

City of Greeley, CO

Request for Proposal FL19-08-076

For A

**Customer Information System (CIS) and
Implementation Services**



Issue Date: October 21, 2019

Closing Date: December 2, 2019

Pre-Proposal Meeting (Non-Mandatory): November 4, 2019

**1001 11th Avenue,
Colorado Room, 2nd Floor,
Greeley, CO 80631.**

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1 Introduction

1.1 Overview

The City of Greeley, CO is interested in soliciting proposals from qualified providers of municipal software whose product offering meets or exceeds current City requirements and whose complete product offering provides a robust solution set that will allow the City to continue to leverage this investment well into the future as the needs of the City grow and evolve.

Definitions

The following definitions are used in the RFP:

1. **Client or City** means the City of Greeley, CO
2. **Plante & Moran, PLLC**: The City's consultant and co-project manager for the project.
3. **Vendor or Proposer** means a firm, company or organization submitting a proposal in response to this RFP.
4. **CIS**: The system or software means the software solution that the successful Vendor responding to this RFP will be responsible for providing

1.2 City Background

The City of Greeley has determined that the Utilities' Customer Information System (CIS) must be replaced. The City currently utilizes several systems to bill approximately 28,000 customer accounts for water, sewer, and stormwater. The City's existing systems were acquired in the early 1990's and no longer adequately support existing business processes at the City, while also preventing these processes from adapting to changing needs. These limitations have restricted the City's ability to fulfill their business needs. The City is currently implementing a new cloud solution for ERP that is targeted for completion by June of 2020.

The City would like to have a new CIS system live by August 2021 at the latest. The City is committed to purchasing and implementing a standard, off the shelf product, but needs a system that is highly configurable to accommodate the City's complex water billing rate structure (see Appendix A).

1.3 Proposal Submittal Checklist

Proposal Section	Response	Title	Submitted (Yes or No)
1		Executive Summary	
2		Company Background	
3		Application Software	
4		Technical Requirements	
5		Vendor Hosted or Cloud Option (Optional)	
6		Implementation Plan	
7		Staffing Plan	
8		Ongoing Support Services	
9		Functional System Requirements (<i>Excel Format</i>)	
10		Client References	
11		License and Maintenance Agreements	
12		Exceptions and Deviations	
13		Other Required Forms and Attachments:	
13.1		Minimum Criteria	
13.2		Proposal Signature Form	
13.3		Non-Collusion Affidavit	
13.4		Certificate of Liability Insurance	
13.5		Vendor Proposal Form (<i>Word Document Format</i>)	
13.6		Client Reference Form	
13.7		Acknowledgement Form	
13.8		Debarment Form	
13.9		Contract Terms and Conditions Compliance Checklist	
13.10		Contract Terms and Conditions Compliance Checklist - Exceptions	
13.11		For Vendors who are proposing a hosted or cloud solution, please additionally supply a copy of your Independent Service Auditor's Opinion Letter from your most recent SSAE 16 Type II audit.	
Separate Proposal	Sealed Cost	Pricing Form (<i>Excel Format</i>)	
14		Addenda (If applicable)	

1.4 Current Application Environment

*Legend for Current Applications		
Legend Code	Description	
R	Replacement	The City is intending on replacing this application with the selected solution.
C	Consider	The City is considering replacing this application with the selected solution, based on the strength of the finalist Vendor offering and cost / benefit of the replacement module
M	Maintain	The City is intending on retaining the application, not replacing it thru this effort
I	Interface	The City is intending on keeping the application and interfacing/integrating it with the selected solution.

Current CIS-Related Application	Application Notes/Description	Departmental Owner	Likely Future?*
ACH Payments	Bank	Utility Billing	I
Beacon	AMI and AMR Meter reads	Water and Sewer	I
Beacon Customer Portal / Eye on Water	Interactive customer portal for AMI accounts.	Utility Billing	I
BillPay/Lockbox	First National Bank - CIS Customer Payments	Utility Billing	I
City GIS	SQL Server	All	I
CityWorks	Work and Asset Management	Public Works	I

Current CIS-Related Application	Application Notes/Description	Departmental Owner	Likely Future?*
Cognos	Utilized to pull data	Water Conservation	C
Community Plus	<ul style="list-style-type: none"> • Account management • Cashiering • Conservation • Payments • Billing 	Utility Billing / Water Conservation	R
	• Bill adjustments		
	• Posting payments		
	• Reporting		
	• Enter / schedule work orders		
	• Work order reports		
	• Tap card tracking – custom database		
eBill (Wells Fargo)	Online customer portal	Utility Billing	R
ERP - Oracle Cloud	Finance, HR, etc.	All	I
GreeleyGov Website	Title companies submit requests through the website	All / Utility Billing	M
Lucity	Water and Sewer Pipe Video	Water and Sewer	M
MARS	CIS Customer Payments; file currently received via email.	Utility Billing	I
Metavante	CIS Customer Payments; file currently received via email.	Utility Billing	I

Current CIS-Related Application	Application Notes/Description	Departmental Owner	Likely Future?*
Security System (Identify)	Active directory, SSO identify for CommunityPLUS	Utility Billing	I
Teller Receipting	Cash receipting	Utility Billing	I
TRAKiT	<ul style="list-style-type: none"> • Permitting • Water Meter Fees • Tap card (future) • Stormwater data tracking (in progress) 	Community Development	I
WaterSmart	<ul style="list-style-type: none"> • Customer leak alerts • Customer information 	Water Conservation	R/I
XC2	Backflow prevention system	Water and Sewer	R/I

1.5 Current Technical Environment

The City has established technology standards and would prefer to adhere to them as part of the implementation of the CIS Project. The tables below provide Proposers with a current summary of the City's network and computing environments, and standards.

As part of the proposal process Proposers will be required to submit significant technical detail about the proposed solution detailed in section 3.4 of this RFP. In preparing responses, Proposers must remain diligent in referencing this table to assure that responses clearly identify:

5. Areas of known or potential conflict between the Vendors proposed solution and the City's defined environments
6. Recommendations of how best to implement and operate the proposed solution within the City's defined environments

1.5.1 Summary of Network and Computing Environment

Network Infrastructure Configuration (WAN & Internet)

The City's Technology Services department provides IT services to 53 buildings including two data centers. The main core resides in Main Data Center; backup resides in offsite City location. City's sites are interconnected via City-owned fiber, in a ring topology.

Network hardware is utilized and all locations for direct-wired connection, Wireless network coverage on most buildings provided by Wireless control manager. The city provides services to 5 remote locations, which include two water treatment plants located outside of city limits. Internet services provided by private provider in a dedicated fiber connection from the Main data center with a dedicated 1 Gbps Synchronous. Dedicated 100 Mbps synchronous internet service for back up the data center. BGP is set up between primary and backup data centers for internet services. BGP is set up for internet

Data Center

The City is operating on a mix of physical and virtual servers. Running windows operating system and some Linux, vm virtual environment with some physical servers.

Server & Operating System Standard

The City is operating on a mix of physical and virtual servers. Running windows operating system and some Linux, vm virtual environment with some physical servers.

Storage & Backup Environment

Backups are performed routinely. Backup and Replication software are utilized for the virtual environment/physical environment.

DRP/BCP Environment

Two physically separated sites with backup replication between them.

Workstation Standard

- Standard machines support all typical office applications.
- High End machines support all typical office application, as well as applications that demand high graphics/Cad processing.
- The Technical Support team provides service/support for four hardware options:
 1. Standard Desktop
 - a. Windows 10
 - b. Intel Core i5 (or equivalent AMD processor)
 - c. 8 GB RAM
 - d. 256 GB SSD
 - e. Includes wired keyboard and mouse
 - f. Does not include CD/DVD drive
 2. Standard Laptop
 - a. Windows 10
 - b. Intel Core i5 (or equivalent AMD processor)
 - c. 14" WLED 1920x1080 display
 - d. 8 GB RAM
 - e. 256 GB SSD
 - f. Bluetooth
 - g. WiFi
 - h. Does not include CD/DVD drive
 3. High End Desktop
 - a. Windows 10
 - b. Intel Core i7 (or equivalent AMD processor)
 - c. Dedicated 2 GB NVIDIA graphics card
 - d. 16 GB RAM
 - e. 512 GB SSD
 - f. Includes wired keyboard/optical mouse.
 - g. DVD-Writer
 4. High End Laptop
 - a. Windows 10
 - b. Intel Core i7 (or equivalent AMD processor)
 - c. 15.6" 1920x1080 (full HD) display
 - d. Dedicated 2 GB NVIDIA graphics card
 - e. 16 GB RAM
 - f. 512 GB SSD
 - g. Bluetooth
 - h. WiFi
 - i. Does not include CD/DVD drive

Web Browser Standard

Chrome

1.5.2 City Technical Standards

Technology Standards	Current
Backup solution	Veeam
Business application environment	Office 2016
Desktop hardware	Dell / HP / Lenovo
Desktop operating system	Windows 10
Email system	Exchange 2013
Firewall	Checkpoint
Geographic information system (GIS)	ESRI 10.3
Handheld devices	Apple / Android
Imaging/content management system	Laserfiche
Interactive voice response system	NONE
Internet browser	IE / Edge / Chrome / Firefox
Network operating system	Brocade
Proxy server	Varnish
Relational databases	SQL Server
Remote access	VPN
Report writer	Cognos 10, Crystal Reports 2011
Server hardware	Dell
Server operating system	Windows Server 2012 / 2016
Server virtualization	Vmware
User authentication	Active Directory
Virus scanning software	Trend Micro
Web server software	IIS-Wordpress

1.6 Other Planned Technology Initiatives

Project Description	Timing
Cloud ERP Implementation Project	June 2020
Beacon - Meter System	July 2020
Cashiering System	June 2020

1.7 Expected Scope of System Solution

The City is requiring that responding proposers complete CIS solution, including software, hardware specifications, project management, and other technology services for the entire scope of the project that may or may not include components owned by the proposer.

An outline of the required software system solution has been provided as follows:

Software:

1. Account Management
2. Billing
3. Customer Portal
4. Delinquency
5. Device Management
6. Payment Processing
7. Rates
8. Reporting & Analytics
9. Service & Work Orders

Services:

Required Services

10. Project Management
11. Software Installation
12. Data Conversion
13. Report Development
14. Integration and Interface Development
15. Software Modification Development (if needed)
16. Implementation and Training Services
17. Change Management

18. Knowledge Transfer to Staff
19. System Documentation Development
20. Operational Redesign Assistance
21. Ongoing Support and Maintenance Services

Optional Services

22. On-Going Hosting Services (if proposing off-premise solution)
23. Hardware design and installation consulting (if proposing on-premise solution)

The City is open to a City-hosted, vendor-hosted or a cloud solution. It is optional, but not mandatory, for Vendors to provide information on all solutions as part of their RFP response. If a Vendor does propose a Vendor-hosted or cloud solution, any differences from a City-hosted solution must be clearly delineated in the appropriate sections of the RFP response.

Additional details and descriptions related to the specifics of the expected scope can be found in section 3 – Proposal Response Format.

1.8 Summary of Key Transaction Volumes

A summary of key transaction and operating volumes and standards is included below. These volumes and standards reflect actual & estimated amounts for the current environment.

Operating Volumes/Standards	Current
City of Greeley	
Population	108,175
Form of Government	Local City
Jurisdictional Area (Square Miles)	49
Total Staff (Full time: 1FTE)	884
Total Staff (Part time: 0.5 FTE)	634
Number of IT employees	29
Number of CIS System Users (Total Current)	127
Number of CIS System Users (Anticipated Future)	150
Number of Concurrent CIS System Users (Current)	20
Utility Billing	
Major services billed	Water Wastewater/Sewer Stormwater
Read Method	AMI

Operating Volumes/Standards	Current
Frequency of Billing	Monthly
Number of Billing Cycles	19
Total number of customers	28,238
Number of commercial or industrial customers	2316
Number of residential customers	25,922
Number of Annual Bills	340,000
Number of Annual Late Reminders/Notices	6,000
Number of Annual Shut Offs	950

1.9 Overall Evaluation Process

1. **Minimum Criteria:** As part of the Proposer's RFP response, the following minimum criteria must be met for a proposal to be considered for further evaluation. Failure to meet all of these criteria will automatically disqualify the Vendor's response from further consideration:

- **Minimum Client Software Installations**

Must have provided software for at least one previous municipality in the State of Colorado, of similar size and complexity, within 10 years.

- **Experience with Water Budget**

Must have implemented a minimum of one CIS solution that had water budget functionality (see Appendix A for details).

- **RFP Response**

RFP response is submitted by the due date and time.

- **Response Authorization**

The RFP response is signed by an authorized company officer.

- **Response Completeness**

Proposer complied with all instructions in the RFP and provided a response to all items requested with sufficient detail, which provides for the proposal to be properly evaluated. Any deficiencies in this regard will be determined by the City's Purchasing staff to be either a defect that will be waived or that the proposal can be sufficiently modified to meet the requirements of the RFP.

- **PCI Compliance**

Where applicable, the Vendor shall certify in its Proposal that it meets Payment Card Industry (PCI) Data Security Standards (DSS), and if recommended for award, shall illustrate compliance.

2. **Round 2 Evaluation:** For those Vendors whose proposals pass the minimum criteria, the following categories of criteria will be used to further evaluate the proposals in the following order of preference from high to low:

Functional requirements	30%
Implementation approach	30%
Cost, both one-time and ongoing	15%
Technical requirements	15%
General Proposer information, including vendor experience and expertise, number and size of comparable public sector installations, financial stability, completeness of response, and quality of proposal response	10%
Total	100

3. **Round 3 Evaluation:**

The top Proposers in the second round evaluation will then proceed to an additional level of due diligence that may include the following activities:

- Follow-up questions and answers with the Proposers.
- On-site Vendor demonstrations to include module/functionality demonstrations, technical demonstrations, service presentation, and other due diligence.
- Reference checking with comparable entities using the Vendor's product.
- Potential site visits to comparable entities using the Vendor's product.

At any point in time during the third round of evaluation, a Proposer may be excluded from further consideration. At the conclusion of the round three activities, the finalist Vendors will be judged on all information collected to date against the following criteria in order of preference:

Functionality and Technical Requirements: This includes the following subdivisions: Data Migration, Data Manipulation, Data Processing and Mapping, Data Access and Optimization (Historical data), Data Integrity, Response Time, Report Writing Configuration and Access, Transaction Correction and Workflow, System Administrative functions, Documentation, Authorization levels, Regulatory Requirements and Serviceability (help system and vendor support portal) , Overall System Operation and Merging.	25%
Non- Functionality: This includes the following subdivisions: usability, security, reliability, availability, adaptability, maintainability, capacity (# of users and	20%

amount to work system is able to handle), scalability, recoverability, configurability, manageability.

Investment and costs	15%
Implementation service and support	15%
Ability to deliver “out of the box” functionality	10%
Vendor viability	10%
Other value added	5%
Total	100%

The City will then enter into contract negotiations with the Proposer whose overall solution best meets the needs of the City over the long-term.

1.10 Anticipated Timeline Overview

Listed below are dates related to this request for proposal (RFP). In the event that these are changed, an addendum to this RFP will be issued.

Milestone	Timeframe
RFP issuance	October 21, 2019
Vendor pre-proposal meeting	November 4, 2019
Deadline for clarification questions	November 19, 2019
City distributes final addendum	November 21, 2019
Vendor proposals due	December 2, 2019 at 2:00 PM local time
Notification of demonstration dates	End of January, 2020
Demonstrations of software	February 2020
Site Visits and other due diligence	March and April 2020
Contract negotiations and award	May and June 2020

The City reserves the right to change the timeline schedule. If changes are made, proposers will be notified by the City in the form of an addendum to this RFP, emailed directly to all registered proposers and posted on Rocky Mountain E-Purchasing System (www.bidnetdirect.com/colorado).

2 Vendor Proposal Guidelines

2.1 Deadline for Proposals

Proposals must conform to the requirements set forth in the RFP. Proposals not conforming to these guidelines may be rejected as non-responsive.

Proposals must be submitted **by 2:00 p.m., local time, December 2, 2019** to:

**City of Greeley Purchasing
c/o Linda Ingram
1001 11th Avenue, 2nd Floor
Greeley, CO 80631**

The Vendor must submit **One (1)** signed, completed, original, **four (4) hard copies**, and **one (1) flash drive** of the Vendor's technical proposal and **one (1) original and four (4) copies**, and **one (1) flash drive** of the Vendor's cost proposal. The first page of the original proposals should be marked "Original" and the first page of the copies should be marked "Copy." The electronic proposals should also include the following files:

RFP FL19-08-076 CIS System Selection - Specifications.xlsx

RFP FL19-08-076 CIS System Selection - Pricing Forms.xlsx

RFP FL19-08-076 CIS System Selection - Vendor Forms.docx

A technical proposal and a separate sealed cost proposal must be accompanied in the same package. The electronic copy of the Vendor technical proposal response shall include the completed specification worksheets that have been provided in Microsoft Excel. The electronic copy of the Vendor cost proposal shall include the completed pricing worksheets that have been provided in Microsoft Excel.

The City reserves the right to determine the suitability of proposals based on any or all of this criteria or other criteria not included in the above list. The City's evaluation team will then make a recommendation to be approved by the City's steering committee to elevate proposals for software demonstrations, discovery, and final contract negotiations.

All proposals must contain the following wording clearly marked on the outside of the envelope:

Company Name, RFP Title, RFP Number, Due Date and Time

Proposals received after the deadline will not be accepted and will be returned to the sender unopened via certified mail. Proposals may not be delivered via facsimile or e-mail. Proposals shall be sent by Federal Express (or comparable carrier) or hand delivered to the above address. The full name and address of the proposer will be clearly marked on the outside of the package that is inside the Federal Express package or comparable carrier.

2.2 Preparation of Proposals

Proposals shall be prepared in accordance with the proposal response format, section 0. Proposals not complying with this format may be considered non-responsive and removed from consideration.

2.3 RFP Clarifications and Questions

In an effort to maintain fairness in the process, inquiries concerning this procurement, including questions related to technical issues are to be directed through email to the following contact. Questions over the phone will not be accepted.

Contact: Linda Ingram

Title: Contract Specialist II

Email: linda.ingram@greeleygov.com

Subject Line: RFP #FL19-08-076

Inquiries regarding the proposal will be accepted up to and including **November 19, 2019 at 4:00 PM local time**.

All questions concerning the RFP must reference the RFP page number, and section heading. Questions will be answered and posted to Rocky Mountain E-Purchasing System (bidnetdirect.com/colorado) in the form of addenda to the RFP. When addenda are issued, all firms that have registered as a proposer will be notified through email. Proposers cannot rely on any other statements that clarify or alter any specification or other term or condition of the RFP.

Inquiries or requests for clarification submitted prior to November 4, 2019 will be addressed at the pre-proposal vendor conference. Additional inquiries or requests for clarification will be accepted until November 19, 2019 and will be answered as they come via Rocky Mountain E-Purchasing System.

2.4 Proposer Communication

All official communication from the City to proposers will be via postings on an electronic solicitation notification system, the Rocky Mountain E-Purchasing System (bidnetdirect.com/colorado). The Purchasing Contact will post notices that will include, but not be limited to, proposal document, addenda, award announcement, etc. It is incumbent upon proposers to carefully and regularly monitor the Rocky Mountain E-Purchasing System for any such postings.

2.5 Vendor Pre-Proposal Meeting

A non-mandatory Vendor pre-proposal meeting will be held on November 4, 2019 at 2PM local time at:

**1001 11th Avenue,
Colorado Room, 2nd Floor
Greeley, CO 80631**

Teleconferencing will be available with the following number:

Call in number for Proposers: +1-877-820-7831

Proposer Passcode: 2934196

Vendors are encouraged to send in questions prior to the conference, so the City is able to provide the best response. If you are unable to attend, please see section 2.3 for RFP clarification and questions.

2.6 Basis for Award, Evaluation Criteria and Questions

Failure to carefully read and understand this RFP may cause the proposal to be out of compliance, rejected by the City, or legally obligate the proposer to more than it may realize. In responding to this RFP, the proposer accepts full responsibility to understand the RFP in its entirety, and in detail, including making any inquiries to the City of Greeley as necessary to gain such understanding. The City reserves the right to determine, at its sole discretion, whether the proposer has demonstrated such understanding. That right extends to cancellation of award, if award has been made. Such disqualification and/or cancellation shall be at no fault, cost, or liability whatsoever to the City. Information obtained by the proposer from any officer, agent or employee of the City shall not affect the risks or obligations assumed by the proposer or relieve the proposer from fulfilling any of the RFP conditions or any subsequent contract conditions. Attempts by or on behalf of a prospective or existing proposer to contact or to influence any member of the selection committee, any member of the City Council, or any employee of the City with regard to the acceptance of a proposal may lead to elimination of that proposer from further consideration. Only the format described in the RFP and the attachments included with this RFP will be accepted as compliant for the submitted proposal. Failure to completely fill out all required attachments may result in disqualification.

In the event that all RFP requirements are not met with products and services provided by one firm, proposers are encouraged to partner with another firm to submit a single proposal. Failure to meet all requirements will not disqualify a firm. However, the City will evaluate each proposal to determine its overall fit in the best interests of the City.

The City reserves the right to select the proposal(s) which in its sole judgment best meets the needs of the City. The lowest proposed cost will not be the sole criterion for recommending the contract award.

The City reserves the right to reject any or all proposals and to waive technicalities and informalities when such waiver is determined by the City to be in the City's best interest.

Minor informalities are matters of form rather than substance evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other proposers. The Purchasing Contact may waive such informalities or allow the proposer to correct them depending on which is in the best interest of the City.

2.7 Right to Award Multiple Contracts

The City reserves the right to award multiple contracts from this RFP.

2.8 Third-Party Requirements

All third-party solutions proposed as part of a single proposal are subject to the same requirements of this RFP, unless otherwise stated.

2.9 Partnerships Must Identify Primary Contact Firm

In the event that multiple firms partner to submit one proposal, the proposal must identify one firm as the primary contact. The firm chosen will be the primary point of contact throughout the procurement process and will be held responsible for the overall implementation of all partners included in the proposal.

2.10 Advice of Omission or Misstatement

In the event the City has omitted or misstated a material requirement to this RFP and/or the services required by this RFP, the responding Proposer shall notify the contact identified in the *RFP Clarifications and Questions* section above of such omission or misstatement.

2.11 Confidential Information

Information contained in the Vendor's proposal that is company confidential must be clearly identified. The City will be free to use all information in the Vendor's proposal for the its purposes. Vendor proposals shall remain confidential until the City's Evaluation Team makes its recommendation to City Council. The Vendor understands that material supplied to the City may be subject to public disclosure under the Freedom of Information Act.

In the event that a proposer desires to claim portions of its proposal exempt from disclosure, it is incumbent upon the proposer to clearly identify those portions with the word "Confidential" printed on the top of each page for which such privilege is claimed. Examples of confidential materials include trade secrets and financial statements. Each page shall be clearly marked and readily separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. The City will consider a proposer's request for exemptions from disclosure; however, the City will make its decision based upon applicable laws. An assertion by a Proposer that the entire proposal, or large portions, is exempt from disclosure will not be honored. Prices, makes and models, or catalog numbers of the items offered, deliverables, and terms of payment shall be publicly available regardless of any designation to the contrary.

By submitting a proposal, the proposer is providing a guarantee to the City that, if chosen, it will be able to provide the proposed products, services, and personnel during the period of time discussed in the RFP. Upon submission, all proposals shall be treated as confidential documents until the selection process is completed. All proposals and supporting documents become public information after an award has been made and are available for public inspection by the general public in accordance with State of Colorado public records statutes. Proposers shall give specific attention to clearly identify those portions of its response that it considers confidential, proprietary commercial information or trade secrets.

Respondents are advised that, upon request for this information from a third party, the City is required to make a determination whether the information can be disclosed.

2.12 Award of Contract

The Vendor shall be deemed as having been awarded a contract when the formal notice of acceptance of the Vendor's proposal has been duly served upon the intended awardee by an authorized agent of the City. Note that the successful Vendor, at the time of contract execution, must be licensed to do business in the State of Colorado.

2.13 Tax Exempt Status

The City is exempt from paying taxes. The City's Federal Taxpayer ID No. is 84-6000593. All prices should be quoted FOB Greeley, CO.

2.14 Advertising

Vendor shall not advertise or publish the fact that the City has placed this order without prior written consent from the City, except as necessary to comply with the government.

2.15 Right to Request Additional Information

The City reserves the right to meet with select proposers at any time to gather additional information. Furthermore, the City reserves the right to remove or add functionality (i.e., modules, components, and/or services) until the final contract signing.

2.16 Proposal Preparation Costs

The City shall not be liable for any pre-contractual expenses incurred by prospective proposers, including but not limited to costs incurred in the preparation or submission of proposals. The City shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

2.17 Pricing Eligibility Period

All Vendor proposals must be offered for a term not less than **180 calendar days**. The City, may purchase a subset of the proposal components with the initial contract. The City requires Vendors to honor software and services pricing established within the Vendor's proposal response for Vendor proposed components which are not included in the City's initial purchase for a period of (3) years from the date of the Vendor's proposal.

Proposals may be modified or withdrawn prior to the established deadline for proposals. All such modifications and withdrawals must be submitted in writing and received by the City prior to the deadline for proposals. After the deadline for proposals, no change in prices or other provisions prejudicial to the interest of the City or fair competition shall be permitted.

2.18 Additional Charges

No additional charges, other than those listed on the price breakdown sheets, shall be made.

2.19 Turnkey Solution

All prices quoted must include all hardware equipment software and services necessary to make the system specified fully operational for the intent, function, and purposes stated herein. The City reserves the right to purchase hardware separately.

2.20 Purchase Quantities

The City reserves the right to purchase any quantities of hardware or software items bid without altering the unit purchase price upon award and throughout the contract period.

2.21 Rights to Pertinent Materials

This RFP does not commit the City to award a contract. All proposals submitted in response to this RFP become the property of the City and public records, and as such, may be subject to public review.

2.22 Right for Usage by Related Entities

The City reserves the right to allow other State and local governmental agencies, political subdivisions, and/or school districts to utilize the resulting award under the entities' own negotiated contract specified and upon agreement by all parties. Usage by any other entity shall not have a negative impact on the City of Greeley in the current term or in any future terms.

2.23 Right to Best and Final Offer

The City reserves the right to negotiate a Best and Final Offer with prospective vendors.

2.24 Right to RFP Cancellation

The City reserves the right to cancel this RFP at any time, without penalty.

2.25 Confidential/Propriety Information

All proposals will be confidential until a contract is awarded and fully executed. At that time, all proposals and documents pertaining to the proposals will be open for public inspection, except for the material that is proprietary or confidential. However, requests for confidentiality can be submitted to the Purchasing Contact provided that the submission is in accordance with the following procedures. This remains the sole responsibility of the offeror. The Purchasing Contact will make no attempt to cure any information that is found to be at a variance with this procedure. The offeror may not be given an opportunity to cure any variances after proposal opening. Neither a proposal in its entirety, nor proposal price information will be considered confidential/proprietary. Questions regarding the application of this procedure must be directed to the Purchasing Contact listed in this RFP.

2.26 Milestone Payment

The City requires that all payments will be based on the successful completion of milestones as determined by the City through the application of objective criteria. After the City's acceptance of the milestone, the vendor will invoice for any applicable milestone payments. Milestone payment amount shall either be a fixed fee or hourly based on the amount of time spent on the milestone up to a not-to-exceed limit.

2.27 Conditional Acceptance Testing

Conditional Acceptance will occur prior to go-live. The City will have up to forty-five (45) days to test the system ("pre-live testing") before going live, using any applicable test scripts or other evaluation methods of its own choosing.

3 Proposal Response Format

To facilitate the analysis of responses to this RFP, the Proposer is required to prepare their proposals in accordance with the instructions outlined in this section. **Proposers must respond in full to all RFP sections and follow the RFP format (section numbering, etc.) in their response. Failure to follow these instructions may result in rejection.** Proposals should be prepared as simply as possible and provide a straightforward, concise description of the proposed products and services to satisfy the requirements of the RFP. Attention should be given to accuracy, completeness, relevance, and clarity of content.

Section	Title
1	Executive Summary
2	Company Background
3	Application Software
4	Technical Requirements
5	Vendor Hosted or Cloud Option
6	Implementation Plan
7	Staffing Plan
8	Ongoing Support Services
9	Functional System Requirements
10	Client References
11	License and Maintenance Agreements
12	Exceptions and Deviations
13	Other Required Forms and Attachments
14	Addenda
Separate Sealed Document	Cost Proposal

3.1 Executive Summary (Section 1)

This part of the response to the RFP should be limited to a brief narrative not to exceed two (2) pages describing the proposed solution. The summary should be oriented toward non-technical personnel. The executive summary should not include any information about the cost.

3.2 Company Background (Section 2)

In addition to providing responses to the following items, the Vendor must complete the **Vendor Proposal Form** in **section 7.6** of this RFP.

Information that Vendors should provide in this section are as follows:

1. The company's background including a brief description (e.g., past history, present status, future plans, company size, key differentiators, etc.) and organization charts.
2. Your commitment to the public sector marketplace, including the year the solution began being sold to public sector clients.
3. If the Vendor is proposing to use subcontractors on this project, please provide the Vendor relationship with that firm and the specific services and/or products that the subcontractor will be providing on the project. Please describe the approximate percentage of services that each subcontractor will provide. A complete list of subcontractors is required. The City has the right to approve all sub-contractors of the Proposer at any time.

3.3 Application Software (Section 3)

If proposing a City-hosted and vendor-hosted or cloud solution, describe any areas where functionality in the two approaches differ.

The Proposer is required to provide a general description of the application and how it will meet requirements of this RFP. This section must address, at a minimum, the following items:

1. Describe your overall proposed technology solution, including any unique aspects.
2. For third party products proposed, provide the following for each product:
 - a. Reason a third party product is proposed versus the Vendor's solution/
 - b. Extent to which this third party product is integrated with the Vendor's solution.

3.4 Technical Infrastructure (Section 4)

Vendors should identify where conflicts may exist between their solution and current technologies being used in the City as described in section 1.5.

1. Hardware and Storage Environment
 - a. How many environments (e.g. production, testing, training) will be provided during implementation and after go-live?
 - b. Identify the communication protocols and networking requirements that are required for implementation and operation of the proposed system. In the event that there are multiple communication systems and/or protocols available, list all options. Take into account the City's current WAN and remote computing requirements and indicate what changes are required or recommended.
 - c. Describe what, if any, footprint exists on each user's desktop.
 - d. What are your guarantees on system performance?

3.5 Vendor Hosted or Cloud Option (Section 5)

Note: Response to this section is optional and only required for a vendor hosted or cloud option.

1. Please describe your **vendor hosting model**, including: hosting, integration, help desk, provisioning and desktop management capabilities, minimum hardware requirements for computers, deployment model (dedicated servers, shared environment, etc.), impact to and requirements of the City's network and bandwidth, and any partners that may be involved in service delivery.
2. Please describe your proposed **service level agreement**, including any tiered levels of service, response times, and standard metrics.
3. Please describe your **support model**, including: cost structure for support calls.
4. Please describe your **data center and storage facilities**, including: locations, staffing, physical security, environmental controls (including redundant power), redundancy/load balancing capabilities, data backups and disaster recovery capabilities.
5. Please describe your **change management**, upgrade, and patch management practices
6. Describe your **systems administration/management** capabilities including: monitoring of performance measures, intrusion detection, and error resolution.
7. Describe how you will help the City move to a new operation at the **end of the contract** term or if the contract is terminated.
8. Please provide the total number of clients and end-users utilizing your proposed solution.
9. Please provide a copy of your most recent SSAE 16 Type II audit.

3.6 Implementation Plan (Section 6)

The Proposer is to provide an implementation plan in narrative format supported by an activity-level project plan (similar to a Microsoft Project file) that details how the proposed solution is to be implemented. This implementation plan should include, at a minimum, the following elements:

1. General Implementation Approach
2. Project Management Approach
3. Data Conversion Plan
4. Report Development
5. Integrations and Interfaces
6. Training
7. Change Management Approach
8. Testing
9. Operational Redesign Approach
10. System Documentation and Manuals

11. Disaster Recovery Plan

12. Knowledge Transfer

It is expected that the Vendor will lead the efforts in each of the implementation areas described below unless stated otherwise.

3.6.1 General Implementation Approach (Section 6.1)

Provide a general overview of the implementation approach you plan to use for the City that includes addressing the following items:

1. Describe key differentiators of the approach as it relates to implementing a solution on time, within budget and with the ability to meet the needs of a client like the City.
2. Describe how you conclude on a preferred implementation phasing of software modules. What is your recommended approach for this implementation? What risks are present with this approach?
3. Describe your approach towards running parallel systems for a period of time.

3.6.2 Project Management Approach (Section 6.2)

The City expects the Proposer to provide “on the ground” project management resources for the system implementation. Costs for this should be clearly denoted in the pricing section.

Provide an overall description of the Vendor project management approach and projected timing for major phases. Include the following for achieving a successful deployment:

1. Project scope
2. Project milestones (including objective criteria for evaluating completion)
3. Project deliverables (including objective criteria for evaluating functionality)
4. High level project schedule (listing of phases and go-live dates)
5. Project resources
6. Project roles and responsibilities
7. Project change control procedures

Please provide a sample project management plan for the City to review.

3.6.3 Data Conversion Plan (Section 6.4)

The Vendor is expected to assist the City in the conversion of data to the new system. The City will be responsible for data extraction from current systems and data scrubbing and that the Vendor will be responsible for overall data conversion coordination, definition of file layouts, and data import and validation into the new CIS solution. Please provide pricing for data conversions in the associated Microsoft Excel pricing spreadsheet. Additionally:

1. Describe your general approach towards data conversion, retention of legacy data, and how you would work with the City to conclude on what should be converted.

3.6.4 Report Development (Section 6.5)

It is anticipated that the Proposer will take the lead on developing any reports required as part of the system implementation. The Proposer is expected to provide technical training on the tools used for report development, database schema and architecture, etc. Provide information on your reporting approach including:

1. Description of available methods of reporting (including business intelligence),
2. Approach to work with the City to identify, specify, and develop any required custom City reports during the implementation.
3. Provide a listing of available out of the box reports.

3.6.5 Integrations and Interfaces (Section 6.6)

It is expected that information generally will only need to be entered once in the system, and that modules within the system are integrated in real-time with each other such that batch processes are not required to transfer information from one area of the system to another. Existing City interfaces between core modules that may currently exist (e.g., Payments updating Accounts) or shadow systems that will likely be replaced are not included in this section as they are assumed to be included in an integrated CIS System.

The Microsoft Excel pricing sheet contains a listing of current and/or desired application interfaces. Please provide pricing for interface development in the associated Microsoft Excel pricing spreadsheet.

In addition:

1. Describe the extent to which the various modules are integrated together versus being purchased separately and interfaced
2. Describe your approach towards interfacing and integration with other solutions
3. Describe data exchange standards (e.g. XML, Web Services, API, or EDI) supported
4. Using the City's current technical environment described above, identify potential issues for integrating with specific technologies that are used within the City and possible mitigation measures.
5. If local customizations are made, do you provide any tools or assistance to easily incorporate customizations into new version/releases of your software?
6. Have you ever interfaced with the Oracle ERP Cloud system? If so, include those references in this section.
7. Have you ever interfaced with the TRAKiT system? If so, include those references in this section.
8. Have you ever interfaced with the CityWorks system? If so, include those references in this section.

3.6.6 Training (Section 6.7)

The City intends to explore the advantages, disadvantages and costs of two implementation training approaches:

1. **End User Training On-site Approach:** All end-user and technical training will be performed on-site through implementation and be performed by the Vendor.
2. **End User Training Remote Approach:** All end-user and technical training will be performed remote through implementation and be performed by the Vendor.

The Proposer should provide an overall description of **both** training methods (if available as options) and their recommendation, including the following:

1. General timeframes in which both types of training will be conducted
2. Materials that will be provided during training
3. The nature and amount of training to be provided in the following areas:
 - a. Technical training (e.g., programming, operations, etc.)
 - b. User training
 - c. Other staff (e.g., executive level administrative staff)
 - d. City's roles and responsibilities, including coordination, material development, training delivery, etc.

Additionally, please provide information on the following:

4. Options for online training versus in-person classroom training
5. Opportunities for ongoing training post go-live (e.g. new hires, refresher training)

3.6.7 Change Management Approach (Section 6.8)

The City recognizes that a movement from the current environment to a new solution will present change management challenges. The Proposer should clearly identify their approach towards Change Management, including any unique approaches or tools that will be used.

3.6.8 Testing (Section 6.9)

The Proposer should describe their recommended approach to the following types of testing that are anticipated to be performed on the project and the type of assistance they anticipate providing to the City related to such testing:

1. System testing
2. Integration testing
3. Stress/performance testing
4. User acceptance testing (UAT)

Describe what testing scripts will be provided to the City for the areas above, and how these will be customized for the City's needs.

3.6.9 Operational Redesign (Section 6.10)

The City wishes to implement operational improvements. Proposers are requested to describe their approach towards operational redesign. In addition, please describe your organization's capabilities to assist in a Citywide redesign of the chart of accounts.

3.6.10 System Documentation and Manuals (Section 6.11)

The Proposer is expected to provide user manuals and online help for use by the City as part of training and on-going operational support. Additionally, the Proposer is expected to provide technical documentation.

1. Describe what documentation (user guide, technical guide, training materials, etc.) is available on the system proposed and any related costs.
2. Describe what types of documentation you anticipate developing during the project.

3.6.11 Disaster Recovery Plan (Section 6.12)

Please describe the services you provide around disaster recovery as part of your solution.

3.6.12 Knowledge Transfer (Section 6.13)

Describe the process for ensuring that a transfer of knowledge occurs back to City staff such that staff is capable of supporting and maintaining the application.

3.7 Staffing Plan (Section 7)

1. The Proposer must detail the type and amount of implementation support to be provided (e.g., number of personnel, level of personnel, time commitment, etc.). If the Proposer is using a subcontractor, please include information on subcontracting staff being used and their specific role on the project.
2. Please provide an overall project organizational structure for City staff involvement during the project. Identify the roles and responsibilities of each component of this structure, as well as the skills required.
3. Please provide an overview of the City staff that are expected to be committed to the project implementation, in table format, including time spent with and without the Proposer. This overview should clearly delineate business versus technical staff, and represent commitments in terms of FTEs.

3.8 Ongoing Support Services (Section 8)

1. Please specify the nature and conditions of any post-implementation support options including:
 - a. Post-go live support that is included in the proposal response
 - b. Onsite support (e.g. system tuning, application configuration, interface issues, report development, network optimization, user training and tips)

- c. Telephone support
 - d. Help Desk services (Provide a service level agreement for your help desk if it exists. Include any limits on the number of staff who may call in.)
 - e. Users group (i.e. overview, location, and timing).
 - f. Online knowledgebase
- 2. Describe your maintenance programs and options with associated pricing.
 - 3. Provide an overview of the update process, including major version updates and patches. Include the process, describe any downtime, as well as the frequency they are released.
 - 4. How can the City change their configurations without Vendor involvement?
 - 5. Please provide an overview of the City staff that are required for ongoing application support, in table format. This overview should clearly delineate business versus technical staff, and represent commitments in terms of FTEs.

3.9 Functional System Requirements (Section 9)

Responses to the requirements referenced in section 4 of this RFP must be provided in this section of the Proposer's response. Use the Microsoft Excel specification spreadsheet provided and attach explanation pages if necessary. Include any costs associated with modifications in the Microsoft Excel pricing spreadsheet as well. Please note: The response to these requirements should be provided in the exact format as provided (e.g. no additional macros, formulas, additional columns, modifications, passwords, etc.). Failure to do so can result in disqualification of the entire proposal.

3.10 Client References (Section 10)

The Proposer must provide at least five references from clients that are similar in size and complexity to the City in the format provided in **section 7.7**. The City also requests a listing of all municipal clients. If proposing vendor-hosted or cloud, at least one of these references should be vendor-hosted or cloud.

3.11 License and Maintenance Agreements (Section 11)

Sample license and maintenance agreements must be provided in this part of the Proposer's response for all components of the recommended solution. Indicate the basis on how licenses are determined.

3.12 Exceptions and Deviations (Section 12)

If the Vendor finds it impossible or impractical to adhere to this RFP, it shall be so stated in its proposal, with all deviations grouped in a separate section entitled, "exceptions/deviations from proposal requirements." Objections or deviations expressed in other parts of the proposal, either directly or by implication, will not be accepted, and the Vendor in submitting a proposal, will accept this stipulation without recourse.

3.13 Other Required Forms and Attachments (Section 13)

Please provide the following required forms in this section:

1. Proposal Signature Form
2. Non-Collusion Affidavit
3. Minimum Criteria
4. Certificate of Liability Insurance
5. Vendor Proposal Form (*Word Document Format*)
6. Client Reference Form
7. Acknowledgement Form
8. Debarment Form
9. Contract terms and conditions compliance checklist
10. Contract terms and conditions compliance checklist – Exception explanation
11. For Vendors who are proposing a hosted or cloud solution, please additionally supply a copy of your Independent Service Auditor's Opinion Letter from your most recent SSAE 16 Type II audit.
12. Pricing Form (*Excel Format*) – Separate Sealed Document

3.14 Addenda (Section 14)

Include all original, signed copies of addenda in this section.

3.15 Separate Sealed Cost Proposal

One (1) original cost proposal, four (4) **copies** of the cost proposal, and **one (1) flash drive copy** of the cost proposal shall be submitted in a separate sealed envelope labeled "Cost Proposal", with the technical proposal. Pricing forms must remain in the original Excel format—failure to do so may result in disqualification of the proposal. If additional pricing forms are provided in the Vendor's proprietary format, evaluation will still be performed based on the costs in the included Microsoft Excel form.

- The City will not consider time and materials pricing. Vendors shall provide firm and fixed pricing and denote if each cost is one-time, annual, or other.
- The Vendor shall provide price information for each component of the proposed solution, as well as any modifications necessary to fully comply with the RFP specification response.
- In the event the product or service is provided at no additional cost, the item should be noted as "included," "no charge" or words to that effect.
- In the event the product or service is not being included in the Vendor proposal, the item should be noted as "No Bid". Modules are assumed to be "No Bid" in the Module Information tab unless licensing information is provided.
- Vendor shall provide prices in U.S. dollars.

- For software license fees, Vendor shall clearly define the license type (i.e. named user vs. concurrent user), number of licenses, and version of software licensed in the Module Information tab.
- To the extent possible, Vendors shall show any applicable discounts separately.
- Although the City prefers that Vendors provide separate prices for each item, the Vendor may present alternatives (i.e. bundled pricing) if such pricing would be advantageous to the City. In this case, please describe where the component costs are included using the Module Information tab.

The City prefers that Proposers provide separate prices for each item in the proposed solution. However, the Proposer is also encouraged to present alternatives to itemized costs and discounts, such as bundled pricing, if such pricing would be advantageous to the City. Proposers are asked to utilize the Module Information tab to describe licensing and other module-specific information, as well as where costs are represented for each module. There are two pre-defined bundles listed, which the City requests that Proposers utilize if necessary. The linkages described in this worksheet are assumed to be consistent for costs in the Application Software, Implementation Services, End User Training, and Train-the-Trainer Training tabs, unless otherwise stated.

The City reserves the right to pursue direct purchase of all items and services proposed, as well as to obtain independent financing.

The City is considering a vendor-hosted or cloud solution and a traditional on-premise solution. As such, the City is requesting proposals to include detailed information regarding the Proposers hosting and licensing options. If multiple solutions are proposed, please include a separate pricing form for each hosting/licensing model.

4 Functional Requirements

4.1 Introduction

The requirements in this section contain the desired functionality of the requested software solution.

Identified in the attached Excel spreadsheet are the requirements/specifications that must be addressed by the vendor's proposal. These requirements are mandatory in implementing the solution as defined in section 1.7. **The City intends to rely on the representations made in response to this section and considers each of them to be material. Should you be selected, you should expect that your responses regarding Functional Requirements, including in the attached spreadsheet, may be incorporated directly into the governing contract, appropriate statements of work, acceptance testing, and/or acceptance criteria.** Vendors must replace cells A1:G1 in the first area with the vendor's **Company Name** which will be repeated and printed for each subsequent module.

The **Priority** column includes one of the following entries to indicate the importance of the specification/report to the City:

“R” – Required:	This is a feature that the City requires in the <u>future</u> solution.
“D” – Desired:	This is a feature that the City would like in the new system, but is not an absolute necessity.
“O” – Optional:	This would be a feature that, while of interest, is not applicable at this time or is something that could be a future deployment.

Each vendor should review the specifications listed and respond with their availability within the Vendor's proposed solution. The responses should be entered under the **“Availability”** column of each form as follows:

Y	Functionality is provided out of the box through the completion of a task associated with a routine configurable area that includes, but is not limited to, user-defined fields, delivered or configurable workflows, alerts or notifications, standard import/export, table driven setups and standard reports with no changes. These configuration areas will not be affected by a future upgrade. The proposed services include implementation and training on this functionality, unless specifically excluded in the Statement of Work, as part of the deployment of the solution.
R	Functionality is provided through reports generated using proposed Reporting Tools.
T	Functionality is provided by proposed third party functionality (i.e., third party is defined as a separate software Vendor from the primary software Vendor). The pricing of all third party products that provide this functionality MUST be included in the cost proposal.
M	Functionality is provided through customization to the application, including creation of a new workflow or development of a custom interface, that may have an impact on future upgradability. The pricing of all modifications identified in the functional requirements MUST be included in the cost proposal.

F Functionality is provided through a future general availability (GA) release that is scheduled to occur within 1 year of the proposal response.

N Functionality is not provided

Use the **Cost** column for “M” or “F” responses to estimate the cost to be incurred by the City to secure the specification, if necessary. Use the **Comment** column to provide additional comments pertaining to your response for that item.

The **Required Product(s)** column is to be used to specify what product (e.g. product name or software module) is proposed. The cells D10:G10 in the form which currently read “*Replace this text with the primary product name(s) which satisfy requirements*” must be updated. This name will be automatically populated in the **Required Product(s)** column for each specification in the module. The automatically filled values in this column must be updated for any exceptions where a different or additional product is required to satisfy the requirement.

Vendors proposing a multi-product solution should complete a General and Technical module specification response for each product.

Please note: The response to these requirements should be provided in the exact format as provided (e.g. no additional macros, formulas, additional columns, modifications, passwords, etc.). Failure to do so can result in disqualification of the entire proposal.

5 Contract Terms & Conditions

The contractual terms and conditions will be fully negotiated after a provider is selected by City. Responses to the contract terms outlined in this section may be considered in the selection process and such terms shall be included in the final contract between the City and the Provider (the "Agreement"). For purposes of these terms and conditions, the term "Provider" means the Provider responding to this RFP and all such terms shall apply to any subcontractor of the Provider. Use of the term "Exhibit <##>" throughout these contract terms refers to supplemental documents that City expects will be included in the final contract package.

The following contract terms and conditions, substantially in the form contained **below**, are expected to be agreed to by the Providers as part of contract negotiations. Exceptions must be explicitly noted in the Provider Proposals using the checklist forms provided in Attachment <##> of the RFP.

INFORMATION TECHNOLOGY MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "Agreement") between City of Greeley, Colorado ("City") and the service provider as more particularly described on the signature page to this Agreement ("Provider") is made effective as of the effective date set forth on the signature page of this Agreement (the "Effective Date"). Provider and City are each a "Party" and together are the "Parties."

5.1 Services; Statement of Work; Change Orders.

5.1.1 Services.

Provider will provide to City the services (the "Services") and the deliverables (the "Deliverables") as described in a statement of work, substantially in the form of Exhibit A ("SOW"), in accordance with the terms and conditions of this Agreement.

5.1.2 Incorporation by Reference.

The Provider shall supply Software and Services adequate to accomplish the requirements as set forth in the Request for Proposal and the Provider's response to the Request for Proposal provided herein as Exhibit <##> and Exhibit <##>, respectively ("Contract Documents") and Provider's Documentation. Parties agree that where there is a conflict between terms of this Agreement and the information presented in the Contract Documents, this Agreement shall take precedence. The parties also agree that where there is not a conflict between this Agreement and the information presented in the Contract Documents, that all terms, conditions and offers presented in the Provider's proposal shall be incorporated into this Agreement and shall be binding upon all parties to the Agreement.

5.1.3 Statement of Work.

Each SOW will describe in reasonable detail the Services to be performed for City by Provider, any Deliverables to be provided by Provider to City, the fees to be paid for successful performance of the Services and acceptance of the Deliverables, and when and where the Services, the Deliverables, and any milestones will be performed or provided. Each SOW must be signed by both Parties to be effective and enforceable and will be subject to and governed by the terms and conditions of this Agreement except to the extent explicitly agreed by the Parties otherwise.

5.1.4 Change Orders.

If either Party wishes to change the scope or performance of the Services or the Deliverables, it will submit details of the requested change to the other in writing. Provider will, within a reasonable time after such request (and, if such request is initiated by City, not more than 5 business days after receipt of City's written request), provide a written estimate to City that includes the time required to implement the change, the cost adjustments associated with such change, and any other impact such change may have on the performance of this Agreement or the applicable SOW. Promptly after receipt of the written estimate, the Parties will negotiate and agree in writing on the terms of such change (a "Change Order"). Neither Party will be

bound by any Change Order unless mutually agreed upon in writing in accordance with Section 16.15.

5.2 Fees and Expenses; Payment Terms.

5.2.1 Fees.

In consideration of the provision of the Services and the Deliverables by Provider and the rights granted to City under this Agreement, City agrees to pay the fees set forth in the applicable SOW ("Fees"). To the extent contemplated in the applicable SOW, City may retain certain percentages of the Fees to secure completion of the Services and Deliverables. Payment to Provider of the Fees, less any retainage, will constitute payment in full for the performance of the Services and the creation of the Deliverables and, City will not be responsible for paying any other fees, costs, or expenses.

5.2.2 Appropriations Constraints.

The Parties agree that City is a governmental entity and subject to annual budget constraints, therefore, Provider may not increase the Fees or its rates specified in the applicable SOW without prior written consent of City. The Parties agree that this Agreement is contingent upon all funds designated for the Services and Deliverables herein being made available from other sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the Agreement may be terminated by either Party upon written notice being delivered to the other party.

5.2.3 Time and Materials.

Where the Services are provided on a time and materials basis, unless set forth otherwise in the applicable SOW, the Fees will be calculated in accordance with Provider's fee rates for Provider Personnel (as defined below). Provider will issue invoices to the City representative designated in the SOW monthly in arrears for its fees for time for the immediately preceding month, calculated as provided in this Section 2.3.

5.2.4 Fixed Fees.

Where the Services are provided for a fixed price, the Fees will not exceed the amount in the applicable SOW. The Fees will be paid to Provider in installments, as set out in the SOW, with each installment being conditioned on City's acceptance and Provider achieving the corresponding milestone. All prices for Provider's Software and Services hereunder are firm for the term of the Agreement. The City shall pay Provider for satisfactory performance of the Software and Services specified in this Agreement, the sums in accordance with Provider's response to City's RFP, this Agreement and any related addenda. City reserves the right to delay the purchase of Software components ("Modules") and related Services. The Modules subject to this price protection are included in Exhibit <##>.

5.2.5 Right to Withhold Payment.

If the Provider breaches any provision of this Agreement, the City shall have a right to withhold all payments due to the Provider until such breach has been fully cured.

5.2.6 Invoices.

Provider will issue invoices to City only in accordance with the terms of this Section 2, and City will pay all properly invoiced amounts due to Provider within 60 days after City's receipt of such invoice, except for any amounts disputed by City in good faith. City may set off at any time any amount owing to it by Provider against any amount payable by City to Provider. All payments will be in US dollars and made by check or wire transfer.

5.2.7 Taxes.

Provider will pay and be responsible for any taxes imposed on, or with respect to, Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.

5.3 Inspections and Acceptance.

5.3.1 Inspections.

City may observe the Services, and inspect the Deliverables at any reasonable time for compliance

with the standards, requirements, specifications, and instructions described in the applicable SOW ("Acceptance Criteria"). Acceptance Criteria and procedures may be jointly agreed to by the Parties and detailed in the applicable SOW. When a SOW does not include Acceptance Criteria, the acceptance of the Services and the Deliverables will be based on conformance to the generally applicable standards for such Services or Deliverables, as determined by City, in its reasonable discretion.

5.3.2 Non-Complying Work.

City reserves the right to determine whether the Services and the Deliverables, or any portion thereof, conform to the Acceptance Criteria. The Services and the Deliverables that City determines do not conform to applicable Acceptance Criteria will be referred to as "Non-Complying Work." City will provide notice to Provider of Non-Complying Work and the reasons for non-compliance.

5.3.3 Correction of Non-Complying Work.

Provider will use commercially reasonable efforts to correct Non-Complying Work as promptly as feasible after notice of non-compliance from City. City will not be obligated to pay for any Non-Complying Work and Provider will not be entitled to compensation for the Services or materials necessary to correct or re-perform Non-Complying Work. Should the Services or the Deliverables become or be discovered to be Non-Complying Work after payment has been made, City may withhold payment of future invoices or may request refund of such amounts. If after three attempts to correct or re-perform the Non-Complying Work, or regardless of number of attempts if the Non-Complying Work is not corrected within 10 days after notice of non-compliance to Provider, City may terminate this Agreement or the applicable SOW and require a refund of any Fees paid for such Non-Complying Work.

5.4 Provider Personnel and Permitted Subcontractors.

5.4.1 Contract Managers and Key Personnel.

Provider will designate a representative to be the primary point of contact in dealing with City for each

SOW ("Provider Contract Manager"). Provider Contract Manager will have the authority to act on behalf of Provider. Provider will also appoint key personnel, who will be suitably skilled, experienced, and qualified to perform the Services and create the Deliverables ("Key Personnel"). Provider's appointment of Provider Contract Manager and Key Personnel are subject to City's approval. Provider will maintain the same Provider Contract Manager and Key Personnel throughout the Term except for changes in such personnel due to City's request, the resignation or termination of such personnel, or other circumstances outside of Provider's reasonable control. Upon City's request, and at Provider's expense, Provider will promptly replace Provider Contract Manager, Key Personnel, and any other Provider employees and Permitted Subcontractors (as defined below) (collectively "Provider Personnel"). Nothing contained in this Agreement will create any employment relationship between City and Provider or Provider Personnel.

5.4.2 Provider Personnel and Permitted Subcontractor Requirements.

Prior to any Provider Personnel performing any Services or creating any Deliverables hereunder, and upon request of City from time to time, Provider will: (a) ensure that such Provider Personnel have the legal right to work in the United States; and (b) at its sole cost and expense, conduct background checks on such Provider Personnel, which background checks will comprise of, at a minimum, a review of credit history, references and criminal record, in accordance with state, federal, and local law. Any Provider Personnel or Permitted Subcontractor who requires on-site access at City premises or who requires access to City network or physical facilities will execute the Provider Personnel Confidentiality and Security Agreement, attached to Exhibit C as Appendix A.

5.4.3 Provider Personnel Compensation.

Provider is responsible for all Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers'

compensation insurance payments, and disability benefits.

5.4.4 Permitted Subcontractors.

Provider will complete and submit the Use of Third Parties notice set forth on Exhibit B and will obtain City's written approval, which consent may be given or withheld in City's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Provider, other than Provider's employees, to provide any Services and any Deliverables to City (each such approved third party, a "Permitted Subcontractor"). City's approval of any Permitted Subcontractor will not relieve Provider of its obligations under this Agreement. Provider will remain fully responsible for the performance of each Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Provider's own employees. Nothing contained in this Agreement will create any contractual relationship between City and any of Provider's subcontractors or suppliers. Provider will require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property provisions of this Agreement and to enter into a non-disclosure agreement, intellectual property assignment, license agreement, or similar agreement, in a form that is reasonably satisfactory to City.

5.5 Provider's Obligations.

5.5.1 Licenses and Consents.

Provider will, before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction ("Laws") applicable to the provision of the Services and creation and delivery of the Deliverables.

5.5.2 Rules and Regulations.

Provider will comply with, and ensure that all Provider Personnel and Permitted Subcontractors comply with, all rules, regulations, and policies of City that are communicated to Provider, including, without limitation, security procedures concerning systems and data and remote access thereto, building security procedures, restricted access to certain areas of City premises or systems, and general health and safety practices and procedures.

5.5.3 Records.

Provider will maintain complete and accurate records of the time spent and materials used by Provider in providing the Services and creating the Deliverables in such form as City will approve. During the Term and for a period of two years thereafter, upon City's written request, Provider will allow City and City's designated representatives to inspect and make copies of such records and interview Provider Personnel in connection with the provision of the Services and the creation of the Deliverables.

5.5.4 Time Is of the Essence.

Provider acknowledges that time is of the essence with respect to Provider's obligations hereunder and that prompt and timely performance of all such obligations, including all timetables, milestones, and other requirements in this Agreement and each SOW, is strictly required.

5.5.5 Territory.

The obligations of Provider under this Agreement will be performed fully within the United States, unless approved in writing in advance by City.

5.5.6 Project Schedule and Acceptance.

Provider will develop a detailed project schedule that details both Provider and City's responsibilities, timeline for project activities, phases, milestones, and deliverables ("Project Schedule") in connection with Provider's performance of the Services. The Project Schedule should be in sufficient detail to specify the deliverables, conversion, training, testing, acceptance, configuration, modification, integration, and live operation activities. Both Provider and City agree that a mutually agreeable Project Schedule will

be submitted and approved by City within xxxxx (##) days of the date the Agreement is signed by both parties ("Effective Date"). In the event Provider is unable to provide the Project Schedule within xxxxx (##) days, City will have at its option, the ability to terminate the Agreement and obtain all fees paid to Provider. The Project Schedule will also include the criteria by which the software will be tested and accepted by City.

5.5.7 Programming Services.

City may during the implementation period or thereafter require modifications, interfaces, conversion, report writing, etc., services from Provider ("Customizations"). Provider agrees to provide a written Change Order describing the work to be performed and estimating the costs for City approval before any work is initiated by Provider. Provider will not exceed the costs set forth in the mutually agreed to Change Orders without justification, in writing, that is acceptable to the City. No costs in excess of the estimates will be paid by City unless approved in writing in advance of fee incurrence. All Customizations shall be subject to Acceptance Testing before payment is released by the City. Acceptance of the Customizations resulting from each Change Order shall be per the Acceptance Testing clause herein.

5.5.8 Acceptance Testing.

For purposes of acceptance of the Solution (or portions thereof), the parties intend to use the following staged acceptance procedure. All timeframes specified in the following procedures may be overridden by the Project Schedule.

a) Written Deliverable: Provider may submit interim drafts (stamped, noted or otherwise clearly marked "Draft") of a written deliverable to City for review. City agrees to review and provide comments to Provider on each interim draft within xxxxx (#) business days after receiving it from Provider. City will have the opportunity to review the written deliverable for an acceptance period of xxxxx (#) business days after delivery of the final version (stamped, noted or otherwise clearly marked "Final Draft") of the written deliverable (the "Acceptance Period"). City agrees to notify Provider in writing by the end of the Acceptance Period either stating that the written deliverable is accepted in the form

delivered by Provider or describing in reasonable detail any substantive deficiencies that must be corrected prior to acceptance of the written deliverable. If Provider does not receive any such deficiency notice from City by the end of the Acceptance Period, the written deliverable will be deemed to be accepted and an approved document marked "Approved" and dated will be provided to City. If City delivers to Provider a timely notice of deficiencies and the items specified in the notice are deficiencies, Provider will promptly correct the described deficiencies and return to City for Acceptance. City will not unreasonably withhold, delay or condition its approval of a final written deliverable.

Provider is responsible for tracking status of each deliverable including but not limited to the date in which it was submitted to the City and date returned.

b) Software Deliverable: Acceptance testing is an iterative process designed to determine whether each component of the Software combined with related Services delivered by Provider ("Software Deliverable") performs the functions described in the Contract Documents and to discover and remove material deviations where the Software Deliverable does not substantially perform the functions described in the Contract Documents ("Defects") through repeated testing cycles. In the event of conflicts between Contract Documents and Application Software Documentation the Contract Documents will prevail.

Provider will work with the City and make a good faith effort to develop a test plan with the requisite details, understanding the level of detail required may change depending on the complexity of the requested Software Deliverable and to test each Software Deliverable (the "Acceptance Tests" or "Acceptance Testing").

i) The "Acceptance Test Period" for each Software Deliverable will be xxxxx (##) business days unless an alternate time is mutually agreed upon between Provider and City per the Project Schedule. The Acceptance Test Period for each Software Deliverable will start within xxxxx (#) business days, unless an alternate start date is mutually agreed upon by Provider and City per the Project Schedule, after the Software Deliverable is installed at City's designated site and Provider has

successfully completed Provider's installation test and notified City that the Software deliverable is "Ready for Acceptance Testing." Provider will not be obligated to deliver a Software Deliverable to City until City demonstrates the readiness of the target technical platform and environment.

ii) If City determines during the Acceptance Test Period that the Software Deliverable contains a Defect, City will promptly send Provider a written notice reporting the alleged Defect describing it to Provider in sufficient detail reasonably necessary for Provider to recreate it. Provider will modify the Software Deliverable to remove the reported Defect and will provide the modifications to City for re-testing. City will then re-test the modified portions of the Software Deliverable promptly after receiving the modifications from Provider. In such a case, Provider and City will mutually agree upon an updated Acceptance Test Period.

iii) By the end of the Acceptance Testing Period City will provide Provider with a final written list reporting any outstanding Defects (the "Punch List"). City will then have xxxxx (##) business days after the receipt of the modifications to re-test the modified Software Deliverable to confirm that the Defects that were reported on the Punch List have been removed. If any Defects that were reported on the Punch List have not been removed, City will provide Provider with written notification by the end of the retesting period reporting any such Defects. In such event, the procedures set forth in this section will be repeated for the remaining Defects on the Punch List.

Provider and City each agrees to work diligently to achieve acceptance of Software Deliverable at the earliest possible date.

"User Acceptance Testing" shall mean testing of each Phase identified in the Project Schedule using the process defined above for Software Deliverable.

"Conditional Acceptance" will occur upon the earlier of correction of Defects reported as part of User Acceptance Testing of the Phase, or Go-Live of the Phase. There will be a Conditional Acceptance for each Phase; Conditional Acceptance after the final Phase constitutes Conditional Acceptance of the entire Solution. Unless the Project Schedule determines otherwise, the Acceptance Test Period for User Acceptance Testing will be xxxxx (##)

calendar days, Provider and City will work diligently to put the Phase into Go Live operations.

"Final Acceptance" involves use of the Solution in totality in production operations for a period of xxxxx (##) calendar days, provision of all Services by Provider, and completion of the Phases and/or the Software previously tested and meeting Conditional Acceptance. If after xxxxx (##) calendar days the Solution performs without Defects, the City and the Provider will both issue and execute a "Final Acceptance" of the Solution. The xxxxx (##) day time frame for Final Acceptance will stop if Defects are found during production use and prevent further production use of the Software. The Final Acceptance process will resume on the date the Defect is confirmed as fixed and will continue for the remainder of the Xxxxx (##) day time frame. There will be a Final Acceptance for each Phase; Final Acceptance after the final Phase constitutes Final Acceptance of the entire Solution.

5.5.9 Professional Services Warranty.

c) Provider agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. Provider agrees that, at all times, the employees of Provider furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.

d) Provider agrees that all persons working for or on behalf of Provider whose duties bring them upon the City's premises shall obey the rules and regulations that are established by the City and shall comply with the reasonable directions of the City's officers. The City may, at any time, require the removal and replacement of any of Provider's employees for good cause.

e) Provider shall be responsible for the acts of its employees and agents while on the City's premises. Accordingly, Provider agrees to take all necessary measures to prevent injury and loss to persons or property located on the City's premises. Provider shall be responsible for all damages to persons or property caused by Provider or any of its agents or employees. Provider shall promptly repair, to the specifications of the City, any damage that it, or its employees or agents, may cause to the City's premises or equipment; on Provider's failure to do so,

the City may repair such damage and Provider shall reimburse the City promptly for the cost of repair.

- f) Provider agrees that, in the event of an accident of any kind, Provider will immediately notify the City's contact person and thereafter, if requested, furnish a full written report of such accident.
- g) Provider shall perform the services contemplated in the Agreement without interfering in any way with the activities of the City's staff or visitors.
- h) Provider and its employees or agents shall have the right to use only those facilities of the City that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the City. The City shall also extend parking privileges to properly identified members of Provider's full-time staff on the same basis as they are extended to the City's staff.
- i) The City shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Provider or its employees or subcontractors.

5.5.10 Ineffective Training.

Provider will submit to City an agenda in advance of any training sessions to be covered with the key materials provided during the course of the training. Further, Provider will provide to City details associated with the layout of the training facility, computer requirements, as well as all associated media necessary to deliver the course. City will conduct a rating of the course after its completion and communicate the results of this rating to Provider for future class improvements. In the event that City asserts in good faith that any Provider training consultant lacks the skill or capacity to adequately train City's staff, Provider shall replace such training consultant as soon as reasonably possible. If City notifies Provider within xxxxx (#) business days of the completion of said training, that in City's reasonable judgment the training sessions provided by such training consultant were inadequate or ineffective, then Provider shall provide a credit in training days to City for all such training sessions.

5.5.11 Subcontracts.

The Provider agrees not to subcontract any of the work required by this Agreement without the prior written approval of the City's <Executive Director> or designee. The Provider agrees to be responsible for the accuracy and timeliness of the work submitted in the fulfillment of its responsibilities under this Agreement.

5.5.12 Video and Audio Recording.

City reserves the right to record video and/or audio of any and all training sessions, whether held at City site, Provider site, or via teleconference. Use of such recordings shall be strictly for City staff training purposes.

5.6 City's Obligations.

5.6.1 Contract Manager.

City will designate a representative to be the primary point of contact in dealing with Provider for each SOW ("City Contract Manager").

5.6.2 Cooperation.

City will cooperate with Provider in matters relating to the Services and appoint and replace, in its reasonable discretion, a City employee to serve as the City Contract Manager with respect to this Agreement. Such City Contract Manager will have the authority to act on behalf of City with respect to matters pertaining to this Agreement. City agrees to respond to Provider requests for direction, information, approvals, authorizations, or decisions that are reasonably necessary for Provider to perform the Services in accordance with the requirements of this Agreement. City agrees to provide such City Materials (as defined below) as Provider may reasonably request and City considers reasonably necessary, in order to carry out the Services.

5.6.3 Access.

Subject to Section 5.2, City will provide such access to City's premises as may reasonably be required by Provider and agreed with by City in writing in

advance, for the purposes of performing the Services.

5.7 Term and Termination.

5.7.1 Term.

This Agreement will commence as of the Effective Date and will continue thereafter for a period of one year ("Initial Term"), unless sooner terminated pursuant to this Section 7. Upon the expiration of the Initial Term, this Agreement will automatically renew for additional periods of one year (each a "Renewal Term" and together with the Initial Term, the "Term"), unless either Party provides written notice to the other Party of its intent not to renew at least 90 days prior to the expiration of the then-current Term. The Initial Term and each Renewal Term remain subject to City's annual appropriations and Section 7.5.

5.7.2 Termination by City.

City, in its sole discretion, may terminate this Agreement or any SOW, in whole or in part, at any time without cause, by providing at least 30 days' prior written notice to Provider.

5.7.3 Termination by Either Party.

Either Party may terminate this Agreement, effective upon written notice to the other Party (the "Defaulting Party"), if the Defaulting Party:

j) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 10 days after receipt of written notice of such breach.

k) (i) becomes insolvent or admits its inability to pay its debts generally as they become due, (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing, (iii) is dissolved or liquidated or takes any company action for such purpose, (iv) makes a general assignment for the benefit of creditors, or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any

court of competent jurisdiction to take charge of or sell any material portion of its property or business.

l) loses funding due to governmental budget changes (see paragraph 2.2).

5.7.4 Effect of Termination.

Upon expiration or termination of this Agreement for any reason:

m) Provider will (i) promptly deliver to City all Deliverables (whether complete or incomplete) and all documents, information, data, know-how, methodologies, software, and other materials provided to Provider by City ("City Materials"), (ii) promptly remove any Provider equipment located at City's premises, (iii) provide reasonable cooperation and assistance to City in transitioning the Services to an alternate service provider, and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services which have not been provided or any Deliverables which have not been completed.

n) Each Party will (i) return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information (as defined below), (ii) permanently erase or return, at the option of the disclosing Party, all of the other Party's Confidential Information from its computer systems, except to the extent necessary to comply with applicable Law or Regulation, (iii) certify in writing to the other Party that it has complied with the requirements of this Section 7.4(b), provided, however, that City may retain copies of any Confidential Information of Provider incorporated in the Deliverables or to the extent necessary to allow it to make full use of the Services and the Deliverables; and (iv) comply with the data destruction and return provisions of Exhibit C.

o) In no event will City be liable for any Provider Personnel termination costs arising from the expiration or termination of this Agreement.

5.7.5 City Restrictions.

This Agreement is subject to annual appropriation by the Greeley City Council and, in the absence of appropriated funds, City may terminate this Agreement or any applicable SOW immediately upon notice to Provider. Nothing in this Agreement is a

pledge of City's credit, or a payment guarantee by City to Provider. Nothing contained herein will constitute a mandatory liability, charge, or requirement of or against City in any ensuing fiscal year of City beyond the then current fiscal year of City. Neither this Agreement nor any SOW will constitute a general obligation or other indebtedness of City, or a multiple fiscal year direct or indirect debt, or other financial obligation whatsoever of City within the meaning of the Constitution of the State of Colorado and laws of the State of Colorado or of the Charter and ordinances of the City of Greeley. In the event of a default by City of any of its obligations under this Agreement, Provider will have no recourse against any revenues of the City of Greeley, its affiliates, or its agencies. Notwithstanding any language herein to the contrary, nothing in this Agreement or corresponding SOW, will be construed as creating a lien against any revenues of City. City is subject to the Colorado Open Records Act, §24-72-201, et seq., C.R.S. (2017) ("CORA") and City's compliance with CORA will not be considered a breach of this Agreement or any applicable SOW.

5.7.6 Survival.

The rights and obligations of the Parties set forth in this Section 7, and Section 8, Section 9, Section 10, Section 13, Section 14, Section 15, and Section 16, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

5.8 Intellectual Property Rights; Ownership.

5.8.1 City Ownership of Deliverables.

City is, and will be, the sole and exclusive owner of all right, title, and interest in and to the Deliverables, including all Intellectual Property Rights (as defined below) therein. Provider agrees, and will cause its Provider Personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a work made for hire for City. To the extent that any of the Deliverables do not constitute a work made for hire, Provider hereby irrevocably

assigns, and will cause Provider Personnel and Permitted Subcontractors to irrevocably assign to City, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Provider will cause Provider Personnel and Permitted Subcontractors to irrevocably waive, to the extent permitted by applicable Law, any and all claims such Provider Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables. Upon the request of City, Provider will, and will cause Provider Personnel and Permitted Subcontractors to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist City to prosecute, register, perfect, or record its rights in or to any Deliverables. "Intellectual Property Rights" means all: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) trade secrets, know-how, and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

5.8.2 Provider's Pre-Existing Materials.

Provider and its licensors are, and will remain, the sole and exclusive owners of all right, title, and interest in and to the pre-existing materials specified in a SOW as well as all documents, data, know-how, methodologies, software, and other materials, provided by or used by Provider to perform the Services, in each case developed or acquired by Provider prior to the commencement of this Agreement ("Pre-Existing Materials"), including all Intellectual Property Rights therein. Provider hereby grants City an irrevocable, perpetual, fully paid-up, royalty-free, non-transferable (except in accordance with Section 16.13), non-sublicenseable, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create

derivative works), import, make, have made, sell, offer to sell, and otherwise exploit any Pre-Existing Materials to the extent incorporated in, combined with, or otherwise necessary for the use of the Services or the Deliverables for any and all purposes. All other rights in and to the Pre-Existing Materials are expressly reserved by Provider.

5.8.3 Patents, Copyrights, and Proprietary Rights Indemnification.

The Provider, at its own expense, shall completely and entirely defend the City from any claim or suit brought against the City arising from claims of violation of United States patents or copyrights resulting from the Provider or the City's use of any equipment, technology, documentation, and/or data developed in connection with the Services and Software (together the Solution) described in this Agreement. The City will provide the Provider with a written notice of any such claim or suit. The City will also assist the Provider, in all reasonable ways, in the preparation of information helpful to the Provider in defending the City against this suit.

In the event that the City is required to pay monies in defending such claims, resulting from the Provider being uncooperative or unsuccessful in representing the City's interest, or in the event that the City is ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, Provider agrees to fully reimburse the City for all monies expended in connection with these matters. The City retains the right to offset against any amounts owed Provider any such monies expended by the City in defending itself against such claims.

Should a court order be issued against the City restricting the City's use of any portion of the Software related to the claim and should the Provider determine not to further appeal the claim issue, at the City's sole option the Provider shall provide, at the Provider's sole expense, the following:

- A. Purchase for the City the rights to continue using the contested Software or portions thereof which may include purchase of a third party software product, or
- B. Provide substitute software products and related services to the City which are, in the

City's sole opinion, of equal or greater quality, or

- C. Refund all monies paid to the Provider for the Solution subject to the court action. The Provider shall also pay to the City all reasonable losses related to the Solution and for all reasonable expenses related to the installation, implementation and conversion to the new Solution.

5.8.4 Unlimited Liability for Software Provider Infringement.

The Provider will reimburse City for all costs related to infringement (not "finally awarded"). There shall be no limit of liability on behalf of the Provider if the Software is determined to be infringing.

5.9 Software License

5.9.1 Replication of Software.

City shall not copy Software for any purposes other than for back up, disaster recovery and/or testing.

5.9.2 Risk During Software Installation.

Delivery of the Software shall be made in accordance with the Project Schedule referenced as part of this Agreement. Minor variances from this Project Schedule may be permitted subject to a mutual agreement by both parties and confirmed by prior written notice. The Software shall be installed and placed into good working order by representatives of the Provider. During the time period where the Software is in transit and until the Software is fully installed in good working order, the Provider and its insurer shall be responsible for the Software and relieve the City of responsibility for all risk or loss or damage to the Software. In addition, Provider shall hold the City and its officers, employees and agents harmless from any risk of loss or damage arising out of occurrences during the installation of the Software.

5.9.3 Warranty Pertaining to Hardware Recommendation.

Provider represents and warrants that all Software provided under this Agreement are compatible with and certified for use and operation in City's operating environment. Furthermore, Provider acknowledges

that it has reviewed the hardware system ordered by City and represents and warrants that such hardware system as defined in Exhibit <##> is sufficient for City's current and reasonably projected use, including account and transaction volumes.

5.9.4 Payment Terms – Software License.

It is expected that certain payments will be made to Provider by City upon delivery of the Software with additional payments made for Software and Services based on specific project milestones as defined in the Project Schedule.

Provider shall invoice City for the Total Amount on Exhibits <##> and <##> according to the following payment schedules:

Software License Fees:

- ##% Due upon Contract Execution
- ##% Due upon initial Software installation
- ##% Due in installments based upon Conditional Acceptance of each Software Module
- ##% Due upon Final Acceptance

Provider shall submit to the City an invoice in a form agreeable to the City. The invoice shall be accompanied by such supporting documentation as required by the City.

5.10 Ownership of City Materials.

CITY AND ITS LICENSORS ARE, AND WILL REMAIN, THE SOLE AND EXCLUSIVE OWNER OF ALL RIGHT, TITLE, AND INTEREST IN AND TO THE CITY MATERIALS, INCLUDING ALL INTELLECTUAL PROPERTY RIGHTS THEREIN. PROVIDER WILL HAVE NO RIGHT OR LICENSE TO USE ANY CITY MATERIALS, EXCEPT SOLELY DURING THE TERM OF THIS AGREEMENT TO THE EXTENT ABSOLUTELY NECESSARY TO PROVIDE THE SERVICES OR CREATE THE DELIVERABLES AS SET FORTH IN THIS AGREEMENT. ALL OTHER RIGHTS IN AND TO THE CITY MATERIALS ARE EXPRESSLY RESERVED BY CITY. CONFIDENTIAL INFORMATION.

5.10.1 Definition of Confidential Information.

"Confidential Information" means any information that is treated as confidential by a Party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information will not include information that: (a) is already known to the Party that receives it (the "Receiving Party") without restriction on use or disclosure prior to receipt of such information from the Party that discloses it (the "Disclosing Party"); (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party, as evidenced in written documentation; (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information; or (e) information that is subject to CORA requests.

5.10.2 Nondisclosure. The Receiving Party agrees:

p) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants, and legal advisors who have a "need to know," who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 9;

q) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under this Agreement or, in the case of City, to make use of the Services and the Deliverables; and

r) to immediately notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

5.10.3 Compelled Disclosure.

If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party will reasonably attempt to provide:

- s) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy;
- t) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure; and
- u) if, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

5.10.4 CORA.

Provider acknowledges that City is subject by law to responding to all CORA requests. Provider shall comply with CORA in all respects and shall not restrict or otherwise inhibit City from complying.

5.11 Privacy and Data Protection.

5.11.1 Access and Use.

Provider may access and use the City Data, City Systems, and Personal Data (each as defined below) only on behalf of, and for the benefit of, City and only to carry out its obligations under this Agreement and in accordance with City's instructions. Provider will not transfer City Data or Personal Data outside the United States without the explicit written consent of City. "Personal Data" means any information relating to an identified or identifiable individual, regardless of the media in which it is contained. "City Data" means any information about City's business processes, security, technology infrastructure, employee and citizen identifiers, and any regulated data. "City Systems" means any information technology system, equipment, network (virtual or physical) that is owned, controlled, leased, or rented by City or its affiliates.

5.11.2 Authorized Disclosure.

Provider will not share, transfer, disclose, or otherwise provide access to any City Data, City Systems, or Personal Data to any third party or affiliate unless City has expressly authorized Provider to do so in writing in advance, pursuant to Exhibit B. Provider will immediately inform City in writing of any requests with respect to Personal Data received from City's customers, employees, or others. Provider will respond to such requests only in accordance with City's instructions. Provider will cooperate with City if an individual requests access to his or her Personal Data for any reason.

5.11.3 Privacy and Information Security Requirements.

Provider will comply with the Privacy and Information Security Requirements set forth in this Agreement and as further set forth on Exhibit C. Provider will not commence work under this Agreement until Provider has fully executed Exhibit C. Provider will develop, maintain and implement a comprehensive written information security program that complies with all applicable Privacy and Information Security Requirements (as defined below) at its sole expense. "Privacy and Information Security Requirements" means: (a) all applicable international, federal, state, provincial and local laws, rules, regulations, directives, and governmental requirements relating in any way to the privacy, confidentiality, or security of Personal Data, including, without limitation: Criminal Justice Information Services Security Policy, Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, the Family Educational Rights and Privacy Act, 42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records), the Genetic Information Nondiscrimination Act of 2008, the Payment Card Industry Data Security Standard, the Payment Application Data Security Standard, the Data Protection Act 1998, Directive 95/46/EC (to be repealed and replaced by Regulation (EU) 2016/679 on May 25, 2018), Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive Regulations 2003 (SI

2426/2003); the Gramm-Leach-Bliley Act; laws regulating unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Data; and all other similar international, federal, state, provincial, and local requirements; and (b) all applicable provisions of the written information security requirements of City or Provider, except those the Parties have agreed are inapplicable.

5.11.4 Provider's Information Security Program.

Provider's information security program will include appropriate technical, physical, and organizational safeguards designed to: (a) ensure the security and confidentiality of City Data, City Systems, and Personal Data; (b) protect against any reasonably anticipated threats or hazards to the security and integrity of City Data, City Systems, and Personal Data; and (c) protect against any actual or suspected unauthorized access, use, loss, disclosure, or acquisition of or to any City Data, City Systems, and Personal Data (each (a), (b), and (c), an "Information Security Incident"). Provider's information security program will, among other things, include regular testing and monitoring of the effectiveness of Provider's information safeguards. Upon request from City, and subject to the reasonable discretion of City, Provider will permit City and City's designated representatives to conduct an audit and review of Provider's information security program and all records, documents, and information applicable thereto ("Security Review"). Provider agrees to fully cooperate with such Security Review at Provider's sole cost and expense. Provider will exert best efforts to correct all material problems disclosed by any of the foregoing audits or reviews, at its sole expense.

5.11.5 Notice of Security Incident.

Subject to applicable legal, regulatory, or law enforcement requirements, Provider will immediately inform City in writing of any Information Security Incident involving City Data, City Systems, or Personal Data of which Provider or any Permitted Subcontractor becomes aware. Such notice will summarize in reasonable detail the effect on City, if known, of the Information Security Incident and the corrective action taken or to be taken by Provider.

Provider will promptly take all necessary corrective and remedial actions (at its sole cost and expense), and will cooperate fully with City in all reasonable and lawful efforts to mitigate the effects of such Information Security Incident. Subject to applicable legal, regulatory, or law enforcement requirements, Provider must obtain the approval of City prior to the publication or communication of any filings, communications, notices, press releases, or reports related to any Information Security Incident that expressly mention City.

5.11.6 Password Security.

The Provider warrants that no "back door" password or other method of remote access into the Software code exists. The Provider agrees that any and all access to any Software code residing on the City's City/server must be granted by the City to the Provider, at the City's sole discretion.

5.11.7 Software Interfaces.

City has the right to develop interfaces to, and/or database applications that integrate with, the licensed Software using Provider's recommended database and development tools without voiding the terms or warranties herein.

5.11.8 Source Code Escrow.

Provider shall place Source Code for the Software modules licensed by the City in escrow with an independent third-party (with whom a separate Escrow Agreement will be entered into by Provider at no additional cost to City). The Source Code shall be kept current with the releases and versions of the Software in live use at the City. The Source Code shall revert to City for City's use if Provider files for bankruptcy or protection from creditors in a court of law. City shall then have full rights to use source code for any purposes other than resale.

Provider will provide appropriate source code to the City in a timely manner in the event that the Provider goes out of business or no longer supports the Software being licensed. The same applies if the Provider is merged or acquired and the Software is no longer supported. Once the City obtains the source code, it will be a perpetual license, and there will be no additional fees due, even if additional licenses are deployed.

5.11.9 Right to Outsource.

Software [licensed][subscribed] to City may be used by a third-party Provider hired by City to perform outsource services on City's behalf.

5.11.10 Use of Software by Personnel Who Are Not Employees.

City's consultants, contractors, external customers, and business partners may access and use the Software under the City's direction.

5.11.11 Disaster Recovery & Disaster Recovery Testing.

There will be no additional software costs to process at another site in the event of a disaster that shuts down the primary location where the Software is hosted or for testing at the disaster recovery site.

5.11.12 Disclaimers and Limitations of Remedies.

Except as specifically stated in the Warranty section of this Agreement, the Software is provided "as is" without warranty of any kind, other than expressed or implied herein. In no event shall Provider be liable for any indirect, special or consequential damages unless as otherwise stated herein, including, but not limited to, loss of anticipated profits, revenue or savings, arising from the use of or inability to use the Software or breach of any expressed or implied warranty, even if Provider or its agent has been advised of the possibility of such damages.

In the event that the parties are unable to resolve differences, and after exhausting the terms and conditions of the Non-Performance Escalation Procedures clause herein, that may arise relating to this Agreement, all disputes arising from this Agreement shall be resolved through the courts of Greeley, Colorado, unless both parties agree to binding arbitration, which shall take place in Greeley, Colorado. If arbitration is agreed to, the arbitration shall be governed by the most recently published Commercial Arbitration Rules of the American Arbitration Association. Both parties agree to submit disputes to a single arbitrator acceptable to both parties. The arbitrator will be selected from a list compiled by the parties' respective legal counsels. Every person named on the list of potential

arbitrators must be a neutral and impartial lawyer who has at least xxxxx years specializing in the field of general commercial litigation and is knowledgeable about software. The arbitrator shall base its award on applicable law and judicial precedent and unless both parties agree, otherwise shall include in such award the finding of fact and conclusions of law upon which the award is based. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

5.12 Software Maintenance and Support.

5.12.1 Extended Services.

For as long as City pays the [maintenance and support][subscription] fees ("Annual Fees") delineated in Exhibit <##>, Provider will provide City with maintenance and support services ("Extended Services") with respect to the Software. Such Extended Services shall consist of the following:

- Provider shall provide maintenance for the Software necessary to insure its operation in material conformance with all Documentation, Contract Documents and all representations and warranties set forth herein.
- Provider shall provide City with any revisions, updates and enhancements of the Software, together with related documentation, during the period in which enhancement and support services under this Agreement are furnished.
- Provider agrees that the rates specified for Extended Services shall remain in effect for a period of minimally two (#) years from initial contract signing.
- Provider agrees not to assign its Extended Services obligations as contemplated herein, without prior written authorization of City, which will not be unreasonably withheld. Provider will not utilize subcontractors for any Extended Services provided herein without the express written authorization of City.

5.12.2 Annual Fees.

Annual Fees shall not be increased by an annual average percentage greater than the annual Consumer Price Index (CPI) for the Mountain-Plains

region or xxxxx (#) %, whichever is less, for as long as Annual Fees are paid and this agreement between the City and the Provider is in effect.

Provider agrees to send an itemized invoice to the City at least 90 days before Extended Services is up for renewal.

5.12.3 Resolution and Response Time Warranty.

Provider warrants that all Resolution and Response Times delineated below shall be adhered to as follows:

Priority 1 support issues are defined as: Mission Critical – Software is down /undiagnosed but feared critical; situation may require a restore and Software use is suspended until a diagnosis is given.

- Response to first call time limit – within xxxxx (#) business hours.
- Resolution time limit – Provider shall use its best efforts to resolve within xxxxx business days.
- If Provider and City are on a support telephone call to resolve a Priority 1 support issue at the time that normal support hours end, Provider support representatives will remain on the call past the normal support hours to provide what assistance can be provided at no additional cost. City acknowledges that programmers will not be available at that time.
- Penalty for not adhering to time limits - City shall receive a xxxxx percent (#%) credit against the Annual Fees, per incident.

Priority 2 support issues are defined as: Critical Issue – Software is not down, but operations are negatively impacted.

- Response to first call time limit – within xxxxx (#) business hours.
- Resolution time limit – Provider shall use its best efforts to resolve within xxxxx (#) business days.
- Penalty for not adhering to time limits - City shall receive a xxxxx percent (#%) credit against the Annual Fees, per incident.

Priority 3 support issues are defined as: Non-Critical Issue – resolution period to be mutually agreed upon.

- Response to first call time limit – within xxxxx (##) business hours.
- Resolution time limit – Provider shall use its best efforts to resolve within xxxxx (##) business days.
- Penalty for not adhering to time limits - City shall receive a xxxxx percent (#%) credit against the Annual Fees, per incident.

5.12.4 Termination of Annual Maintenance and Support.

City may cancel Extended Services upon xxxxx (##) day notification to the Provider.

Extended Services may be reinstated by the City at an amount not to exceed the back fees that would have been due if Extended Services had not been dropped. In the event of reinstatement of Extended Services, the City shall not be forced to move to a new [license][subscription] model.

The Provider shall give the City at least xxxxx (#) months' notice before unilaterally canceling Extended Services. In addition, the Provider shall continue to support the Software as long as it is supporting such Software for other customers of Provider.

5.12.5 Federally Mandated Changes.

Provider shall supply City with all federally mandated changes to Provider's Software. Provider will make a good faith effort to provide City with these changes within xxxxx (##) days of their enactment dates prescribed by the aforementioned bodies. In the event that Provider is unable to supply these changes within xxxxx (##) days of the enactment, City will be credited a prorated share of the Annual Fees for every week Provider is tardy in delivering the required change.

5.12.6 Future Releases/Upgrades.

City shall be entitled to future releases and upgrades, whether of a "minor" or major" nature, of Software for no additional cost beyond the Annual Fees delineated in Exhibit <##>.

5.12.7 Solution Longevity.

The Provider certifies that the Software will remain available and fully supported by Provider for a minimum of xxxxx (##) years from the date the Agreement is signed and that any material changes to Provider's company or products will not affect the City's implementation or Extended Services of the Software as long as City pays the Annual Fees.

5.12.8 Successor Software Products.

In the event Provider makes available successor software products with substantially similar functionality as the Software which may be based on a new technical architecture ("Successor Products") within xxxxx (##) years of contract signing, City may transfer the [license][subscription] for the Software to the Successor Products for no additional Provider [license][subscription] fees. In such event, City shall pay the then-current Annual Fees for the Successor Products, in addition to any services and/or third party fees associated with the Successor Products.

5.12.9 Functionality Replacement.

The City maintains the rights to the Software functionality that is [licensed][subscribed to] herein, even if that functionality later gets renamed or rebundled by Provider.

5.12.10 Continuity of Warranty.

City may continue the Software Warranty protection by purchasing and paying for Extended Services described herein. By doing so, all Software Warranty, Year 200 Warranty, and Resolution and Response Time Warranty conditions included herein shall remain in effect, in perpetuity, as long as payments for Annual Fees are kept current.

5.12.11 Payment Terms – Annual Fees.

Provider shall invoice City for the Total Amount on Exhibits <##> and <##> according to the following payment schedule:

Annual Fees:

- First year Annual Fees due upon Final Acceptance

- Subsequent Annual Fees due annually on anniversary of Final Acceptance

Provider shall submit to the City an invoice in a form agreeable to the City. The invoice shall be accompanied by such supporting documentation as required by the City.

5.13 Hosting

5.13.1 Hosting Services.

Provider will provide hosting services consisting of system administration, system management, and system monitoring activities that Provider performs for the Software, and includes the right to access and use the Software, resolving performance issues under the terms of the Service Level Agreement (SLA), City data storage, City data archiving and disaster recovery services ("Hosting Services"). Hosting Services do not include support of an operating system or hardware other than those used by Provider at Provider's data centers to host and operate the Software, support outside of Provider's normal business hours, training, consulting or other professional services.

5.13.2 Service Audits.

Hosting Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 16, Type 2. Provider has attained, and will maintain, Type II SSAE compliance, or its equivalent, for so long as this Agreement is in effect. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), Provider will provide City with a summary of Provider's SSAE-16 compliance report or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which City makes a written request, Provider will provide that same information.

5.13.3 Disaster Recovery.

Provider has developed and implemented a business continuity/disaster recovery plan and will continue to maintain a commercially reasonable business continuity/disaster recovery plan for the term of this Agreement. As part of Provider's business continuity/disaster recovery program, Provider has fully-redundant telecommunications access, electrical power, and the required hardware to provide access

to the Software and Hosting Services in the event of a component or system failure or any other unplanned interruption of the Software or Hosting Services whether caused by a disaster or otherwise. In the event any of City data has been lost or damaged due to an act or omission of Provider or its subcontractors or due to a defect in Software, Provider will use best commercial efforts to restore all the data on servers in accordance with the architectural design's capabilities and with the goal of minimizing any data loss as greatly as possible. In no case shall the recovery point objective ("RPO") exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this subsection, RPO represents the maximum tolerable period during which City data may be lost, measured in relation to a disaster Provider declares, said declaration will not be unreasonably withheld. The Force Majeure provisions herein shall not limit Provider's obligations under this section, meaning that, a Force Majeure event does not relieve Provider of its obligation to implement its business continuity/disaster recovery plan to the extent it is able to do so in light of the Force Majeure event.

Provider will test the business continuity/disaster recovery plan on an annual basis. Provider's standard test is not City-specific. If City requests a City-specific disaster recovery test, Provider will work with City to schedule and execute such a test on a mutually agreeable schedule.

5.13.4 Penetration Testing.

Provider conducts annual penetration testing of the production network and/or web application. Provider will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. Provider will provide City with a written or electronic record of the actions taken by Provider in the event that any unauthorized access to City database(s) is detected as a result of Provider security protocols. Further, Provider recognize that Provider is storing confidential City data and any breach of security could have a detrimental impact on City. The <Regulation> requires breach notification when residents' computerized personal information is accessed and acquired without authorization. In the event there is such a breach, Provider will notify City

immediately while the issue is remediated, and all communications shall be coordinated with City in conformance with applicable law. Provider will indemnify City for all costs reasonably incurred by City due to a breach of security determined to be the result of Provider's negligence, subject to the limitation of liability in the Agreement. Provider will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at City's written request. City may not attempt to bypass or subvert security restrictions in the Hosting Services or environments related to the Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of Provider network and systems (hosted or otherwise) is prohibited without the prior written approval of Provider's IT Security Officer.

5.13.5 Back-up and Recovery.

Provider will (i) execute nightly database backups to a backup server in a secure offsite location and (ii) save the last ##### nightly database backups in a secure offsite location. City will have the ability to download any of the backups to City's location. The Software shall be configured to perform incremental backups every ### hours, such that the database can be restored to the last committed transaction and/or point in time of the last incremental backup, which will have occurred up to two-hours earlier, in the event of a system failure.

Provider will be responsible for importing back-up and verifying that City can log-in to the Software. City will be responsible for running reports and testing critical processes to verify the returned data. At City's written request, Provider will provide test results to City within a commercially reasonable timeframe after receipt of the request.

5.13.6 Secure Data Transmission.

Provider will provide secure data transmission paths from each of City's workstations to Provider's servers; all data transmission between Provider's hosted environment and City's environment shall be encrypted.

Provider guarantees that all City data that Provider hosts will be located within the United States at all times.

5.13.7 Background Checks.

For at least the past ten (10) years, all of Provider's employees have undergone criminal background checks prior to hire. All employees sign Provider's confidentiality agreement and security policies. Provider's data centers are accessible only by authorized personnel with a unique key entry. All other visitors must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

5.13.8 City Notification if Third-Party Request for Data.

Unless the notification is specifically precluded by such law, lawful order, or government authority, as applicable, Provider shall notify City in the event that Provider is required by law, lawful order of a court (including, without limitation, request for production of documents), or governmental authority to disclose City data. In the event that Provider is required to produce or disclose City data, unless prohibited as set forth above, then Provider shall provide City with written notice of the request sufficiently in advance of the data specified for the production of the records so that City can act to protect its data by, for example, seeking a protective order. In addition, to the extent permitted by law, Provider shall not release the data pending the outcome of any measures taken by City to contest, otherwise oppose, or seek to limit disclosure by Provider.

5.13.9 Provision of City Data upon Termination.

Upon termination or non-renewal of this Agreement, Provider will promptly provide City data to City then residing in Provider's hosted environment. The City data shall be provided in ASCII or such other format as may be mutually agreed. Such City data will be provided no later than sixty (60) days prior to the date of expiration or termination, as applicable, (provided at least 10 days advance notice by City) and again seven (7) days after date of expiration or termination, as applicable.

5.13.10 Transition Services.

Upon expiration or termination of this Agreement, upon City's request, Provider will cooperate with City and provide services that are reasonably necessary to effectuate an orderly transition to a new system, solution, or provider; provided that City shall pay Provider's then-current rates for such services. Such cooperation and services shall include assistance with data conversion and, at Provider's option may include the provision of file layouts to City on a confidential basis for the purpose of identifying the data Provider provided to City.

Data should be returned to the customer in both the SaaS Provider's native data format and a platform-agnostic format (e.g. MS SQL) with appropriate data schemas and dictionaries. Once a successful hand-off of that data has been confirmed, all customer data should be permanently removed from all SaaS Provider servers.

5.13.11 Annual Hosting Fees.

Annual Hosting Fees shall not be increased by an annual average percentage greater than the annual Consumer Price Index (CPI) for the Mountain-Plains region or xxxxx (#) %, whichever is less, for as long as Annual Hosting Fees are paid and this agreement between the City and the Provider is in effect.

Provider agrees to send an itemized invoice to the City at least 90 days before Extended Services is up for renewal.

5.13.12 Payment Terms – Annual Hosting Fees.

Provider shall invoice City for the Total Amount on Exhibits <##> and <##> according to the following payment schedule:

Annual Hosting Fees:

- First year Annual Hosting Fees due upon availability of Software
- Subsequent Annual Fees due annually on anniversary of availability of Software
- Provider shall submit to the City an invoice in a form agreeable to the City. The invoice

shall be accompanied by such supporting documentation as required by the City.

5.13.13 Service Level Agreement Overview.

This Service Level Agreement (SLA) operates in conjunction with, and does not supersede or replace any part of, the Agreement, specifically, the Hosting Services Section. It outlines the information technology service levels that Provider will provide to City to ensure the availability of the application services and Software that City has requested Provider to provide. All other support services are documented in the Software Maintenance and Support Section.

5.13.14 Definitions.

- Except as defined below, all defined terms have the meaning set forth in the Agreement.
- *Attainment*: The percentage of time the Software is available during a calendar quarter, with percentages rounded to the nearest whole number.
- *City Error Incident*: Any service unavailability resulting from City applications, content or equipment, or the acts or omissions of any of City service users or third-party providers over whom Provider exercises no control.
- *Downtime*: Those minutes during which the Software is not available for City use. Downtime does not include those instances in which only a defect is present.
- *Service Availability*: The total number of minutes in a calendar quarter that the Software is capable of receiving, processing, and responding to requests, excluding maintenance windows, City Error Incidents and Force Majeure.

5.13.15 Service Availability.

The Service Availability of the Software is intended to be 24/7/365. Provider sets Service Availability goals and measures whether Provider has met those goals by tracking Attainment.

- A. City Responsibilities: Whenever City experiences Downtime, City must make a

support call according to the procedures outlined in the Software Maintenance and Support Section. City will receive a support incident number. City must document, in writing, all Downtime that City has experienced during a calendar quarter. City must deliver such documentation to Provider within 30 days of a quarter's end. The documentation City provides must evidence the Downtime clearly and convincingly. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

- B. Provider Responsibilities: When Provider support team receives a call from City that Downtime has occurred or is occurring, Provider will work with City to identify the cause of the Downtime (including whether it may be the result of a City Error Incident or Force Majeure). Provider will also work with City to resume normal operations. Upon timely receipt of City's Downtime report, Provider will compare that report to Provider's own outage logs and support tickets to confirm that Downtime for which Provider was responsible indeed occurred. Provider will respond to City's Downtime report within 30 day(s) of receipt. To the extent Provider has confirmed Downtime for which Provider is responsible, Provider will provide City with the relief set forth below.
- C. City Relief: When a Service Availability goal is not met due to confirmed Downtime, Provider will provide City with relief that corresponds to the percentage amount by which that goal was not achieved, as set forth in the City Relief Schedule below. Notwithstanding the above, the total amount of all relief that would be due under this SLA per quarter will not exceed 100% of one quarter of the then-current Annual Fees. The total credits confirmed by Provider in one or more quarters of a billing cycle will be applied to the Annual Fees for the next billing cycle. Issuing of such credit does not relieve Provider of its obligations under the Agreement to correct the problem which created the service interruption. Every quarter, Provider will compare confirmed Downtime to Service

Availability. In the event actual Attainment does not meet the targeted Attainment, the following City relief will apply, on a quarterly basis:

Targeted Attainment	Actual Attainment	City Relief
100%	99.5-100%	Remedial action will be taken.
100%	<99.49%	##% credit of Annual Fees paid for affected calendar quarter for each 1% by which Actual Attainment is less than ##%, such credit not to exceed Annual Fees actually paid in any circumstance. Credit for affected calendar quarter will be posted to next billing cycle.

City may request a report from Provider that documents the preceding quarter's Service Availability, Downtime, any remedial actions that have been/will be taken, and any credits that may be issued.

D. Failure by Provider to Meet Attainment

Levels: In the event Provider fails to achieve an Actual Attainment Level of ##% or greater for three (3) consecutive quarters, City shall be entitled to terminate the Agreement on written notice to Provider with no liability, obligation, or penalty to City by reason of such termination. Without limitation, if City terminates the Agreement pursuant to this Section, then any early termination penalties shall not apply. Alternatively, City shall have the option to terminate the Agreement, without penalty, and to purchase perpetual licenses from Provider for the Software to be hosted by City in-house or by its designated hosting provider. If City exercises this option,

City shall pay the then-current license fees for the Software, discounted ##% for each full year that this Agreement has been in force, with such discount, in no event, to exceed ##% of the list price for the Software so licensed. City's license rights are not otherwise expanded, City may not modify the Software so acquired or use it for any other purpose than was provided for in this Agreement.

5.13.16 *Applicability.*

The commitments set forth in this SLA do not apply during Provider maintenance windows, City Error Incidents, and Force Majeure. Provider performs maintenance during limited windows that are historically known to be reliably low-traffic times. Provider will not perform maintenance during normal business hours (8 am-8 pm EST, Mon - Fri). If and when maintenance is predicted to occur, Provider will provide at least one week advance notice and will coordinate to the greatest extent possible with City. The foregoing notwithstanding, Provider reserves the right to provide maintenance without such advance notice if circumstances require immediate action; provided that any notice provided without such advance notice that occurs during normal business hours will count as Downtime for the purposes of this SLA.

5.13.17 *Force Majeure.*

City will not hold Provider responsible for not meeting service levels outlined in this SLA to the extent any failure to do so is caused by Force Majeure. In the event of Force Majeure, Provider will file with City a signed request that said failure be excused. That writing will at least include the essential details and circumstances supporting Provider's request for relief pursuant to this Section. City will not unreasonably withhold its acceptance of such a request.

5.14 Representations and Warranties.

5.14.1 *Mutual Representations and Warranties.*

Each Party represents and warrants to the other Party that:

- v) it is duly organized, validly existing and in good standing under the laws and regulations of its jurisdiction of formation;
- w) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;
- x) the execution of this Agreement by its representative has been duly authorized by the Party; and
- y) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

5.14.2 Provider Representations and Warranties.

Provider represents and warrants to City that:

- z) it will perform the Services and create the Deliverables using personnel of required skill, experience, and qualifications and in a professional, good, and workmanlike manner in accordance with best industry standards for similar services and deliverables;
- aa) it has all requisite personnel, competence, skill, and physical resources to provide the Services and create the Deliverables;
- bb) it is in compliance with, and will perform the Services and create the Deliverables in compliance with, all applicable Laws;
- cc) City will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind;
- dd) the Services, the Deliverables, and City's use thereof does not and will not infringe on any third party's Intellectual Property Right;
- ee) as of the Effective Date, there are no pending or, to Provider's knowledge, threatened claims, litigation, or other proceedings pending against Provider by any third party alleging a violation of Intellectual Property Rights;
- ff) the Services and the Deliverables will be in conformity with all requirements or specifications stated in this Agreement and the applicable SOW;
- gg) to the extent that Provider provides software hereunder, Provider represents and warrants to City that it will not contain any feature, code, or instructions (including any code or instructions provided by third parties) that may be used to access, modify, delete, damage, or disable any computer, associated equipment, computer programs, data files, or other electronically stored information operated or maintained by City including, without limitation (i) software locks, drop dead devices, back doors, time bombs, keys, or other software routines which may disable a computer program automatically with the passage of time or under the positive control of a person other than City, or (ii) any form of virus, a Trojan horse, worm, or other software routines or hardware components that may permit unauthorized access or disable, erase, or otherwise harm software, hardware, or data. Provider further represents and warrants that it will not impair the operation of any other software or hardware of City in any way for any reason whatsoever. Provider hereby expressly waives and disclaims any right or remedy it may have at law or in equity to de-install, disable, or repossess (except as may otherwise be expressly provided in this Agreement) any Deliverables or software provided under this Agreement, even in the event City fails to perform any of its obligations under this Agreement. If Provider becomes aware of any potential breach of the obligations set forth in this Section 12.2(h), Provider will promptly notify City and will use best efforts to immediately and completely remedy the breach and all associated damages, losses, or problems caused by such breach; and
- hh) unless specifically identified in the SOW (or otherwise pre-approved in writing by City in Exhibit B), Provider will not use any third parties or include any third party software, including without limitation, any freeware or open source software ("Third Party Software") in the Deliverables. In no event will open source software that is licensed pursuant to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), or similar type of license be included in the Deliverables or be required for the operation or use of such Deliverables. If any Third Party Software is incorporated into the Deliverables pursuant to this Section 12.2(i) (and upon the prior written approval of City) (i) Provider will be fully responsible and liable for the representations, warranties, and other obligations set forth herein with

regard to the Third Party Software, (ii) such Third Party Software will be deemed to be within the scope of the Deliverables, and (iii) City will not have any liability related to the Third Party Software. Any Third Party Software that City is required to separately license in connection with the Deliverables will be specifically identified in the applicable SOW. Provider hereby represents and warrants that the Deliverables will operate with such separately licensed Third Party Software without error.

5.15 Indemnification.

5.15.1 General Indemnification.

Provider will defend, indemnify, hold harmless, and reimburse City and its officers, directors, employees, agents, successors, and assigns (the "Indemnitees") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers ("Losses") arising out of, relating to, or resulting from any third party claim, suit, action, or proceeding (each, an "Action") arising out of, relating to, or resulting from:

ii) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the willful, fraudulent, or negligent acts or omissions of Provider, Provider Personnel, or other persons or entities acting on behalf of Provider; and

jj) Provider's, Provider's Personnel's, or other person or entities acting on behalf of Provider's breach of any representation, warranty, or obligation of Provider set forth in this Agreement, any applicable SOW, and any exhibits; and

Provider's, Provider's Personnel's, or other person or entities acting on behalf of Provider's provision of Services and Deliverables under this Agreement, any applicable SOW, and any exhibits.

Provider shall assume the defense of the City pursuant to the provisions of the paragraph above within xxxxx (##) days of receipt of written notice. Any legal cost or expense, including attorney's fees, incurred by the City for enforcement of its rights under the paragraph above between the time by

which Provider should have assumed the City defense and the time when Provider assumes the City's defense shall be reimbursed by Provider. Any legal cost or expense, including attorney's fees, incurred by the City in the successful prosecution of any litigation or arbitration seeking to enforce the provisions of the paragraph above or in negotiating a settlement of such claim, shall also be reimbursed by Provider.

Should the parties agree to submit claims, disputes, or other matters arising out of this Agreement to arbitration, they may do so only with written agreement of all parties, including the City.

5.15.2 Infringement Indemnification.

Provider will defend, indemnify, hold harmless, and reimburse the Indemnitees from and against all Losses arising out of, relating to, or resulting from a claim that any of the Services or the Deliverables or City's receipt or use thereof infringes any Intellectual Property Right of a third party.

5.15.3 Procedure.

Should City seek indemnification hereunder it will notify Provider in writing of any Action and cooperate with Provider, at Provider's sole cost and expense. Upon consent of City, Provider may assume control of the defense and investigation of such Action. Upon consent of City, Provider may employ counsel of its choice to handle and defend the same, at Provider's sole cost and expense. Provider will not settle any Action without City's prior written consent. City's failure to perform any obligations under this Section 13.3 will not relieve Provider of its obligations under this Section 13.3. City may participate in and observe the proceedings.

5.16 Limitation of Liability.

5.16.1 Consequential Damages.

Except for Provider's obligations under Section 2, Section 8, Section 9, Section 10, Section 12, Section 13 of this Agreement, and Section 4.3 and 9 of Exhibit C, in no event will either Party be liable to the other or to any third party for any loss of use, revenue, or profit, or for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract,

tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not such Party has been advised of the possibility of such damages.

5.16.2 Liability Cap.

Subject to all other restrictions in this Agreement, including, but not limited to those in Section 15.17, in no event will City's liability arising out of, relating to, or resulting from this Agreement, whether arising out of, related to, or resulting from, breach of contract, tort (including negligence), or otherwise, exceed the aggregate amounts paid to Provider in the six months preceding the event giving rise to the claim. No term or condition of this Agreement or any attachments thereto shall be deemed as an assumption of any duty with respect to any non-party to this Agreement.

5.16.3 Exclusions from Limitation; Survival.

The foregoing limitations do not apply to the payment of settlements, costs, damages and legal fees referred to herein. The limitations of liability set forth herein will survive and apply notwithstanding any determination by a court of law that a limited or exclusive remedy for breach of warranty set forth in the Agreement is inadequate. The parties agree that the foregoing limitations will not be read so as to limit any liability to an extent that would not be permitted under applicable law.

5.17 Insurance.

5.17.1 Types and Amount of Insurance.

At all times during the Term of this Agreement and for a period of three years thereafter, Provider will procure and maintain, at its sole cost and expense, insurance coverage in at least the types and amounts set forth on Exhibit D.

5.17.2 Insurance Policy Requirements.

All insurance policies required pursuant to this Section 15 will: (a) be issued by insurance companies reasonably acceptable to City; (b) provide that such insurance carriers give City at least 30 days prior written notice of cancellation or non-renewal of policy coverage; provided that, prior to such cancellation, Provider will have new insurance policies in place that meet the requirements of this

Section 15; (c) waive any right of subrogation of the insurers against City; (d) provide that such insurance be primary insurance and any similar insurance in the name of and for the benefit of City will be excess and non-contributory; (e) name City and all successors and permitted assigns, as additional insureds; and (f) have a Best's rating for each carrier of B+VII or better.

5.17.3 Certificates Upon Request; Sufficiency Qualification.

Provider will not commence work under this Agreement until Provider has obtained copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Section 15 and such insurance has been approved by the City. Provider will not do anything to invalidate such insurance. This Section 15 will not be construed in any manner as waiving, restricting, or limiting the liability of either Party for any obligations imposed under this Agreement (including without limitation, any provisions requiring indemnification). The insurance coverage required under this Agreement shall be maintained until Final Acceptance of the system by City according to the prescribed procedures. The insurance coverage required under this Agreement may not be a sufficient amount to provide adequately for Provider's obligations hereunder. Provider should review and assess its own coverages and its obligations under this Agreement.

5.18 General Provisions.

5.18.1 Further Assurances.

Each Party will, upon the reasonable request, and at the sole cost and expense, of the other Party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

5.18.2 Force Majeure.

Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence, and that by its nature could not have been foreseen by such

Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, or acts of terrorism) (each, a "Force Majeure Event"). Provider's financial inability to perform, changes in cost, availability of materials, availability of work force, components, or services, market conditions, supplier actions, or contract disputes will not excuse performance by Provider under this Section 16.2. Provider will give City prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Provider will use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized, and resume full performance under this Agreement. If Provider will not be able to provide the Services or the Deliverables for a period of 10 consecutive days, or such other period of time as the Parties agree in writing, City will have the right to terminate this Agreement or any SOW, in whole or in part, on written notice to Provider. During the Force Majeure Event, the non-affected Party may suspend its performance obligations until such time as the affected Party resumes performance.

5.18.3 Liquidated Damages.

Failure on the part of the Provider to complete critical project milestones as established in the Project Schedule may result in liquidated damages being imposed on the Provider by the City for breach of contract and for non-compliance. The milestones will be defined in the Project Schedule and extent of damages will be <###> per day for each day the project Go Live date as defined in the Project Schedule is extended.

5.18.4 Independent Contractors.

The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever.

5.18.5 Non-Collusion.

Provider hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm, employee of the City, or other person or entity concerning the obtaining of this Agreement. In addition, Provider agrees that a duly authorized Provider representative will sign a non-collusion affidavit, in a form acceptable to City that Provider has not received from City any incentive or special payments, or considerations not related to the provision of the Software and Services described in this Agreement.

5.18.6 Conflict of Interest.

The Provider shall not employ as a director, officer, employee, agent, or subcontractor any elected or appointed official of the City or any member of his/her immediate family.

5.18.7 Publicity.

Neither Party will issue or release any announcement, statement, press release, other publicity, or marketing materials relating to this Agreement, or otherwise use the other Party's trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other Party. Provider shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of the City unless Provider receives specific written authorization in advance from the City's <Executive Director>. Provider will limit and direct any of its advertising on the City's premises and shall make arrangements for such advertising through the <Executive Director>. Provider shall not install any signs or other displays within or outside of the City's premises unless in each instance the prior written approval of the City's <Executive Director> has been obtained. However, nothing in this clause shall preclude Provider from listing the City on its routine City list for matters of reference

5.18.8 Notices.

All notices, requests, consents, claims, demands, waivers, and other communications hereunder will be in writing and will be deemed to have been given: (a) on the date and at the time of delivery if delivered

personally to the party to whom notice is given; (b) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed; (c) on the date and at the time shown on the facsimile if telecopied; (d) on the date and at the time shown on the electronic mail (email) if emailed, with no bounceback received within two (2) days; or (e) on the date shown on the delivery acknowledgment provided by the courier if sent by a nationally-recognized overnight courier service that provides evidence of delivery. Such communications must be sent to the respective Parties at the respective addresses, facsimile numbers, and e-mail addresses indicated on the signature page of this Agreement (or at such other address for a Party as will be specified in a notice given in accordance with this Section 16.10).

5.18.9 Interpretation; Construction.

For purposes of this Agreement: (a) the words “include,” “includes,” and “including” will be deemed to be followed by the words “without limitation;” (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (a) to sections, schedules, exhibits and statements of work refer to the sections of, and schedules, exhibits, and statements of work attached to this Agreement; (b) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (c) to a statute or regulation means such statute or regulation as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The schedules, exhibits, and statements of work referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

5.18.10 Entire Agreement; Order of Precedence.

This Agreement, together with all schedules, exhibits, appendixes, statements of work, and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any schedule, exhibit, or statement of work, the following order of precedence will govern: (a) first, this Agreement, exclusive of its exhibits, appendixes, and schedules; (b) second, the applicable SOW; and (c) third, any exhibits, appendixes, and schedules to this Agreement. In no event will Provider's end user license agreement, other standard terms and conditions, or responses to City's Request for Proposal preempt or supersede this Agreement and corresponding schedules, exhibits, statements of work, or otherwise, in any way.

5.18.11 Assignment.

Neither Party, without the prior written consent of the other Party, may assign, transfer, or delegate any or all of its rights or obligations under this Agreement. No assignment will relieve the assigning Party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing will be null and void. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

5.18.12 No Third Party Beneficiaries.

Except for the Indemnitees, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity, any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

5.18.13 Amendment; Waiver.

This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by

each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

5.18.14 Severability.

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible. To the extent the Parties cannot agree on the modification to this Agreement, the court will modify this Agreement so as to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

5.18.15 Audit.

City and City's designated representatives will each have the right to inspect and audit Provider's records in connection with this Agreement. If an audit reveals an overcharge, Provider will promptly reimburse City for the amount of the overcharge and the cost of the audit. Audits will only be conducted with reasonable advanced notice during normal business hours and in a manner so as not to unreasonably interfere with Provider's operations.

5.18.16 Governing Law; Venue.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or

conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Colorado. Any legal suit, action, or proceeding arising out of, related to, or resulting from this Agreement, the Services, or the Deliverables provided hereunder will be instituted exclusively in the 19th Judicial District of the State of Colorado located in the County of Weld, City of Greeley, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Any legal suit, action, or proceeding so commenced shall be maintained and remain exclusively in the aforementioned courts and any courts having appellate jurisdiction over them. Service of process, summons, notice, or other document by mail to such Party's address on the signature page to this Agreement will be effective service of process for any suit, action, or other proceeding brought in any such court. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party against the other Party arising out of or related to this Agreement, the prevailing Party will be entitled to recover its attorneys' fees and court costs from the non-prevailing Party.

5.18.17 Equitable Remedies.

Each Party acknowledges that a breach by a Party of Section 8 (Intellectual Property Rights; Ownership), Section 9 (Confidential Information), or Section 10 (Privacy and Data Protection) may cause the non-breaching Party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching Party may be entitled at law or in equity. Such remedies will not be deemed to be exclusive but will be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

**5.18.18 Business Continuity and
Contingency Plans.**

Provider will maintain policies and procedures for contingency and business resumption plans, disaster recovery plans, and proper risk controls for the Services, including the capability to establish a disaster recovery platform at a remote data center (the "Business Continuity Plan") which will, at a minimum, conform to the greater of: (a) the policies and procedures Provider has for its own data; (b) the policies and procedures City has for its own data; or (c) the then current industry standards, but in no event less than the use of reasonable care. A Business Continuity Plan including emergency management and communications, business recovery, and disaster recovery must be in place and tested at least annually. The Business Continuity Plans must be delivered to City on the execution of the first SOW and then no less than annually thereafter or sooner if changes to the plan occur.

5.18.19 Counterparts.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. This Agreement, including all component parts, may be executed and delivered by electronic signature by any of the Parties and all Parties consent to the use of electronic signatures.

5.18.20 Governmental Immunity.

No term or condition of this Agreement or any attachments thereto shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections and limitations provided by common law or state statute, including the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as now or hereafter amended, which shall govern Provider's obligations hereunder in the event of conflict with any other applicable law, and City hereby expressly reserves the same.

**5.18.21 Equal Opportunity Employment/
Nondiscrimination Policy.**

It is the policy of the City that all Providers who provide goods and services to the City by contract, shall, as a condition of providing goods and services, adhere to all Federal, State and Local laws, ordinances, rules and regulations, and policies, and if applicable, prohibiting discrimination in regard to persons to be served and employees and applicants for employment including, but not limited to, the following:

- The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended.
- The Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended.
- Section 504 of the Federal Rehabilitation Act of 1973, PL 93-112, 87 Stat 355, as amended, and rules adopted thereunder.
- The Americans with Disabilities Act of 1990, PL 101-336, 104 Stat 327 (42 USCA § 12101 et seq.), as amended, and regulations promulgated thereunder.

Provider shall, as a condition of providing Software and Services, as required by law and/or the City's Equal Opportunity Employment/Nondiscrimination Policy, not discriminate against persons to be served or an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation.

Where there has been a conclusive finding that Provider has violated Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies, Provider shall be barred from providing goods and services to the City for xxxxx (#) years from the date that a determination of the violation has been made in accordance with applicable statutes, ordinances, rules/regulations, or policies or from the date that such determination becomes known, unless

a specific exemption is granted by the City's governing body.

Any violation of Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies during the course of time during which Provider is providing Software or Services to the City shall be regarded as a material breach of the Agreement between the City and the Provider, and the City may terminate such Agreement effective as of the date of delivery of written notification to the Provider.

Any employee of Provider providing goods and services to the City under his Agreement, or any employee of a subcontractor of Provider providing goods and services to the City under this Agreement, or any bona fide organization representing such employees may file a written complaint with the governing body or its designated agent, if any, challenging the compliance by Provider with the terms of this policy, the governing body or its designated agent shall then conduct an investigation to determine whether the policy has been violated.

Any Provider found to have retaliated in violation of a Federal or State law against an employee for filing a claim of violation of Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies shall be ineligible to provide any goods or services to the City for a period of xxxxx (##) years from the date of such finding

5.18.22 Governing Law Clause.

The Agreement shall be subject to all laws of the Federal Government of the United States of America and to the laws of the State of Colorado. All duties of either party shall be legally performable in the State of Colorado. The applicable law for any legal disputes arising out of this Agreement shall be the law of (and all actions hereunder shall be brought in) the State of Colorado, and the forum and venue for such disputes shall be in the courts of appropriate jurisdiction for Greeley, Colorado.

5.18.23 Effect of Regulation.

Should any local, state, or national regulatory authority having jurisdiction over the City enter a valid and enforceable order upon the City which has the effect of changing or superseding any term or

condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the City of a material part of its Agreement with the Provider. In the event this order results in depriving the City of material parts or raising their costs beyond that defined in this Agreement, the City shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon xxxxx (##) days' written prior notice to the Provider. Should the Agreement be terminated under such circumstances, the City shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

The City shall not be charged for such compliance beyond the cost of the annual [maintenance and support fees][subscription fees]. The City shall also not be charged for analysis, investigation, design, programming, conversion, or implementation of such compliance beyond the cost of the annual [maintenance and support fees][subscription fees].

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date, notwithstanding the actual date of execution.

NOTE: THIS ONLY HAS TO BE SIGNED BY THE FINALIST VENDOR

CITY:

City of Greeley, Colorado

Approved as to Substance:

By: _____

Name: _____

Title: _____

PROVIDER:

[Name of Provider]

By: _____

Name: _____

Title: _____

Notice Addresses:

City of Greeley

1001 11th Avenue, Ste. 300

Greeley, CO 80631

Attention: I.T. Department

Email: 9300@greeleygov.com

Facsimile: 970-350-9302

With a copy to:

City of Greeley

1100 10th Street, Suite 401

Greeley, CO 80631

Attention: Office of the City Attorney

Email: cityattorney@greeleygov.com

Facsimile: 970-350-9763

Notice Address:

Effective Date: _____

6 Contract Terms & Conditions Compliance Checklist

Proposal responders are to mark the Comply, Exception, or Not Comply column. Comply indicates the proposal responder understands and agrees to comply fully. Exceptions must be fully explained on the bottom portion of this page.

#	Title	Comply	Exception	Not Comply
5.1.1	Services			
5.1.2	Incorporation by Reference			
5.1.3	Statement of Work			
5.1.4	Change Orders			
5.2.1	Fees			
5.2.2	Appropriations Constraints			
5.2.3	Time and Materials			
5.2.4	Fixed Fees			
5.2.5	Right to Withhold Payment			
5.2.6	Invoices			
5.2.7	Taxes			
5.3.1	Inspections			
5.3.2	Non-Complying Work			
5.3.3	Corrections of Non-Complying Work			
5.4.1	Contract Managers and Key Personnel			
5.4.2	Provider Personnel and Permitted Subcontractor Requirements			
5.4.3	Provider Personnel Compensation			
5.4.4	Permitted Subcontractors			
5.5.1	Licenses and Consents			
5.5.2	Rules and Regulations			
5.5.3	Records			
5.5.4	Time Is of the Essence			
5.5.5	Territory			
5.5.6	Project Schedule and Acceptance			

#	Title	Comply	Exception	Not Comply
5.5.7	Programming Services			
5.5.8	Acceptance Testing			
5.5.9	Professional Services Warranty			
5.5.10	Ineffective Training			
5.5.11	Subcontracts			
5.5.12	Video and Audio Recording			
5.6.1	Contract Manager			
5.6.2	Cooperation			
5.6.3	Access			
5.7.1	Term			
5.7.2	Termination by City			
5.7.3	Termination by Either Party			
5.7.4	Effect of Termination			
5.7.5	City Restrictions			
5.7.6	Survival			
5.8.1	City Ownership of Deliverables			
5.8.2	Provider's Pre-Existing Materials			
5.8.3	Patents, Copyrights, and Proprietary Rights Indemnification			
5.8.4	Unlimited Liability for Software Provider Infringement			
5.9.1	Replication of Software			
5.9.2	Risk During Software Installation			
5.9.3	Warranty Pertaining to Hardware Recommendation			
5.9.4	Payment Terms – Software License			
5.10.1	Definition of Confidential Information			
5.10.2	Nondisclosure			
5.10.3	Compelled Disclosure			
5.10.4	CORA			

#	Title	Comply	Exception	Not Comply
5.11.1	Access and Use			
5.11.2	Authorized Disclosure			
5.11.3	Privacy and Information Security Requirements			
5.11.4	Provider's Information Security Program			
5.11.5	Notice of Security Incident			
5.11.6	Password Security			
5.11.7	Software Interfaces			
5.11.8	Source Code Escrow			
5.11.9	Right to Outsource			
5.11.10	Use of Software by Personnel Who Are Not Employees			
5.11.11	Disaster Recovery & Disaster Recovery Testing			
5.11.12	Disclaimers and Limitations of Remedies			
5.12.1	Extended Services			
5.12.2	Annual Fees			
5.12.3	Resolution and Response Time Warranty			
5.12.4	Termination of Annual Maintenance and Support			
5.12.5	Federally Mandated Changes			
5.12.6	Future Releases / Upgrades			
5.12.7	Solution Longevity			
5.12.8	Successor Software Products			
5.12.9	Functionality Replacement			
5.12.10	Continuity of Warranty			
5.12.11	Payment Terms – Annual Fees			
5.13.1	Hosting Services			
5.13.2	Service Audits			
5.13.3	Disaster Recovery			
5.13.4	Penetration Testing			
5.13.5	Back-up and Recovery			

#	Title	Comply	Exception	Not Comply
5.13.6	Secure Data Transmission			
5.13.7	Background Checks			
5.13.8	City Notification if Third-Party Request for Data			
5.13.9	Provision of City Data upon Termination			
5.13.10	Transition Services			
5.13.11	Annual Hosting Fees			
5.13.12	Payment Terms – Annual Hosting Fees			
5.13.13	Service Level Agreement Overview			
5.13.14	Definitions			
5.13.15	Service Availability			
5.13.16	Applicability			
5.13.17	Force Majeure			
5.14.1	Mutual Representation Warranties			
5.14.2	Provider Representation and Warranties			
5.15.1	General Indemnification			
5.15.2	Infringement Indemnification			
5.15.3	Procedure			
5.16.1	Consequential Damages			
5.16.2	Liability Cap			
5.16.3	Exclusions from Limitation; Survival			
5.17.1	Type and Amount of Insurance			
5.17.2	Insurance Policy Requirements			
5.17.3	Certificates Upon Request; Sufficiency Qualification			
5.18.1	Further Assurances			
5.18.2	Force Majeure			
5.18.3	Liquidated Damages			
5.18.4	Independent Contractors			
5.18.5	Non-Collusion			

#	Title	Comply	Exception	Not Comply
5.18.6	Conflict of Interest			
5.18.7	Publicity			
5.18.8	Notices			
5.18.9	Interpretation; Construction			
5.18.10	Entire Agreement; Order of Precedence			
5.18.11	Assignment			
5.18.12	No Third-Party Beneficiaries			
5.18.13	Amendment; Waiver			
5.18.14	Severability			
5.18.15	Audit			
5.18.16	Governing Law; Venue			
5.18.17	Equitable Remedies			
5.18.18	Business Continuity and Contingency Plans			
5.18.19	Counterparts			
5.18.20	Government Immunity			
5.18.21	Equal Opportunity Employment/Nondiscrimination Policy			
5.18.22	Governing Law Clause			
5.18.23	Effect of Regulation			

6.1 Contract Terms and Conditions – Exception Explanations

For all items marked as “Exception” in the Agreement Terms and Conditions Compliance Checklist, a Proposer must fully explain the exception on the Exception Explanations form below.

Exception Explanations		
#	Title	Explanation of Exception

7 Proposal Forms

7.1 Introduction

This section contains various forms that should be prepared and submitted along with the Vendor's proposal. The intent of providing such forms is to ensure comparability between proposals. Included in this section are the following forms:

- Minimum Criteria
- Proposal Signature Form
- Non-Collusion Affidavit
- Certificate of Liability Insurance
- Vendor Information Form
- Client Reference Form
- Acknowledgement Form
- Debarment Form
- Pricing Forms (Excel format)

7.2 Minimum Criteria

As noted in section 1.9 of this RFP, proposed solutions **MUST** meet all of the following requirements. **Proposals not meeting these requirements will be rejected.** Vendors should acknowledge acceptance of these terms and include the following checklist in their RFP response.

Minimum Criteria	Yes/No
Minimum Client Software Installations	
Experienced with Water Budget (Examples must be listed in the response to Question 21 of the Section 7.6 Vendor Proposal Form.)	
RFP Response	
Response Authorization	
Response Completeness	
PCI Compliance	

7.3 Proposal Signature Form

The undersigned, as authorized proposal responder, declares that he/she has carefully examined all the items of the Specifications and Instructions herein that he/she fully understands and accepts the requirements of the same, and he/she agrees to furnish the specified items and will accept, in full payment therefore, the amount specified below. The proposal responder will identify below its business entity as individual, DBA, partnership, corporation (foreign or domestic), and will indicate the official capacity of person(s) executing this proposal.

Proposals shall include installation services, and the successful respondent shall obtain all required permits and pay fees required.

State payment terms:

State term proposal is held firm for:

State warranty on equipment:

State maximum time required for shipping, F.O.B. Greeley, CO:

PROPOSAL: Customer Information System (CIS) and Implementation Services

\$

(Total price spelled out in words)

\$

(Total figure in numbers – must equal the figure on the Pricing Form)

Firm Name: _____

Date: _____

Address: _____

Telephone: _____

Signature: _____

(Person executing response and official capacity)

(Names of principal officers:
designate official capacity)

(If partnership or assumed name,
indicate name of owners)

7.4 Non-Collusion Affidavit

**THE AFFIDAVIT SET FORTH BELOW MUST BE EXECUTED ON BEHALF OF
THE VENDOR AND FURNISHED WITH EVERY PROPOSAL
NON-COLLUSION AFFIDAVIT**

STATE OF: _____

City OF: _____

TAX ID NUMBER: _____

_____, being duly sworn, deposes and says he/she is the _____ *(Name) (Title)*

Of _____ the proposal responder that has
(Company)

submitted to the **City** a proposal for a **Customer Information System (CIS) and Implementation Services** all as fully set forth in said proposal and that except as specified below, the aforementioned proposal responder constitutes the only person, firm, or corporation having any interest in said proposal or in any contract, benefit, or profit which may, might or could accrue as a result of said proposal, said exceptions being as follows:

(If no exceptions, please state)

Vendor further states that said proposal is, in all respects, fair and is submitted without collusion or fraud; and that no member of the **City** is directly or indirectly interested in said proposal.

(Affiant)

SWORN TO and subscribed before me, a Notary Public, in and for the above named State and City

this _____ day of _____, _____.
(Day) (Month) (Year)

(Notary Public)

7.5 Certificate of Liability Insurance

See page below.

ACORD CERTIFICATE OF LIABILITY INSURANCE

City of Greeley, CO

Customer Information System (CIS) and Implementation Services

October 21, 2019

DATE (MM/DD/YYYY)

05/14/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS

CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER ABC Insurance Company P. O. Box 1234 Anywhere, USA	CONTACT	
	NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL	
	ADDRESS:	
	PRODUCER	
	CUSTOMER ID #:	
INSURED Sample Certificate	INSURER A : Financial Rating of A	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES
NUMBER:

CERTIFICATE NUMBER:

REVISION

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS,

EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$5,000
							PERSONAL & ADV INJURY \$1,000,000
							GENERAL AGGREGATE \$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$2,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$

AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
<input checked="" type="checkbox"/>	ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS SCHEDULED						BODILY INJURY (Per accident)	\$
	AUTOS HIRED AUTOS						PROPERTY DAMAGE (Per accident)	\$
<input checked="" type="checkbox"/>	NON-OWNED AUTOS							\$
<input checked="" type="checkbox"/>								\$
								\$
	UMBRELLA LIAB		OCCUR				EACH OCCURRENCE	\$
	EXCESS LIAB		CLAIMS- MADE				AGGREGATE	\$
	DEDUCTIBLE							\$
	RETENTION \$							\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below <input type="checkbox"/>			N/A				<input checked="" type="checkbox"/> WC STATU- TORY LIMITS	
							E.L. EACH ACCIDENT	\$100,000
							E.L. DISEASE - EA EMPLOYEE	\$100,000
							E.L. DISEASE - POLICY LIMIT	\$500,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)								
City of Greeley is named as Additional Insured on General Liability. Waiver of subrogation is included on Work Compensation. This insurance is primary and noncontributory to insurance policies held by the City.								

CERTIFICATEHOLDER

CANCELLATION

<p>City of Greeley</p> <p>1000 10th St</p> <p>Greeley, CO 80631 3808</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p>
--	--

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#S786373/M786364

7.6 Vendor Proposal Form

Vendor name:	
Software brand name:	
Software version proposed & number of years in production:	
Is Vendor prime contractor:	Yes <input type="checkbox"/> No <input type="checkbox"/>

1. How do you guarantee the services provided by your company?			
2. How many fully operational (i.e. Live) customer installations of the version proposed in this RFP, currently in production, has the Vendor completed?			
		Colorado	Nationally
	Local government		
	Other public sector		
	Other non-public sector		
	Overall:		
3. How many fully operational customer installations (i.e. Live), of all versions, has the Vendor completed?			
		Colorado	Nationally
	Local government		
	Other public sector		
	Other non-public sector		
	Overall:		

4. How many current system implementations of your solution are <i>in-process</i> within both the State of Colorado and the Vendor-defined region of the Country that includes the State of Colorado?				
		Current in-process Implementations		
	State of Colorado			
	Region			
	Total:			
5. Where is the Vendor's closest support facility/sales office to Greeley, CO?				
6. Where is the Vendor's company headquarters?				
7. Please list the Vendor's sales in the previous three years:				
	Year	Sales		
	2018			
	2017			
	2016			
8. What is the Vendor's hourly rate for implementation assistance beyond that which is included in the Vendor bid by skill set?				
	Rates for Additional Implementation Assistance			
	Skill Set	Hourly Rate		
		\$ / hr.		
		\$ / hr.		
		\$ / hr.		
9. Please indicate two separate potential visits of 2-3 consecutive days each in which the Vendor will commit to being available for an onsite demonstration and your preference.				
	Demonstration Date Options			
	Dates:	Prefer	Available	Not Available
	Week of February 10			
	Week of February 17			
	Week of February 24			

10. What would be the Vendor's preferred comparably sized, site visit location?
11. What is the total duration of your proposed implementation approach?
12. Please list all third party solutions proposed.
13. What database are you proposing?
14. Is the solution hosted by the vendor or a third-party?
15. Please describe the minimum commitment term (in years) for a vendor-hosted or cloud option and note the term assumed for determining the proposed costs.
16. What is the query tool and report writer that Vendor is proposing?
17. What is your recommended approach to training (End-user vs. train the trainer), for this City, and why?
18. Identify the degree to which Vendor staff will be onsite versus off-site during the project.

19. Will the vendor contractually agree to:		
Contractual Inquiry		
Term / Condition	Yes	No
Provide <u>on-site</u> staff for training and implementation		
Non-performance hold-backs?		
Payment hold-backs until fully operational and formally accepted?		
Allow the City to approve Vendor staff assigned to help with implementation?		
One year warranty, during which the annual support conditions apply. The first, annual support payment would occur after the warranty period expires		
20. Describe how your software will be licensed to the City (e.g. site license, named users, concurrent users, etc.)		
21. List your CIS implementations that included water budget functionality		

7.7 Client Reference Form

Vendor name:
Customer name:
Customer contact:
Customer phone number: ()
Customer E-mail address
System which Solution Replaced

Describe Nature of Project and Services Provided to This Client:

Configuration of Solution Implemented (Hardware, Software):

7.8 Acknowledgement Form

EXHIBIT 1

PROPOSAL ACKNOWLEDGEMENT

The offeror hereby acknowledges receipt of addenda numbers _____ through _____.

Falsifying this information is cause to deem your proposal nonresponsive and therefore ineligible for consideration. In addition, falsification of this information is cause to cancel a contract awarded based on one or both of the above preferences.

By signing below, you agree to all terms & conditions in this RFP, except where expressly described in your cover letter.

Original Signature by Authorized Officer/Agent

Type or printed name of person signing

Company Name

Title

Phone Number

Vendor Mailing Address

Fax Number

City, State, Zip

Proposal Valid Until (at least for 90 days)

E-Mail Address

Website Address

Project Manager:

Name (Printed)

Phone Number

Vendor Mailing Address

Fax Number

City, State, Zip

Email Address

7.9 Debarment Form

PROJECT NAME AND RFP#

Debarment/Suspension Certification Statement

The proposer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal, State, County, Municipal or any other department or agency thereof. The proposer certifies that it will provide immediate written notice to the City if at any time the proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstance.

DUNS # (Optional) _____

Name of Organization _____

Address _____

Authorized Signature _____

Title _____

Date _____

7.10 Pricing Forms

Please complete the pricing forms that have been provided in the associated Microsoft Excel pricing spreadsheet. It is the responsibility of the Vendor to ensure the accuracy of the pricing provided as part of your response. Any errors in providing an accurate price response due to inaccuracies in the provided templates are the sole responsibility of the responding Vendor. If there is not enough space to describe the pricing on these forms, please attach a separate pricing page and provide the pricing information in the same type of format so that it is easy to understand. The City requests a firm, fixed price for each of the components described below that are included on the attached Microsoft Excel pricing spreadsheet as separate tabs:

- Vendor Checklist (including overall Hosting/Licensing Model, Travel & Lodging Costs, and Discount)
- Proposal Summary (no direct input required, only comments if required)
- Module Summary (no direct input required, only vendor-defined modules if desired)
- Module Information
- Application Software
- Other Software
- Hardware
- Implementation Services
- Train-the-Trainer Training
- Optional End-User Training
- Interfaces
- Modifications
- Other Implementation Services
- Managed Services

For vendors proposing multiple solutions or utilizing sub-contractors, the City prefers that one combined pricing form is submitted.

Appendix A - City of Greeley Water Budget

Please see below for further detail on the City's water budget structure, or visit greeleygov.com/services/ws/water-budget/about for more information.

Why does the City use water budgets?

The City of Greeley's legacy of water efficiency dates back to 1907. Our 2003 Water Master Plan stated that "Greeley will expand water conservation efforts"; part of this effort was a plan to implement a tiered rate structure for water use.

As a limited natural resource, water should be used wisely. Greeley has been fully metered since 1997, allowing us to show our customers how much water they are using. In 2013, we began putting an informational water budget on all single-family residential customers' bills, taking that communication one step further to show our customers how much water they need. The water budget rate structure, which went into effect in 2017, is an equitable way to promote and reward water efficiency and helps us communicate the value of this precious natural resource.

Greeley has a variety of property and household sizes, and a water budget program addresses that

diversity without punishing large families or large lot owners for using what's needed to maintain their landscapes. For example, let's say that your water budget for a particular month was 40 thousand gallons (40 kgal) and you used every drop. Meanwhile, your neighbor's water budget was 20 kgal — but they used 30 kgal. You may have used more water than your neighbor, but you were efficient with your use. That's what the water budget program is all about.

The 2015 Greeley Water Conservation Plan states that "custom tiered rates (water budget) that account for the customer's lot size and water dedication are more suitable to Greeley." Because water budgets are based on current weather conditions and unique household properties, they reflect the City's goal of promoting efficient water use.

Water Budget Calculation Methods

Water budgets are currently in place only for single family residences (SFRs). A water budget is based on the indoor and outdoor water needs specific to a home: family size, potentially landscaped area around the house, and real-time weather. During the non-watering season (November 1 – April 14), an SFR's total water budget is composed only of indoor use; when grass needs water to grow (April 15 – October 31), both indoor and outdoor use make up the SFR's total water budget.

The indoor budget is based on the number of people in the household ("Persons per Household"), with each person allocated the previous year's actual average gallons per day (gallons per person per day, "GPCD") for every day of the year. The gpcd for 2019 is 45 gpcd.

Indoor budget = 45 GPCD x Persons per Household x Number of Days in Billing Period

The outdoor budget is based on the actual water needs of bluegrass (the "Irrigation Water

Requirement,” which is based on real-time Greeley weather) and your total “Irrigable Area” (in square feet), which is the total area of the non-pervious surfaces around the house. Although the Irrigation Water Requirement is based on water needs of bluegrass, it is more than adequate to take care of other plants and trees. Irrigable Area includes right-of-ways, shrubs, and trees — but excludes driveways, sidewalks, and rooftops. The Irrigation Water Requirement is calculated on a daily basis (in gallons per square foot), and every household gets the same Irrigation Water Requirement for their water budget.

Outdoor budget = Irrigable Area x Total Irrigation Water Requirement for Billing Period

Water Budget Tiers

Each household is allocated the same amount of water per person and the same amount of water per square foot of landscape. No two households will necessarily be allocated the same water budget.

Think of it this way: Two people live in your neighbor’s home; you have four. Because each person in each household is allocated 45 gallons a day, your indoor water budget will be twice as high as your neighbor’s. But if your yard is, say, half the size of your neighbor’s, your outdoor water budget will be

half the amount of your neighbor’s — because both lawns require the same amount of water per square foot.

The water budget is made up of 4 tiers. With 2019 rates, if you go over your budget, you will pay anything with in your budget at \$4.35 /1,000 gals (kgal) and then pay the rest at the rate in which tiers you fall. See below.

2019 Water Budget Rate Structure				
For Single Family Residential (SFR) customers only.				
Effective January 1, 2019.				
The current uniform residential water rate is \$4.62 .				
				\$9.67
			\$7.25	\$7.25
		\$5.32	\$5.32	\$5.32
	\$4.35	\$4.35	\$4.35	\$4.35
	per	per	per	per
	1,000	1,000	1,000	1,000
	gallons	gallons	gallons	gallons
	(kgals)	(kgals)	(kgals)	(kgals)
Water Budget	Inefficient Use	Excessive Use	Unsustainable Use	
(0-100%)	(101-130%)	(131-150%)	(>150%)	

1. Water Budget (Efficient Use)
2. Inefficient Use
3. Excessive Use
4. Unsustainable Use

Use that falls within the Water Budget tier is considered efficient and includes anything at or below your water budget amount. For example, if your water budget is 10 thousand gallons (10 kgal), then the Water Budget tier covers any use up to 10 kgal. This tier will have the lowest rate.

Any use over your water budget — up to 130 percent — falls into the Inefficient Tier. Using the 10 kgal water budget example above, your Inefficient Tier would cover any use from 10 kgal to 13 kgal. This tier will have a slightly higher rate than the Water Budget tier.

Any use from 130 – 150 percent of your water budget falls into the Excessive Tier. For a water budget of 10 kgal, an Excessive Tier would cover any use from 13 kgal to 15 kgal and have a higher rate than the Inefficient Tier.

Any use over 150 percent of your water budget falls into the Unsustainable tier. That would be any use above 15 kgal for a water budget of 10 kgal and would be charged at the highest rate.

1. Example: Within Your Water Budget

If your water budget was 10 kgal and you only used 9 kgal, you would be charged: \$39.15

Tier	2019 Rate (\$/kgal)	% Range of Water Budget	Use (kgal)	Amount
Water Budget Tier	\$4.35	Less than 100% of water budget	9	\$39.15
Inefficient Tier	\$5.32	Between 100% and 130% of water budget	0	
Excessive Tier	\$7.25	Between 130% and 150% of water budget	0	
Unsustainable Tier	\$9.67	Over 150% of water budget	0	

2. Example: Slightly Over Your Water Budget

If your water budget was 10 kgal but you used 12 kgal, here's how your consumption would be charged:

\$54.14

Tier	2019 Rate (\$/kgal)	% Range of Water Budget	Use (kgal)	Amount
Water Budget Tier	\$4.35	Less than 100% of water budget	10	\$43.50
Inefficient Tier	\$5.32	Between 100% and 130% of water budget	2	\$10.64
Excessive Tier	\$7.25	Between 130% and 150% of water budget	0	
Unsustainable Tier	\$9.67	Over 150% of water budget	0	

3. Example: Far Over Your Water Budget

If your water budget was 10 kgal but you used 20 kgal, here's how your consumption would be charged:

\$122.31

Tier	2019 Rate (\$/kgal)	% Range of Water Budget	Use (kgal)	Amount
Water Budget Tier	\$4.35	Less than 100% of water budget	10	\$43.50
Inefficient Tier	\$5.32	Between 100% and 130% of water budget	3	\$15.96
Excessive Tier	\$7.25	Between 130% and 150% of water budget	2	\$14.50
Unsustainable Tier	\$9.67	Over 150% of water budget	5	\$48.35

Appendix B – Exhibits from the IT Master Agreement

The Exhibits are referred to in the IT Master Agreement (see section 5). **These Exhibits are examples only and do not need to be completed.**

EXHIBIT A

FORM OF STATEMENT OF WORK

Statement of Work No. ____

THIS STATEMENT OF WORK (this “SOW”) between City of Greeley, Colorado (“City”) and the service provider as more particularly described on the signature page to this SOW (“Provider”) is made effective as of the date set forth on the signature page of this SOW (the “SOW Effective Date”). City and Provider are each referred to herein as a “Party” and together as the “Parties.”

City and Provider are parties to that certain Master Services Agreement (the “MSA”) effective as of [Insert Effective Date of MSA] under which Provider may be engaged from time to time to provide Services to, and create Deliverables for, City, subject to the execution of an SOW for each such engagement.

City desires Provider to provide certain Services to and create certain Deliverables for City. Provider desires to provide certain Services to and create certain Deliverables for City pursuant to this SOW.

Subject to the conditions of the Master Services Agreement and in consideration of the promises, mutual covenants, and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Services and Deliverables.** The Services and the Deliverables to be provided, delivered, and performed by Provider under this SOW are described in detail below. [This section should describe the expected outcomes of the engagement/project and the type of work that will be done to achieve them. For example, if the project was to build a software system, the scope would describe the hardware and software that will be part of that system. It would also give a high-level overview of the steps involved in building and implementing the system]
2. **Time Lines; Project Milestones; Project End Date.** [Insert or attach the time line for the project. Include times frames for completion of Services and Deliverables and project end date.]
3. **Contract Managers.** The contact person for each of the Parties regarding this SOW and their contact information are: [Insert name and contact information.]

For City

Name:

Title:

Contact Information:

For Provider

Name:

Title:

Contact Information:

4. Personnel assigned to this SOW. The following Provider Personnel will constitute the team for this engagement and Key Personnel (if any) are identified with an asterisk. [Insert staffing information.]

Position	Individual	% Allocation	Rate	Hours	Total \$
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

5. Work Scheduling and Rules. Provider will comply with the following work scheduling requirements and the rules; [insert list of work scheduling hours and other requirements; insert any rules applicable to Provider and the Services and Deliverables being provided and created. [Change management requirements & Expiration of maintenance and cap on PS hours utilized & training hours/scheduling]
6. Fees. Provider will be compensated for the Services and the Deliverables as follows: [Insert or attach a fee schedule (include cap if applicable); Insert agreed amounts for reimbursable expenses and procedures; insert any retainage amounts.] Applicable fees are subject to the terms set forth in the MSA.
7. Criteria; Acceptance and Testing. Except as otherwise set forth below or attached, inspection and acceptance will be governed by the MSA. The performance criteria, acceptance tests, and standards applicable to the Services to be performed and the Deliverables (if any) to be created, together with any penalties for failure to meet the foregoing are set forth below or attached: [Insert acceptance criteria, acceptance testing, acceptance procedures, and applicable service level agreements.]
8. Reports. Provider agrees to provide the following reports to be submitted on a daily, weekly, and monthly basis, as appropriate. Provider will submit all reports electronically in a format approved by City. [Insert report list, report frequency, and file format for transmission if applicable; include service level reports.]

Additional Terms and Conditions. Additional terms and conditions regarding this SOW include the following: [Insert any provisions that further clarify, supplement, or modify terms of MSA or are necessary for SOW; e.g. Equipment & background checks & on-site behavior & Resource utilization]

9. General Provisions. This SOW (including any attachment to this SOW) may not be modified or amended except by an instrument in writing signed by duly authorized representatives of the Parties. This SOW, together with the MSA and any exhibits or attachments to the MSA or this SOW, contains all of the understandings and agreements of the Parties in respect of the subject matter hereof as of the SOW Effective Date, and any and all prior understandings and agreements, expressed or implied, between the Parties in respect of the subject matter hereof are superseded hereby. Any additional or different terms appearing on any invoice, end-user license agreement, or other document including terms and conditions in standard or preprinted documents or on Provider's web site that are inconsistent with the MSA or this SOW will be void and have no force or effect. This SOW may be executed by the Parties in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument. A signed copy of this SOW delivered by facsimile, e-mail, or other

means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this SOW.

IN WITNESS WHEREOF, the Parties have executed this SOW to be effective as of the SOW Effective Date, notwithstanding the actual date of execution.

CITY:

City of Greeley, Colorado

By: _____

Name: _____

Title: _____

PROVIDER:

[Name of Provider]

By: _____

Name: _____

Title: _____

Notice Addresses:

City of Greeley

1001 11th Avenue, Ste. 300

Greeley, CO 80631

Attention: I.T. Department

Email: 9300@greeleygov.com

Facsimile: 970-350-9302

Notice Address:

With a copy to:

City of Greeley

1100 10th Street, Suite 401

Greeley, CO 80631

Attention: Office of the City Attorney

Email: cityattorney@greeleygov.com

Facsimile: 970-350-9763

SOW Effective Date: _____

EXHIBIT B

USE OF THIRD-PARTIES

City requires all persons or entities providing Services or Deliverables to City to disclose any Permitted Subcontractor or other third parties that may be used in the provision of Services or the creation of the Deliverables ("Third Party Providers"). Third Party Providers may include independent contractors, specialists, or other product or service vendors, which are used to facilitate or perform the Services or create the Deliverables on behalf of Provider, in part or in total, or provide operational support of the underlying systems that could result in direct or indirect access, transmission, transfer, or processing of City Data, City Systems, or Personal Data.

Third Party Providers' personnel and technology location will be disclosed by Provider at the time of the execution of the MSA, the execution of any SOW, and within 90 days of entering any service relationships throughout the Term and as long as Provider maintains any City Data, City Systems, or Personal Data. Provider may not, outside of the United States, provide Services or create Deliverables, house systems performing Services or creating Deliverables, access City Data or City Systems, conduct maintenance on systems used in performing the Services or creating the Deliverables, or develop applications used in the performance of Services. The use of Third Party Providers that reside outside the United States is prohibited without City's prior written approval.

Third Party Providers will comply with the confidentiality, security, and privacy requirements within this Agreement, and any applicable SOW. Third Party Providers will also ensure that any of their third party providers comply with such requirements. City reserves the right to audit any Third Party Provider and any third party provider to such Third Party Providers.

Provider will complete the Declaration of Third Party Provider Performance found in this Exhibit B to provide official notice of use of Third Party Providers. The form will be submitted by email to [insert email address].

Declaration of Third Party Provider Performance

This Declaration of Third Party Provider Performance is delivered in connection with that certain Master Services Agreement between City of Greeley and [Insert name of Provider] ("Provider") effective as of [insert effective date of MSA] (the "Agreement").

Provider submits this as its declaration of any legal or natural persons (each a "Third Party Provider") that will directly provide services or technology, on behalf of the Provider, which will access, store, process, or transmit regulated or confidential City information (including, without limitation, City Data, City Systems, or Personal Data) in the performance of the Services or creation of the Deliverables under the Agreement or any applicable SOW entered into in connection with the Agreement.

Additionally, Provider will disclose any Third Party Provider who will provide operational and administrative support of the technology used in the performance of the Services or creation of the Deliverables, which could result in direct or indirect access, transmission, transfer, or processing of such regulated or confidential information (including, without limitation, City Data, City Systems, or Personal Data).

Company Name: _____

Company Address: _____

Function/Service Performed: _____

Company Name: _____

Company Address: _____

Function/Service Performed: _____

Company Name: _____

Company Address: _____

Function/Service Performed: _____

Company Name: _____

Company Address: _____

Function/Service Performed: _____

Company Name: _____

Company Address: _____

Function/Service Performed: _____

EXHIBIT C

INFORMATION SECURITY REQUIREMENTS

THIS INFORMATION SECURITY REQUIREMENTS (this “ISR”) is an exhibit to that certain Master Services Agreement (the “MSA”) effective as of [insert Effective Date of MSA] under which Provider may be engaged from time to time to provide Services to City. Any capitalized terms not defined herein will have the meaning ascribed in the MSA or other Exhibits referenced herein.

Provider will comply and will ensure that its Provider Personnel and any Third Party Provider (Provider, Provider Personnel as defined in the MSA, and Third Party Providers as defined in Exhibit B, are collectively referred to as “Provider Parties”) comply, with the ISR (including applicable appendix) (collectively, the “Requirements”).

Provider Parties will comply with these Requirements at all times during the Term, and thereafter until such time as all parties performing services are no longer in possession of, or have access to City Data (as defined below) or City systems.

1. Standard of Care

Provider acknowledges and agrees that, in the course of its engagement by City, Provider may receive or have access to City’s Confidential Information, which includes its business processes, security, technology infrastructure, employee and citizen identifiers, and any regulated or sensitive data (“City Data”). Provider Parties will comply with the Requirements in their collection, receipt, transmission, storage, disposal, use, and disclosure of City Data and Provider will be fully responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use, and disclosure of City Data under their control or in their possession. Provider agrees and covenants that Provider Parties will keep and maintain all City Data in confidence, according to the obligations set forth in the MSA and this ISR.

2. Security Requirements

2.1. Use of City Data. Provider Parties will use City Data, even if anonymized, solely for the purpose of supporting Provider’s performance of the Services and production of applicable Deliverables. Upon discovery or notice of any unauthorized use or processing of City Data, Provider will promptly notify City in writing and take immediate steps to stop such unauthorized use or processing and coordinate with City regarding Provider’s remediation of such unauthorized use or processing.

2.2. Security Measures and Information Security Programs. Provider Parties will use security measures at least as stringent and protective as is standard in Provider’s industry for its computer systems and information storage facilities in the United States to safeguard City Data and in no event will such security measures be less protective than those used by City. Provider represents and warrants that it has adopted, documented, implemented, and will adhere to a comprehensive written information security program for maintaining security controls to protect City Data against accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, and access, and against all other unlawful activities. Provider’s information security program will include rules on the collection, maintenance (including access rights), transmittal, and disposal of any third party data, including City Data, and will include training, oversight, tests for vulnerabilities, system checks, and measures to prevent and detect unauthorized access. Provider will conduct security awareness training of all Provider

Parties and retain verification of attendance. Provider will, upon request, provide City copies of its information security program, security documents, policies, procedures, and compliance information. Provider will notify City in writing of any material changes to the security measures, information security program, infrastructure, vendors, solutions, or processes used to provide security or services to Provider Parties or to City, or any City designee, and will provide City access to verify no such changes have occurred.

- 2.3. Infrastructure Security. Provider will install and maintain anti-virus software, apply all system patches and updates provided from primary vendors for operating systems, middleware, and hardware and, to the extent possible, use real time protection features. Provider will not introduce any viruses, time or logic bombs, Trojan horses, worms, timers, clocks, trap doors, or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down City's system or any component of City's system, including, without limitation, its security or data. In the event a virus or similar issue is found to have been introduced into City's system by any Provider Party, Provider will, at its sole cost and expense: (a) use commercially reasonable efforts to reduce or eliminate the effects of the virus or similar issue; and (b) if the virus or similar issue causes a loss of operational efficiency or loss of data, mitigate, restore and reimburse City and any third parties for all such losses.
- 2.4. Encryption and Secure Transmission of Data. Provider represents and warrants that all electronic City Data in storage with any Provider Party will reside behind an appropriate and secure firewall and will retain any data storage encryption in place at the time of service commencement within the respective environment. City Data in electronic form must be transmitted by a secure, private, point-to-point network connection, or by communications protected by encryption. In no case will City Data be transmitted by a public network (internet, wireless, cellular, GSM, satellite, etc.) without being encrypted.
- 2.5. Destruction and Return of City Data. Within 30 days of the completion of the Services and delivery of the Deliverables or upon termination of the MSA, Provider Parties will return to City, or securely destroy, all City Data in such Provider Parties' possession, custody, or control in such a manner as to eliminate the possibility that City Data is capable of being accessed, read, or reconstructed. In addition, Provider will provide to City a written certification by an officer of Provider confirming that such return or destruction occurred. If a Provider Party cannot destroy all City Data as required herein due to recordkeeping law, court order, or the pendency of litigation requiring it to retain City Data in its existing format, Provider warrants that it: (a) will promptly notify City; (b) will continue to protect City Data as agreed to in this ISR; (c) will not use or disclose City Data, except as required by court order; (d) will ensure the confidentiality of City Data while it is retained; and (e) will comply with its destruction obligations once the legal prohibition on destruction has expired.

3. Physical and Environmental Security

- 3.1. Facility Security Measures. Provider will implement, or cause to be implemented, appropriate security measures at any Provider Party facilities where City's Data or Confidential Information is processed or stored. Such security measures must include, at a minimum: (a) documented disaster recovery plan for accessing the facility and City Data, and restoring City Data if needed, in the case of an emergency or crisis; (b) reasonable environmental safeguards designed to protect systems storing City Data from smoke, heat, water, fire, humidity, power surge, or other such potential damage;

(c) appropriate controls designed to ensure that only authorized Personnel are allowed physical access to the facility; and (d) regular backup of City Data. Provider will promptly supply copies of City Data in a format requested by City, upon City's request. Provider will use all reasonable measures to prevent theft or damage to Provider systems or storage media containing City Data, including, without limitation, protecting systems or devices that contain un-encrypted data with physical barriers such as locked cabinet, floor to ceiling room, or secured cage. Provider will not connect any device or technology to any City system, network, or infrastructure that has not been provided by City or approved by City in writing prior to such connection.

- 3.2. Confidentiality and Security Agreement. Any Provider Party who requires on-site access at City premises or who requires access to City network or physical facilities will execute the Provider Personnel Confidentiality and Security Agreement, attached as Appendix A.

4. Security Incident and Data Breach Procedures

- 4.1. Security Incident or Data Breach. If any Provider Party suspects, discovers, or is notified of: (a) any actual or suspected unauthorized or accidental access, use, loss, or disclosure of any City Data which could reasonably be expected to compromise the integrity, confidentiality, or availability of such data; or (b) any actual or suspected breach of any Provider Party's security or information systems or the systems of City accessed, managed, or modified by any Provider Party that could reasonably be expected to either (i) expose any City Data to such unauthorized or accidental access or use, (ii) cause harm, damage, or negatively affect the function or performance of City systems, network, or infrastructure ("Security Incident"), or (iii) cause in whole or in part the unauthorized acquisition of data that compromises the security, availability, confidentiality, or integrity of City Data maintained by an individual or a commercial entity ("Data Breach"), then Provider will immediately notify City's Information Security Officer (Service.Desk@Greeleygov.com) of such Security Incident or Data Breach, in writing, and in no event, later than 24 hours after Provider suspects, discovers, or is notified of, such Security Incident or Data Breach. Provider will provide regular status reports to keep City apprised of the matter and will respond timely to additional requests for information from City. Provider will cooperate and assist City in all Data Breach and Security Incident reporting efforts and obligations that the City is subject to by law or by internal policy.
- 4.2. Notice Contents. Such notification will include: (a) the specific details of the Security Incident or Data Breach, including, but not limited to the date, estimated date, date range, the names of end users affected or reasonably believed to have been affected, the method and means of the Security Incident or Data Breach, and any such other information the City reasonably requests by Notice; (b) a thorough description of City Data that was acquired, accessed, or affected, or reasonably believed to have been acquired, accessed, or affected; and (c) the effect of the Security Incident or Data Breach on City Data, including, but not limited to the likelihood that end user data and any other type of City Data has been or will be misused. In addition, Provider will provide City with the corrective action taken or to be taken by Provider as well as the identity of each affected individual, as soon as such information can be determined or collected. Provider will provide timely updates on the foregoing details and any other information City may reasonably request relating to the Security Incident or Data Breach. Provider will not release or publish any filing, communication, notice, press release, or report concerning the Security Incident or Data Breach without City's prior

written approval (except where it is required to do so by law and then only following written notice to City). At its sole expense, Provider will promptly take all appropriate corrective actions and will cooperate with City in all ongoing, reasonable, and lawful efforts to mitigate or rectify such Security Incident or Data Breach (including, without limitation, cooperation in complying with applicable breach notification laws).

- 4.3. Security Incident or Data Breach Indemnification. In addition to other remedies set forth in this ISR and the MSA, Provider will indemnify and hold City harmless from and against any and all losses, liabilities, claims, disputes, judgments, settlements, costs, and expenses of any nature whatsoever (including, without limitation, reasonable fees and disbursements for attorneys and other professional advisors, expert witnesses, and court costs) related to, arising out of, or resulting from, a Security Incident or Data Breach, including, without limitation, any breach notification costs, credit monitoring, and costs associated with a call center.

5. Provider Parties

Provider Parties will each only access those systems, applications, or data which such party is expressly authorized by City to access, even if the technical controls in the system or application do not prevent access to those data or functions outside of City's authorization. Where City does consent to Provider engaging a third party to carry out any part of the Services or create any of the Deliverables, Provider will impose in any agreement with such third party provisions in favor of City which are at least equivalent to those in this ISR and the MSA. Provider at all times remains fully responsible for all obligations under this ISR and the MSA, even in the event such obligations have been delegated to a Provider Party. Provider will not permit City Data to be transferred to any third party that does not comply with all requirements under this ISR and the MSA, unless the transfer is authorized in writing by City.

6. Audit

City, and its designee, will have the right to monitor any or all Provider Parties' compliance with the terms of this ISR. City, and its designee, will have the right to inspect any and all Provider Parties' facilities, equipment, information security policies, procedures, and records. Provider will, and will compel the Provider Parties to, respond to any inquiries from City or its designee related to compliance with this ISR, the MSA, including, without limitation, the information security programs, privacy, and data security. City, or City's designee, may conduct periodic security audits as to the procedures and safeguards used by Provider Parties to protect City Data. City may, in its sole discretion, require an alternative documentation process in lieu of an audit (*i.e.* ISO27001, SSAE16, PCI DSS, or SOC2). Provider will promptly cooperate with audit requests by City, or its designee. Upon City's, or its designee's, request, Provider will supply evidence of Provider Parties' compliance with the terms of this ISR, including supporting certifications, if applicable.

7. Terms and Conditions; Click Through Agreements

To the extent of any conflict, Provider agrees that the terms of this ISR will override any unsigned or click-through agreement generated by any Provider Party and entered into between any Provider Party and City or City's employees, consultants, citizens, end users, and subcontractors to the extent such agreements relate to this ISR, the MSA, City Data, City systems, City infrastructure, the Services, and the Deliverables.

8. SUBPOENAS AND LEGAL PROCEEDINGS

- 8.1. Subject to applicable law, Provider shall notify City immediately in writing of any subpoena or other judicial or administrative order by a court, tribunal, litigant, or government authority seeking access to or disclosure of City Data covered by this ISR. Prior to the release of any such City Data and subject to applicable law, City shall have the right to challenge and defend subpoena enforcement proceedings or motions to compel in lieu of and on behalf of Provider. Provider shall provide reasonable cooperation to City in connection with such defense.

9. GENERAL INDEMNIFICATION

Provider will, at its sole cost and expense, indemnify, defend, and hold harmless City, its affiliates, and their respective directors, officers, employees, and agents, from and against any and all claims, allegations, suits, and proceedings made or brought by any third party, and all damages, losses, costs, expenses, settlements, administrative fines, and other liabilities in connection therewith (including, without limitation, reasonable fees and disbursements for attorneys and other professional advisors, expert witnesses, and court costs), related to, arising from, or resulting from: (a) a breach of Provider's obligations, representations, warranties, covenants, or agreements under this ISR; and (b) Provider Parties' provision of Services and Deliverables under the MSA and this ISR. Notwithstanding anything to the contrary contained in the MSA, no limitation of liability contained therein (including, without limitation, any cap on damages or any waiver of consequential, incidental, or other types of damages) shall apply to third-party claims that are subject to indemnification under this ISR.

Appendix A

Provider Party Confidentiality and Security Agreement

Any Provider Party who is on-site at City premises or who requires access to the City system, network, or infrastructure will sign the following Provider Party Confidentiality and Security Agreement, which will be collected and maintained by City, before being granted access to any system or data.

1. GENERAL PERSONNEL REQUIREMENTS

- 1.1. I understand that I should have no expectation of privacy when using City's information systems. City may log, access, review, and otherwise utilize information stored on or passing through its systems, including email, in order to manage systems and enforce security.
- 1.2. I understand that violation of this agreement may result in disciplinary action, up to and including loss of privileges, and termination of authorization to work within the City facility or with City Data.

2. PROTECTING CONFIDENTIAL DATA

- 2.1. I will not disclose or discuss any City Data with others who do not have a need to know it. I will not take media or documents containing City Data to my home or other offsite location unless specifically authorized to do so as part of my job.
- 2.2. I will not publish or disclose any City Data to others using personal email, or to any websites, or through blogs or mobile apps, such as, without limitation, Facebook, Twitter, Instagram, or other social media. I will only use such communication methods when explicitly authorized to do so in support of City business and within the permitted uses of City Data as governed by applicable laws and regulations.
- 2.3. I will not make any unauthorized transmissions, inquiries, modifications, or purges of City Data.
- 2.4. I will not transmit City Data outside City's internal network unless I am specifically authorized to do so as part of my job responsibilities. If I do transmit City Data outside of City using email or other electronic communication methods, I will ensure that City Data is encrypted according to City's information security standards, which City will provide to me upon request.
- 2.5. I will not copy or store City Data on removable media or portable devices such as laptops, cell phones, thumb drives, external hard drives, or any other means, unless specifically required to do so by my job. If I do copy or store data on removable media or portable devices, I will encrypt the data while it is on the media according to City's information security standards, which City will provide upon request.

3. ABIDING BY APPROPRIATE SECURITY CONTROLS

- 3.1. I will only access or use City systems or devices I am officially authorized to access, and will not demonstrate the operation or function of systems or devices to unauthorized individuals.
- 3.2. I will not bypass or attempt to bypass City security controls.

- 3.3. I understand that I will be assigned a unique identifier to track my access and use of City Data and that the identifier is associated with my personal data provided as part of the initial or periodic credentialing and employment verification processes ("User-ID").
- 3.4. I will: (a) use only my City-assigned User-ID, password, token, or badge; (b) use only Provider-approved, licensed software.
- 3.5. I will never: (a) allow another person to use any assigned User-IDs, such as passwords, PINs, badges, or access codes; (b) use tools or techniques to break or exploit security measures; or (c) connect unauthorized systems or devices to the City network.
- 3.6. I will practice good workstation security hygiene, such as locking my computer when away from my desk, using screen savers with activated passwords, positioning screens away from public view, and such other security measures, as applicable.
- 3.7. I will immediately notify my City contact or the City IT Client Services if: (a) my password has been seen, disclosed, or otherwise compromised; (b) media with City Data stored on it has been lost or stolen; (c) I suspect a virus infection on any system; (d) I am aware of any activity that violates this agreement, or any privacy or security policies; or (e) I am aware of any other incident that could possibly have any adverse impact on City Data or City systems.
- 3.8. "I will abide by any further controls set in place by the City on my ability to access any area designated as a "controlled area." Furthermore, I will perform any required training and examinations the City may require for access to controlled areas, and will provide any requested proof of the same.

4. UPON TERMINATION

- 4.1. I agree that my obligations under this Agreement will continue after termination of my employment, expiration of my contract or this agreement, or my relationship ceases with the Provider Party (i.e. my employer).
- 4.2. Upon termination, I will immediately return any documents or media containing City Data to Provider.
- 4.3. I understand that I have no right to any ownership interest in any City Data accessed or created by me during and in the scope of my relationship with City.

I hereby agree to the terms of this Provider Party Confidentiality and Security Agreement.

Personnel Signature: _____

Printed Name: _____

Provider Party: _____

Date: _____

EXHIBIT D

INSURANCE REQUIREMENTS

These Insurance Requirements are an exhibit to that certain Master Services Agreement (the "MSA") effective as of [Insert Effective Date of MSA] under which Provider may be engaged from time to time to provide Services and/or Deliverables to City. Any capitalized terms not defined herein will have the meaning ascribed in the MSA.

In accordance with the MSA, Provider shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

- a) Commercial General Liability with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the general aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Provider under the MSA;
- b) Worker's Compensation with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, the Contractor shall maintain Employers Liability Insurance with minimum limits of: \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease each employee, and \$1,000,000 bodily injury disease aggregate;
- c) Commercial Automobile Liability with limits no less than \$1,000,000, per accident for bodily injury and property damage;
- d) Technology Errors and Omissions / Professional Liability to cover professional misconduct or wrongful acts arising out of those activities defined in any SOW stemming from this MSA with limits of \$2,000,000 per occurrence or claim, covering claims which arise out of any wrongful act, error or omission of the Provider for those activities defined in the SOW; and
- e) Cyber Liability Insurance, including first party and third party coverage, covering liability for any intentional and/or unintentional release of private information, loss damage, destruction, alteration, theft, extortion and/or access or use of Customer's data (which may include but is not limited to, Personally Identifiable Information ("PII"), Payment Card Data, and Protected Health Information ("PHI")), and network security with minimum limits of with limits no less than \$2,000,000 per occurrence and \$5,000,000 in the aggregate for all claims each policy year.
- f) WAIVER OF SUBROGATION. All insurance policies in any way related to the MSA, which are secured and maintained by Provider Parties (as that term is defined in Exhibit C) as required herein, shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against City or its agencies, institutions, organizations, officers, agents, employees, and volunteers for direct or consequential loss or damage arising out of or incident to the perils covered by all insurance policies carried by Provider Parties whether due to the negligence of City or Provider or their agencies, institutions, organizations, officers, agents, employees, and volunteers. All insurance policies required under this MSA shall be endorsed to so provide.