.

(c) Warranty Service. During the Warranty Period, Contractor shall provide warranty Service to the City at no additional cost and shall include all Services or replacement products or product media necessary to enable Contractor to comply with the warranties set forth in this Agreement. Contractor shall pass through to the City any manufacturers' warranties which Contractor receives on the System and, at the City's request, Contractor shall enforce such warranties on the City's behalf.

(d) Third-Party Products. Contractor warrants that it has the right to deliver the Third-Party Products, if any, subject to any documentation accompanying

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such Third-Party Products at the time of delivery and/or any licensing mechanisms, physical, electronic or otherwise, included in any Third-Party Products that are Software.

- (e) Performance Warranty.** Contractor warrants that its employees and contractors shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.
- (f) Personnel.** Unless a specific number of employees are set forth in the Statement of Work, Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement or as set forth in the Statement of Work. During the course of performance of Services, the City may, for any or no reason, request replacement of an employee or a proposed employee. In such event, Contractor shall, within five (5) working days of receipt of such request from the City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies.
- (g) Compensation and Benefits.** Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. The City shall not be liable to Contractor or to any employee of Contractor for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold the City harmless from and against all such taxes, contributions and benefits and shall

comply with all associated governmental regulations, including the filing of all necessary reports and returns.

- (h) Malicious Code.** Contractor represents and warrants that it shall take commercially reasonable actions and precautions to prevent the introduction and proliferation of any Malicious Code into Contractor's information technology environment or any system used by Contractor to provide the Services. Without limiting Contractor's other obligations under this Agreement, Contractor covenants that, in the event any Malicious Code is found in the systems used to provide the Online Services, (a) if such Malicious Code originated in the Software, Contractor shall remove such Malicious Code at its expense and indemnify the City and its Users for all Losses incurred by the City or its Users as a result of such Malicious Code, and (b) in any case (wherever such Malicious Code originated), Contractor shall exercise commercially reasonable efforts at no additional charge to eliminate, and reduce the effects of, the Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, to mitigate such Losses and restore such data with generally accepted data restoration techniques.

32. Indemnification.

- (a) Contractor Indemnification.** Contractor shall indemnify, defend and hold harmless the City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the "City Indemnitees") from and against all Losses suffered or incurred by a City Indemnitee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by Contractor or its representatives in the performance of

GENERAL TERMS

Contractor's obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of Contractor contained in this Agreement.

(b) Infringement. Contractor shall indemnify, defend, and hold the City harmless from all Losses arising from any third-party claims that any Products or Services supplied by Contractor infringes or misappropriates any Intellectual Property Rights of any third party; provided, however, that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on (1) use of the Products in combination with products or services not provided by Contractor to the extent that such infringement or misappropriation would have been avoided if such other products or services had not been used; (2) any modification or enhancement to the Products made by the City or anyone other than Contractor or its Subcontractors; or (3) use of the Product other than as permitted under this Agreement.

(c) Indemnification Procedures. Notwithstanding anything else contained in this Agreement, no obligation to indemnify which is set forth in this Section shall apply unless the City notifies Contractor as soon as practicable to avoid any prejudice in the claim, suit or proceeding of any matters in respect of which the indemnity may apply and of which the City has knowledge. The City shall have the right to participate in any legal proceedings to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys. No settlement or compromise of an asserted third-party claim other than the payment/money may be made without the prior written consent of the City.

(d) Immunity. Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended.

INSURANCE REQUIREMENTS

33. Insurance.

(a) Limits: The Contractor shall procure and maintain in force during the term of this Agreement, at its own cost, the following minimum coverages:

(1) Workers' Compensation and Employers' Liability:

State of Colorado: Statutory

(2) General Liability:

(i) General Aggregate Limit:

\$2,000,000

(ii) Each Occurrence Limit:

\$1,000,000

(3) Automobile Liability:

Bodily Injury & Property Damage Combined Single Limit:¹

\$1,000,000

¹ Applicable only if Contractor, its agents, employees, or representatives will be using motor vehicles in Colorado while performing the Services.

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- (4) Third Party Fidelity Including Employee Dishonesty While on City Premises:

Each Loss: \$1,000,000

- (5) Technology Services Errors and Omissions, Technology Products, Network Security Liability and Privacy Liability.

(i) Per Loss \$3,000,000

(ii) Aggregate \$3,000,000

- (b) Coverage.** Insurance required by this Agreement shall:

- (1) Be primary coverage;
- (2) Include the City its officials and employees as additional insureds as their interest may appear (except for Worker's Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability;
- (3) Include a waiver of subrogation for General Liability coverage;
- (4) Be issued from a company licensed to do business in Colorado having an AM Best rating of at least A-VI; and
- (5) Be procured and maintained in full force and effect for duration of work.

- (c) Certificates.** Certificates of Insurance shall be forwarded to the City's Purchasing department.

- (d) Cancellation.** Within seven days after receiving insurer's notice of cancellation or reduction in coverage, Contractor, or its insurance broker, shall notify the City. In either such case, Contractor shall promptly obtain and submit proof of substitute insurance complying with the City's insurance requirements.

MISCELLANEOUS PROVISIONS

34. TABOR. The Parties understand and acknowledge that each Party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

35. Relationship of Parties. Contractor is acting only as an independent contractor and does not undertake, by this Agreement, any Statement of Work or otherwise, to perform any obligation of the City, whether regulatory or contractual, or to assume any responsibility for the City's business or operations. Neither Party shall act or represent itself, directly or by implication, as an agent of the other, except as expressly authorized in a Statement of Work.

36. Complete Agreement. This Agreement contains the entire agreement between the Parties with respect to the matters covered herein.

37. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

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- 38. Applicable Law; Venue.** Contractor shall comply with all applicable Laws in performing the Services. This Agreement shall be construed in accordance with the Laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Boulder County, Colorado and each Party consents to jurisdiction and venue before such courts.
- 39. Scope of Agreement.** If the scope of any provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.
- 40. Notices.** Any notice provided pursuant to this Agreement shall be in writing to the Parties at the addresses set forth in the Statement of Work and shall be deemed given (1) if by hand delivery, upon receipt thereof, (2) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested or (3) one (1) day after deposit with a nationally-recognized overnight courier, specifying overnight priority delivery. Either Party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other Party.
- 41. Assignment.** This Agreement may not be assigned by Contractor without the prior written consent of the City. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.
- 42. Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any person or entity not a party to this Agreement.
- 43. Headings.** The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth on the first page of this Agreement are incorporated into the body of this Agreement. The exhibits referred to throughout this Agreement and any Statement of Work prepared in conformance with this Agreement are incorporated into this Agreement.
- 44. Waiver.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.
- 45. Media Releases.** Except for any announcement intended solely for internal distribution by Contractor or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Contractor, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Contractor or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of the City, shall be coordinated with and approved in writing by the City, at the City's sole discretion, prior to the release thereof. Contractor shall not represent directly or indirectly that any Services provided by Contractor to the City has been approved or endorsed by the City or include the name, trade mark, or symbol of the City on a list of Contractor's customers without the City's express written consent.
- 46. No Requirements Contract.** Nothing in the Agreement shall be construed as a requirements contract, and notwithstanding anything to the contrary contained herein, this Agreement shall not be interpreted to

GENERAL TERMS

prevent the City from obtaining from third parties, or providing to itself, any or all of the Services described in the Statement of Work or any other services

47. Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties. Neither the course of conduct between the parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein

48. Survival. Any and all provisions of this Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.

[SIGNATURE PAGE FOLLOWS]

SCHEDULE A - STATEMENT OF WORK

1. GENERAL

This Statement of Work ("SOW") is referenced in and incorporated into to the **Hosted Services Agreement** between [insert Contractor's legal name], a [insert state of incorporation] [insert corporate form, such as corporation, LLC, partnership] ("Contractor"), and the City of Boulder, a Colorado home rule municipality (the "City"), dated _____, 20__ (the "Agreement").

2. SUMMARY OF PURPOSE

The purpose of the Agreement is to define the terms and conditions pursuant to which Contractor will install and configure _____ and associated Work Product, described in Section 12, below, in order to provide _____ services to the City. Contractor shall also provide City staff training, software licensing, and annual Maintenance and Support, as provided in Section 12, below. This Statement of Work supplements the General Conditions of the Agreement.

3. NAMES OF PROJECT COORDINATORS

Contractor's Project Manager:

*

City's Project Manager:

*

4. NOTICES

Any notice provided pursuant to this Agreement shall be in writing to the Parties at the following addresses:

If to Contractor:

*

*

*

If to the City:

*

*

*

With a copy to:

*
*
*

5. DEFINITIONS

[NOTE: use the first sentence if there are additional words defined in the SOW. If there are no additional definitions, strike both this NOTE and the first sentence.] As used in this Statement of Work, the following words and phrases shall have the meaning given in this Section. Words not defined in this Section shall be given the meaning assigned to them in the General Terms, or if undefined in the General Terms, their common and ordinary meaning. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive.

(A) [Applicable?]

6. LOCATION OF WORK FACILITIES

[Contractor's location]

The City shall provide City office space and support as it agrees may be appropriate, at its facility located at 1777 Broadway, Boulder, Colorado.

7. AUTHORIZED SUBCONTRACTORS

[Applicable?]

8. USER INFORMATION TO BE COLLECTED

User Information to be collected by the Contractor include: name, address, cell phone, [anything else?]

9. ADDITIONAL SECURITY MEASURES, IF ANY

[Applicable?]

10. EQUIPMENT AND PROGRAMMING TO BE PROVIDED BY THE CITY (IF ANY)

The City shall provide computers for City staff to access the Software. [Anything else?]

11. CONTRACTOR RESOURCES

Contractor shall manage and assign staff to provide for all the Work Product and deliverables, described in Section 12, below.

12. DESCRIPTION OF PRODUCTS AND DELIVERABLES

- A. Contractor shall provide the Products, including the hardware and Software described in **Exhibit 1**, attached hereto.
- B. Contractor shall provide the project management and installation services, including specific tasks listed in order of performance, described in **Exhibit 2**, attached hereto.
- C. Contractor shall provide the training described in **Exhibit 3**, attached hereto.
- D. Contractor shall provide annual Maintenance and Support for the Software and Products as described in the Service Level Agreement (“SLA”), attached hereto as **Exhibit 4**.
- E. Contractor shall provide a fully-documented and supported Open Application Programmatic Interface (“API”) and Software Development Kit (“SDK”) that enable the City to integrate Software with other City software, systems, and websites. The City may use the API to add, update, extract, delete and customize how information is presented.
- F. Contractor shall provide online documentation for the Software and Products at:
https://na1.salesforce.com/sfc/p/300000000cWxSJa_RqJiOld_uU3LbXA.1fqQpC4 and Work Product support pursuant to the SLA.
- G. Contractor may provide additional Professional Services billed as at per hour cost listed in the Price Chart at the request of the City which may include custom development using the Open API and SDK, City website customization or Content extraction.
- H. At the request of and at no cost to the City, Contractor, shall review the Work Product and City needs and identify possible additional enhancements, integrations, or other application module considerations that will allow the City to optimize the performance and return on its investment.
- I. During Prime Business hours, Contractor shall maintain reasonable accessibility to Content for External Users and Performance. Contractor shall not schedule maintenance during this time.

13. AMENDMENTS TO THE GENERAL TERMS OR OTHER SPECIAL TERMS, IF ANY

14. PAYMENT TERMS AND CONDITIONS; MODE OF PAYMENT

The City shall pay Contractor the price listed for each of the items listed in the Price Chart, attached hereto as **Exhibit 5**. The City shall pay Contractor for the work in accordance with the Payment Schedule. All payments to Contractor are contingent on Contractor’s satisfying the Deliverables/Milestones set forth in the Payment Schedule.

The City shall pay by check payable to Contractor, except in those instances where the City and Contractor mutually agree that payment will be by credit card.

15. PAYMENT SCHEDULE

Payments shall be made upon the City’s written confirmation to Contractor that the Performance Milestones have been satisfied. Costs and fees shall not exceed the amount listed in Price Chart without the prior express written consent of the City.

[Other terms? For example: Upon Agreement execution, 50% of the Setup Costs will be due. The remaining Setup Costs, along with the first year’s Annual Costs, will be due upon completion of the Acceptance Testing and Acceptance of Software. Monthly Fees shall be invoiced every 30 days starting 30 days after completion of the Acceptance Testing and Acceptance of Software.]

16. SCHEDULE AND PERFORMANCE MILESTONES

This schedule sets forth the target dates and performance milestones for the preparation and delivery of the deliverables by Contractor.

Performance Milestone	Responsible Party	Target Date
1.		
2.		
3.		
4.		
5.		
6.		

17. ACCEPTANCE AND TESTING PROCEDURES

[Describe]

18. During the initial installation, Contractor shall notify the City immediately when the Work Product is installed. The City shall test functionality, accessibility, and connectivity of the Work Product. The City may stress test and monitor Software Performance under stress conditions as part of acceptance testing. The City shall immediately notify Contractor of any issues discovered during testing. Contractor shall respond to issues discovered during testing within three days of receiving notification from the City. Contractor shall submit a Functional Acceptance Document to the City for final Acceptance. The City shall complete final testing prior which will include one production broadcast. If all features

function properly with reasonable Software Performance, the City Project Manager shall complete, approve and return the Functional Acceptance Documentation to Contractor.

19. MAINTENANCE AND SUPPORT SERVICES [NOTE: Attach an Exhibit 6, if necessary.]

20. LIQUIDATED DAMAGES

(Example:) Liquidated damages for failure to meet the _____ shall accrue at the rate of \$XXXX per day.

Liquidated damages for failure to meet the _____ shall be \$XXXX per day for each day past _____.

Notwithstanding the foregoing, the parties acknowledge and agree that go-live dates may be modified by the mutual agreement of the parties.

Liquidated damages shall only be assessed where the reason for the failure to meet either go-live date is solely and exclusively attributable to the negligence or delay of Contractor, or to an event or circumstance under Contractor's sole and exclusive control.

EXHIBIT 1
Work Product
(Hardware, Software, Services)

*

EXHIBIT 2
Project Management and Installation Services

*

EXHIBIT 3
Training

*

EXHIBIT 4
Service Level Agreement

*

EXHIBIT 5
Price Chart

Pricing: Item	Up-Front Cost	Monthly Cost
	\$	\$
	\$	\$
	\$	\$
Grand Total	\$	\$
Professional Service	Per hour cost	\$