

City of Delaware, OH



**Request for Proposal
ERP System Selection**

Issue Date: Friday, February 15, 2019

Closing Date: Tuesday, April 2, 2019

**Pre-Proposal Meeting (Non-Mandatory):
Wednesday, March 6, 2019**

Via Goto Meeting

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1 Introduction

1.1 Overview

The City of Delaware, OH 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:

- o **Client or City** means the City of Delaware, OH
- o **Plante & Moran, PLLC**: The City's consultant and co-project manager for the project.
- o **Vendor or Proposer** means a firm, company or organization submitting a proposal in response to this RFP.
- o **ERP**, 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 Delaware has been operating on a Civica CMI ERP solution for nearly 20 years. Although the system meets the City's basic needs today, the City is growing and has a desire to provide City residents with more robust, automated features and services. Additionally, the City has identified that many departments track core financial and other City business information separate and independent from the functions managed in the Civica CMI solution. Consequently, the City finds itself operating a dated system and, based on the resulting risk and lack of functionality, the City has decided to conduct a formal RFP process to identify potential replacement solutions.

1.3 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 ERP Application | Application Notes/Description | Departmental Owner | Likely Future?* | Expected ERP Module |
|-------------------------------------|---|--------------------------|-----------------|------------------------------|
| ACCESS Permit PD | Parking permit management | Police Department | M | |
| Adobe | Personnel Action Form (HR & Payroll) | Human Resources | R | Human Resources |
| Adobe Sign | Contract Signing | Finance | R | Contract Management |
| APPIA | Capital Project Management | Purchasing | R | Project Accounting |
| BidExpress | RFP/Bid Management | Purchasing | M | |
| CityWorks | Used by Public Works for multiple tasks | Public Works | I | |
| CMI - FinQ | Query for employees and non-department owners to view specific pieces of financial information as a query | Finance | R | Employee/Vendor self service |
| CMI - FinX | Core Finance Software | Finance | R | General Ledger |
| CMI - PayX | Core Payroll Software | Finance | R | Payroll |
| CMI - Tax | Income Tax Software | Finance | I | N/A |
| CMI - UTYX | Utility Info and refund checks | Finance/Public Utilities | R | Utility Billing |
| ESRI | Main geographic software used to track assets | Public Works | M/I | |
| GovDeals | Property Auctions | Finance | M | N/A |
| Lansweeper | Used to track helpdesk activity/time | IT | I | |
| MAG-FILER | System for Laser Printed Files | Finance | R | |
| Microsoft Access | Track employee information | Human Resources | R | Human Resources |
| Microsoft Access | "Innumerable" workbooks | Public Works | M | |
| Microsoft Excel (Ambulance Charges) | Transport and non-transport SS | Police Department | M | |

| Current ERP Application | Application Notes/Description | Departmental Owner | Likely Future?* | Expected ERP Module |
|----------------------------------|---|--------------------|-----------------|---------------------------------------|
| Microsoft Excel (AP) | Expense Reimbursement SS Utility Bills SS | Finance | R | Accounts Payable |
| Microsoft Excel (AR) | Receivables (60+ days old) SS | Finance | R | Misc. Billing and Accounts Receivable |
| Microsoft Excel (billing) | Prosecutor Billing SS (CMO) Monthly Invoice Summary (Public Works) | Various | R | Misc. Billing and Accounts Receivable |
| Microsoft Excel (budgeting) | Used for budget development Expenditure Tracking SS (Public Works) Programmatic Budget SS (each department) Line Item Budget SS (each department) | Finance | R | Budgeting |
| Microsoft Excel (grant tracking) | Manages Grant Tracking | Finance | R | Grant Management |
| Microsoft Excel (HR) | Discipline SS Life Insurance SS Manager Training Attendance SS Wellness SS Training (Departmental) FMLA Tracking SS EEO Multiple SS PERRP SS BWC SS Onboarding Checklist SS Off boarding Checklist SS | Human Resources | R | Human Resources |
| Microsoft Excel (IT) | Project Management SS | IT | R | Project Accounting |
| Microsoft Excel (Payroll) | Payroll Calculation SS Time Tracking SS (each department) | Finance | R | Payroll |

| Current ERP Application | Application Notes/Description | Departmental Owner | Likely Future?* | Expected ERP Module |
|--------------------------------------|---|--------------------|-----------------|---|
| | Deferred Compensation SS Longevity Tracking SS Garnishment SS | | | |
| Microsoft Excel (project accounting) | Track expenses per project (Project Managers) | Various | R | Project Accounting |
| Microsoft Excel (purchasing) | Weekly Batch SS | Finance | R | Purchasing |
| Microsoft Excel (Treasury) | Amortization Schedules Bank Reconciliation SS | Finance | R | Bank Reconciliation |
| Microsoft Excel (UB) | Deposit Receipts SS New Installs SS | Public Utilities | R | Utility Billing |
| NeoGov | Recruiting & onboarding system | Human Resources | I | |
| Outlook | Calendar used to track individuals that are out (CMO) | CMO | R | Time and Attendance |
| Paper Time Cards | Time cards | Finance | R | Time and Attendance (and CityWorks interface) |
| Passport | Parking Payment Management (over the phone) | Police Department | M | |
| QuickBooks Pro | Invoicing | Finance | R | Misc. Billing and Accounts Receivable |
| QuickBooks Pro | Risk Management | Finance | M | |
| Recruiting.com | Holds promotional video | CMO | M | |
| SiteMinder | Fuel Usage Tracking | Public Works | M | N/A |
| Tvalue | Used to produce amortization schedules for sidewalk maintenance for Delaware County Audit assessments | Finance | I | |
| Utility Customer Cards | Cards with new account info | Public Utilities | R | Utility Billing |
| Verify | Fuel Usage Tracking | Public Works | M | N/A |

1.4 Current Technical Environment

The City has established technology standards and would prefer to adhere to them as part of the implementation of the System Selection. The tables below provide Vendors with a current summary of the City’s network and computing environments, and standards.

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

- o Areas of known or potential conflict between the Vendors proposed solution and the City’s defined environments
- o Recommendations of how best to implement and operate the proposed solution within the City’s defined environments

1.4.1 Summary of Network and Computing Environment

| |
|--|
| Network Infrastructure Configuration (WAN & Internet) |
| There are fourteen sites connected to the City’s WAN. All sites have a one (1) Gbps connection to the City owned fiber WAN. The City has two connections to the Internet. One connection is 200 Mbps and one is 100 Mbps. Local area network connections within buildings are one (1) Gbps. The City allows remote access through a VPN provided by its local firewall. |
| Backup & Disaster Recovery (DR) |
| An enterprise class backup system is used to perform backups and data is stored locally and offsite. |
| Server & Storage |
| Enterprise class server hardware from Dell is used to support City applications. Various versions of Microsoft Windows Server are installed and server virtualization using VMWare is deployed. Enterprise class storage infrastructure is used to support the standalone server and virtualized server environments. |
| User Administration |
| Microsoft Active Directory is used for user authentication. Microsoft Exchange is used for enterprise email. |
| End User Devices |
| The City supports over 250 desktops, laptops, and tablet devices. The desktop and laptop devices are Windows devices. The desktops and laptops run MS Windows 7 and 10. End user device OS and antivirus updates/patches are automated. MS IE11 and Edge, Google Chrome, and Firefox are used for Internet browsing. MS Office is used for desktop productivity tools. MS Outlook Web App (OWA) and MS Outlook client are used by end users to access email. |

1.4.2 City Technical Standards

| Item | Technical Standards |
|-------------------------------------|---|
| Network and Security | |
| Internet Connection(s) | Two Internet connections one is 200 Mbps and one is 100 Mbps. Traffic is routed to these connections based on location. |
| MAN/WAN Connection(s) | 1 Gbps connections to city owned fiber WAN |
| LAN Connection(s) | 1 Gbps connection within buildings, moving to 10 Gbps |
| Content Filtering System | Content filtering is used |
| Remote Access | VPN provided by local firewall |
| User Authentication | MS Active Directory |
| Server, Storage, Backup | |
| Server Hardware | Enterprise class hardware from Dell |
| Server Operating System | MS Windows Server |
| Server Virtualization | VMware |
| Storage Area Network | On premise enterprise class storage devices are used and available to all servers |
| Backup Solution & Devices | Local backup system with local and offsite storage |
| Application and Database | |
| Business Application Environment | Civica CMI ERP – MS Windows |
| Email System | MS Exchange |
| Relational Databases | MS SQL |
| End User Device and Software | |
| Desktop/Laptop Hardware (WIN/Intel) | Dell Intel i5 with 8 GB RAM, 500 GB HD, 10/100/1000 NIC |
| Desktop/Laptop Operating System | MS Windows 7 and 10 |
| Productivity Tools | MS Office |
| Internet Browser | MS IE, MS Edge, Google Chrome, and Firefox |
| Email Client | MS Outlook Web App (OWA) and MS Outlook client |

1.5 Other Planned Technology Initiatives

The City is considering the following future technology initiatives that may impact the ERP project:

- Move to Office 365
- Human Resources implementation of NeoGov module for onboarding
- Online permit submittal in CityWorks
- Retire Windows 7 and migrate to 10

1.6 Expected Scope of System Solution

The City is soliciting proposals from qualified ERP software vendors who are able to provide an integrated solution that meets the requirements detailed in this RFP. For vendors that cannot propose on every module requested by the City, it is encouraged that you partner with another software provider to submit a proposal that satisfies all modules. In the event a team of vendors submit a proposal, one prime contact will be responsible for the whole project and for coordinating the work of the other vendors.

The City is additionally, accepting best of breed proposals for areas of specialized functionality such as, Utility Billing.

The new ERP should meet the following objectives:

- Eliminates separate departmental systems/spreadsheets in favor of a single system that connects the City's financial and non-financial applications through a common database that provides reports easily accessible to non-Finance departments [e.g. Dashboards]
- Eliminates need for redundant data entry
- Eliminates need for manual input when preparing annual budget
- Ties functions together seamlessly
- Streamlines business processes to take advantage of best practices through automation, integration and workflows
- Provides interface capabilities with third-party systems if needed
- Phased implementation of all modules within 18-24 months form contract signature

The following definitions should be considered relative to the list below:

- **Core:** Components of the solution that **MUST** be responded to by Vendors in the RFP.
- **Expanded:** Components of the proposed solution that may be optionally proposed by responding Vendors but are not mandatory to include in the Vendor's response.

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

Software:

Core Application Software:

- Accounts Payable
- Budgeting
- Cash Management
- Cash Receipting
- Fixed Assets
- General Ledger
- Human Resources
- Misc. Billing and Accounts Receivable
- Payroll
- Project and Grant Accounting
- Purchasing
- Time and Attendance
- Utility Billing (including service orders)

Expanded Application Software and Related Technologies:

- Bank Reconciliation
- Contract Management
- Debt Management
- Investment Management
- Document Management
- Request for Service

Services:

- **Required Services**
- Project Management
- Hardware design and installation consulting
- Software Installation
- Data Conversion
- Report Development
- Integration and Interface Development
- Software Modifications
- Implementation and Training Services
- Change Management
- Knowledge Transfer to Staff
- System Documentation Development
- Operational Redesign Assistance
- Ongoing Support and Maintenance Services

Optional Services:

- On-Going Hosting Services

It is important to note that the City is considering both a City-hosted and a Vendor-hosted solution. It is optional, but not mandatory, for Vendors to provide information on both solutions as part of their RFP response. If a Vendor does propose a Vendor-hosted 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.

1.7 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 Delaware, OH | |
| Population | 40,000 |
| Form of Government | Council-Manager |
| Jurisdictional Area (Square Miles) | 20 |
| Residential Units | 13000 |
| Number of Departments | 25 |

| Operating Volumes/Standards | Current |
|--|--|
| Budget (General Fund) | \$ 22,128,223.00 |
| Budget (Utilities) | \$ 31,836,783.00 |
| Budget (All Funds) | \$ 116,044,911.00 |
| Number of current users [current/future] | |
| Finance | 48 / 75 |
| Utility Billing | 22 / 22 |
| Payroll | 16 / 375 |
| Fixed Assets | 3 / 3 |
| General Ledger/Bank Reconciliation | |
| Chart of Accounts Structure | Exp - AAA.BBBB.5CCC Rev - AAA.0000.4CCC |
| AAA | Fund |
| BBBB | Department |
| 5ZZZ | Expense object |
| 4ZZZ | Revenue object |
| 0000 | Revenues do not have 'department' level 4 zeros are a place holder |
| Chart of Accounts Future Structure | |
| DDDD | Activity |
| EEEE | Sub-activity |
| FFFF | Element |
| Fiscal Year End | 12/31/2018 |
| Number of Funds [active/inactive] | 78 / 24 |
| Number of Operational Departments | 31 |
| Number of Expense Accounts | 1782 |
| Number of Revenue Accounts | 480 |
| Budgeting | |
| Pre-Encumbrance Controls? | Yes - requisitions |
| Encumbrance Controls? | Yes - purchase orders |
| Budget Entry [requisitions] | Decentralized |
| Number of Approval Levels | 3 - 5 |
| Number of Funds Budgeted | 78 |
| Fixed Assets | |
| Fixed asset tagging? | System assigned tag 3, no physical tagging |

| Operating Volumes/Standards | Current |
|--|---|
| Capitalization thresholds [non-infra/infrastructure] | \$5,000 / \$50,000 |
| Project/Grant Accounting | |
| Do Projects/Grants Cross Funds? | Yes |
| Do Projects/Grants Cross Departments? | Yes |
| Purchasing/Contract Management/Inventory | |
| Use of NIGP/Commodity Codes? | n/a |
| Number of Requisitions [2017] | 2413 |
| Number of Purchase Orders [2017] | 2020 |
| Active vendors | 2314 |
| Use of inventory codes | No |
| Frequency of physical inventories | For consumables, these are only requested for annual audit. |
| Accounts Payable | |
| Number of AP checks [2017] | 8,006 |
| Number of PR checks [2017] | 10,016 |
| Frequency of Check Runs | Weekly |
| Check Signature Method | Hand sign |
| Number of active bank accounts | 6 |
| Payment types supported | Check, credit cards, some EFT [mostly to other governments] |
| Cash Collection | |
| Number of points of collection | 9 [finance, tax, UB, court, police, public works, planning, airport, golf course] |
| Payment types supported | Check, cash, credit cards, ACH, EFT |
| Human Resources and Payroll | |
| Number of Permanent Employees | 310.00 |
| Number of Part-Time Employees | 23 |
| Number of Seasonal Employees | 54 |
| Number of Bargaining Units | 7 |
| Payroll Frequency | Bi-weekly |
| Utility Billing | |
| Major services billed | Water, Sewer, Trash, Stormwater |
| Read Method | AMR |

| Operating Volumes/Standards | Current |
|---|---|
| Number of Electric Utility Accounts | 0 |
| Frequency of Billing | Monthly |
| Number of Billing Cycles | 1 |
| Number of Annual Bills | 168000 |
| Number of Annual Late Reminders/Notices | separate notices are not sent; included on monthly bills |
| Number of Annual Shut Offs | 2100 |

1.8 Overall Evaluation Process

Responses to this RFP will be evaluated by a committee consisting of various process owners within the City. The City’s intent is to acquire the solution that provides the best value to the City and meets or exceeds both the functional and technical requirements identified in this RFP.

The City will be using the following process to reach a finalist Vendor decision:

- 1. Minimum Criteria:** As part of the Vendor'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:

- 1. Minimum Client Software Installations**

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

- 2. RFP Response**

RFP response is submitted by the due date and time.

- 3. Response Authorization**

The RFP response is signed by an authorized company officer.

- 4. Response Completeness**

Vendor 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 Director to be either a defect that the Director will waive or that the proposal can be sufficiently modified to meet the requirements of the RFP.

- 5. 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 vendors will be called back for software demonstrations.

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
- Cost including both initial and on-going
- Implementation requirements
- Technical requirements
- General Vendor to include number and size of comparable municipal installations, financial stability, completeness of response, and quality of proposal response

3. **Round 3 Evaluation:** The top Vendors 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 Vendors.
- 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 Vendor 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
- Investment and costs
- Service and support
- Technical requirements
- Other value added
- Ability to deliver “out of the box” functionality
- Vendor Viability

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

1.9 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 | February 15, 2019 |
| Vendor pre-proposal meeting | March 6, 2019 |
| Intent to propose form due from vendors | March 15, 2019 |
| Deadline for clarification questions | March 22, 2019 |
| City distributes responses for Vendor RFP clarification questions | March 27, 2019 |
| Vendor proposals due | April 2, 2019 |
| Notification of demonstration dates | April 24, 2019 or earlier |
| Demonstrations of software | May 6 – May 17, 2019 |
| Site Visits and other due diligence | May 20 – June 7, 2019 |
| Contract negotiations and award | June 17 – July 26, 2019 |

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 4:00 p.m., local time, April 2, 2019** to:

City of Delaware, City Hall, City Manager's Office Second Floor
Attention: Kim Gepper
1 S. Sandusky Street, Delaware, Ohio 43015

The Vendor must submit **one (1)** signed, completed, original, **one (1) copy**, and **one (1) electronic copy (on a USB/flash drive)** of the Vendor's proposal. These copies will serve as the official proposal sets. Electronic proposals should also include the following files:

| | |
|--|----------------|
| ERP System Selection - Specifications.xlsx | (section 4) |
| ERP System Selection - Vendor Forms.docx | (section 7) |
| ERP System Selection - Pricing Forms.xlsx | (section 3.15) |

Please contact Kim Gepper kgepper@delawareohio.net to obtain all documents that are necessary to complete your RFP submission.

All proposals files should be named as specified above. The proposal submission must contain the following wording clearly marked on the outside of the envelope:

ERP System Selection

Additionally, Vendors must send **one (1)** USB copy (including the files specified above) of both the technical and the cost proposal responses to:

Plante & Moran, PLLC
Attention: Kim Szlachetka
27400 Northwestern Hwy
PO Box 307
Southfield, MI 48037-0307

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 3. Proposals not complying with this format may be considered non-responsive and removed from consideration.

2.3 RFP Clarifications and Questions

Potential proposers may submit questions to the City about the contents of this document. All inquiries regarding this proposal must be written and should be **emailed** with a subject line of **“ERP System Selection” to: KGepper@delawareohio.net**

Inquiries regarding the proposal will be accepted up to and including **March 22, 2019 at 4:00 PM local time.**

2.4 Vendor Pre-Proposal Meeting

A non-mandatory Vendor pre-proposal meeting will be held on March 6, 2019 from 2:00 PM via Teleconference with the following number:

Conference Line: +1 (571) 317-3112
Access Code: 340-250-381

If you are unable to attend, please see section 2.3 for RFP clarification and questions.

2.5 City Basis for Award, Evaluation Criteria and Questions

The qualification of proposal responders on this project will be considered in making the award. The City is not obligated to accept any proposal if deemed not in the best interest of the City. The City reserves the right to accept or reject any and all proposals, in whole or in part, at the sole discretion of the City. The City reserves the right to waive any informalities or irregularities in proposals. The City reserves the right to negotiate separately the terms and conditions or all or any part of the proposals as deemed to be in the City's best interest at its sole discretion. Information and/or factors gathered during the procurement process and any other information deemed relevant by the City, shall be utilized in the final award. The final award of a contract is subject to approval by the City Council.

2.6 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 Vendor shall advise the contact identified in the *RFP Clarifications and Questions* section above of such omission or misstatement.

2.7 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 its purposes. Vendor proposals shall remain confidential until the City's <Selection 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.

2.8 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 Ohio.

2.9 Tax Exempt Status

The City is exempt from paying taxes. The City's Federal Taxpayer ID No. is 31-6400225. All prices should be quoted FOB Delaware, OH.

2.10 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.

2.11 Right to Request Additional Information

The City reserves the right to request any additional information that might be deemed necessary during the evaluation process.

2.12 Proposal Preparation Costs

The Vendor is responsible for any and all costs incurred responding to this request for proposal.

2.13 Pricing Eligibility Period

All Vendor proposals must be offered for a term not less than **180 calendar days**. A proposal may not be modified, withdrawn or cancelled by Vendor during this time period following the proposal due date. 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. The price of these components can only be increased by the Vendor during this time by an amount equal to the annual CPI-U adjustment for the CPI region for Delaware, OH or 3%, whichever is less.

2.14 Additional Charges

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

2.15 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.

2.16 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.

2.17 Rights to Pertinent Materials

All responses, inquires, and correspondence relating to this RFP shall become the property of the City upon receipt, a part of a public record upon opening, and will not be returned.

3 Proposal Response Format

To facilitate the analysis of responses to this RFP, the Vendor is required to prepare their proposals in accordance with the instructions outlined in this section. **Vendors 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.**

| Section | Title |
|---------|--------------------------------------|
| 1 | Executive Summary |
| 2 | Company Background |
| 3 | Application Software |
| 4 | Technical Requirements |
| 5 | Vendor Hosted 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 | Additional Materials |
| 15 | Cost Proposal |
| 16 | Addenda |

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 7.9** 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. Audited financial information for the past TWO (2) completed fiscal years that includes income statements, balance sheets, and statement of cash flows.
4. Privately-held companies wishing to maintain confidential financial information must provide information detailing the company's long-term stability. Please provide a current Dunn & Bradstreet report (D&B) as part of the Vendor proposal response.
5. If the Vendor is proposing to use subcontractors on this project, please provide Vendor relationship with that firm and the specific services and/or products that the subcontractor will

be providing on the project. A complete list of subcontractors is required. The City has the right to approve all sub-contractors of the Vendor at any time.

6. What are you putting into Research & Development? What are you doing to expand your product?

3.3 Application Software (Section 3)

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

The Vendor 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. If technology will be in future release, please provide the anticipated release date.
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. If the vendor is not proposing a complete solution please list the software vendors that your solution has been integrated with, relative to the scope of this RFP
4. Describe the history of the primary product(s) being proposed including whether these product(s) were internally developed, acquired in-whole or in-part, or something different.
5. Please provide the upgrade or release plans for the next three years.
6. Please describe the current product lifecycle and the evolution of the product over the next ten years.
7. Discuss end of life licensing options.
8. Do you have customer user groups? Do you have one serving our region, if so how often and where do they meet?
9. Describe any potential need for customization for previous and current customers.

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 1.4.

Hardware and Storage Environment

1. Describe the proposed computer hardware and storage environment to support the system. If multiple options, indicate which is the preferred hardware platform and why. Provide a hardware configuration which takes into account the size of the City, application modules, database size, and anticipated growth.
2. What system architecture do you propose? Describe the number and type of: application servers, database server(s), and development and test environments. Describe your proposal's technical architecture (preferably using a PowerPoint or Visio diagram). This should show components such as the database server, applications server, reporting server, test/training server, firewall(s), web server(s), web browser, minimum workstation requirements, remote access, wireless connectivity, network connectivity to LANs and WAN, etc. Describe any potential use of virtual server technologies (e.g. Microsoft Virtual Server, VMware) and application accelerators and note what Vendors you partner with or recommend and/or support.
3. 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.

4. Describe what, if any, footprint exists on each user's desktop.
5. What are your guarantees on system performance?

3.5 Vendor Hosted Option (Section 5)

Note: Response to this section is optional.

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 Vendor 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. Hardware, Software & Storage Design and Installation Consulting
4. Data Conversion Plan
5. Report Development
6. Integrations and Interfaces
7. Training
8. Change Management Approach
9. Testing
10. Operational Redesign Approach
11. System Documentation and Manuals
12. Disaster Recovery Plan
13. 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?
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 Vendor 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 a high-level work plan for achieving a successful deployment. Tasks to include on the project plan will include all implementation activity; deadlines, milestones, sign offs, review periods and deliverables.

3.6.3 Hardware, Software and Storage Design and Installation Consulting (Section 6.3)

The City usually installs required equipment for applications. We are open to other proposals to accomplish a successful deployment. What do you propose for the most effective deployment of hardware, communications and related equipment?

3.6.4 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 ERP. 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.

3.6.5 Report Development (Section 6.5)

It is anticipated that the Vendor will take the lead on developing any reports required as part of the system implementation. The Vendor 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.

3.6.6 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 City. Existing City interfaces between core modules that may currently exist (e.g., AP posting to GL) or shadow systems that will likely be replaced are not included in this section as they are assumed to be included in an integrated ERP 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:

- a. Describe the extent to which the various modules are integrated together versus being purchased separately and interfaced
- b. Describe your approach towards interfacing and integration with other solutions
- c. Describe data exchange standards (e.g. XML, Web Services, or EDI) supported. If you have supported APIs or other standard add-ons please provide a list of them.
- d. Using the City's current technical environment described above, identify potential issues for integrating with specific technologies that are used within the City.
- e. If local customizations are made, do you provide any tools or assistance to easily incorporate customizations into new version/releases of your software?
- f. Have you ever interfaced with the Cityworks system? If so, include those references on the reference forms provided, in section 8 of your response.

3.6.7 Training (Section 6.7)

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

- End User Training Approach: All end-user and technical training will be performed on-site through implementation and be performed by the Vendor.
- Train the Trainer Approach: The Vendor will incorporate a "train the trainer" approach where only key City team leads will be trained on their modules and they will train the remainder of the City staff with training materials supplied by the Vendor.

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

- General timeframes in which both types of training will be conducted
- Materials that will be provided during training
- The nature and amount of training to be provided in the following areas:
 - Technical training (e.g., programming, operations, etc.)
 - User training
 - Other staff (e.g., executive level administrative staff)

Additionally, please provide information on the following:

- Options for online training versus in-person classroom training

- Opportunities for ongoing training post go-live (e.g. new hires, refresher training)

3.6.8 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 Vendor should clearly identify their approach towards Change Management, including any unique approaches or tools that will be used.

3.6.9 Testing (Section 6.9)

The Vendor 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)

3.6.10 Operational Redesign (Section 6.10)

The City wishes to implement operational improvements. Vendors 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.

3.6.11 System Documentation and Manuals (Section 6.11)

The Vendor 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 Vendor is expected to provide technical documentation.

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

3.6.12 Disaster Recovery Plan (Section 6.12)

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

3.6.13 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 Vendor must detail the type and amount of implementation support to be provided (e.g., number of personnel, level of personnel, time commitment, etc.). Include resumes for all personnel that will be assigned to the project. If the Vendor 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.
3. Please provide an overview of the City staff that are expected to be committed to the project implementation, in table format. 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, 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 1 of this RFP must be provided in this section of the Vendor'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 Vendor must provide at least five references from clients that are similar in size and complexity to the City in the format provided in **section 7.10**. The City also requests a listing of all municipal clients. If possible, at least one of these references should be Vendor-hosted on the version proposed.

3.11 License and Maintenance Agreements (Section 11)

Sample license and maintenance agreements must be provided in this part of the Vendor'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)

- a. Contract terms and conditions compliance checklist
- b. Contract terms and conditions compliance checklist – Exception explanation
- c. Proposal Signature Form
- d. Non-Collusion Affidavit
- e. Minimum Criteria
- f. For Vendors who are proposing a hosted solution, please additionally supply a copy of your Independent Service Auditor's Opinion Letter from your most recent SSAE 16 Type II audit.

3.14 Cost Proposal (Section 14)

Costs for the Vendor's proposed solution should be submitted on the proposal pricing forms provided in the associated Microsoft Excel pricing spreadsheet (obtain from Kim Gepper kgepper@delawareohio.net). 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 not included, the item should be noted as "No Bid".
- In the event the product or service is provided at no additional cost, the item should be noted as "no charge" or "included." Otherwise, it will be assumed the item is "No Bid"
- 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.

3.15 Addenda (Section 15)

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

4 Functional Requirements

4.1 Introduction

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

Identified in the Excel specification spreadsheet (obtain from Kim Gepper kgepper@delawareohio.net) **are the requirements that must be addressed by the vendor's proposal.** These requirements are mandatory in implementing the solution as defined in section 1.6. Vendors must replace cells A1:G1 in the first module (General and Technical Requirements) 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:

| | |
|----------------------|--|
| “H” – High: | This is a feature that the City requires in the future solution. |
| “M” – Medium: | This is a feature that the City would like in the new system, but is not an absolute necessity. |
| “L” – Low: | 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. |
| F | Functionality is provided through a future general availability (GA) release that is scheduled to occur <u>within 1 year</u> 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 vendor is selected by City of Delaware (the "Client"). 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 Client and the Vendor (the "Agreement"). For purposes of these terms and conditions, the term "Vendor" means the vendor responding to this RFP and all such terms shall apply to any subcontractor of the Vendor. Use of the term "Exhibit <##>" throughout these contract terms refers to supplemental documents that Client expects will be included in the final contract package.

The following contract terms and conditions, substantially in the form contained herein, are expected to be agreed to by the vendors as part of contract negotiations. Exceptions must be explicitly noted in the Vendor Proposals using the checklist forms provided in Attachment <##> of the RFP. Lack of exceptions listed on the checklist forms shall be considered acceptance of all of the terms and conditions as presented in this RFP.

5.1 General Terms & Conditions

5.1.1 Scope of Agreement

Client agrees to [license][subscribe to] the software detailed in Exhibit <##> ("Software") and receive the services detailed in the Statement of Work detailed in Exhibit <##> ("Services"). Vendor agrees to provide Software and Services (the "Solution"), subject to the terms and conditions stated in this Agreement including all Exhibits. Payment for such services shall be per Exhibit <##> and shall not exceed the total amount included in Exhibit <##> without the prior written consent of Client. The Client, without prior and mutual written agreement, will incur no other service costs. The service costs in Exhibit <##> are inclusive of all services described in the Statement of Work included as Exhibit <##>. Client agrees to provide server, desktop and other hardware and configuration based on Vendor's recommendation per Exhibit <##>.

5.1.2 Incorporation by Reference

The Vendor shall supply Software and Services adequate to accomplish the requirements as set forth in the Request for Proposal and the Vendor's response to the Request for Proposal provided herein as Exhibit <##> and Exhibit <##>, respectively ("Contract Documents") and Vendor'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 Vendor's proposal shall be incorporated into this Agreement and shall be binding upon all parties to the Agreement.

5.1.3 Entire Agreement Clause

This Agreement, including appendices and referenced attachments, constitutes the entire Agreement between the Client and Vendor and supersedes all proposals, presentations, representations, and communications, whether oral or in writing, between the parties on this subject.

5.1.4 *Applicable and Governing Law Clause*

The Agreement shall be subject to all laws of the Federal Government of the United States of America, to the laws of the State of Ohio, and to the laws of the City of Delaware, Ohio. All duties of either party shall be legally performable in the State of Ohio. 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 Ohio, and the forum and venue for such disputes shall be in the courts of appropriate jurisdiction for City of Delaware, Ohio.

5.1.5 *Wording Conflicts*

Should there be a conflict in wording between the Agreement and Vendor's RFP response, the Agreement shall prevail.

5.1.6 *Standard Forms and Contracts*

Any forms and contracts the Vendor(s) proposes to include as part of any agreement resulting from this proposal response between the vendor(s) and the Client must be submitted as part of this proposal. Any forms and contracts not submitted as part of the proposal and subsequently presented for inclusion may be rejected. Client reserves the right to accept or reject in whole or in part any form contract submitted by a vendor and/or to require that amendments be made thereto, or that an agreement drafted by the Client be utilized. This requirement includes, but is not limited to, the following types of forms: subcontractor, franchise, warranty agreements, maintenance contracts, third party licenses and support agreements. The Client will negotiate any and all contracts/agreements and prices/fees with the Vendor, if doing so is deemed in the best interest of the Client.

5.1.7 *Term and Termination Clause*

In the event that either party shall fail to maintain or keep in force any of the terms and conditions of this Agreement, the aggrieved party may notify the other party in writing via certified mail of such failure and demand that the same be remedied within 30 business days. Should the defaulting party fail to remedy the same within said period, the other party shall thereupon have the right to terminate this Agreement by giving the other party 30 days written notice. Notwithstanding the foregoing, due to lack of funding, the Client may at any time during the life of this Agreement, terminate same by giving 30 days' notice in writing via certified mail to Vendor. In addition, if at any time a voluntary petition in bankruptcy shall be filed against the Vendor and shall not be dismissed within 60 days, or if the Vendor shall take advantage of any insolvency law, or if a receiver or trustee of the Vendor's property shall be appointed and such appointment shall not be vacated within 30 days, the Client shall have the right, in addition to any other rights of whatsoever nature that it may have at law or in equity, to terminate the contract by giving 30 days' notice in writing of such termination.

5.1.8 *Indemnification*

- A. To the fullest extent permitted by law, the Vendor shall indemnify, hold harmless, and defend the Client and its agents, employees, officers and successors, from and against any claims, causes of action, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting in any way from Vendor's performance of this contract, provided that such claim, cause of action, damage, loss or expense is attributable to bodily injury,

sickness, disease, or death to any person, including employees or agents of the Vendor, subcontractor, or construction manager, or to injury to or destruction of tangible property including loss of use resulting therefrom, but only if caused in whole or in part by a negligent act or omission of the Vendor, a subcontractor, the construction manager, anyone directly or indirectly employed by them, or any for whose acts they may be liable, regardless of whether or not such claim, cause of action, damage, loss or expense is caused in part by a party indemnified hereunder. Vendor shall not be obligated to hold harmless, indemnify, or defend the Client or its agents, employees, officers, or successors if any claim, cause of action, damage, loss or expense arises from the sole negligence or fault of a party indemnified hereunder.

- B. Vendor shall assume the defense of the Client pursuant to the provisions of the paragraph above within 30 days of receipt of written notice. Any legal cost or expense, including attorney's fees, incurred by the Client for enforcement of its rights under the paragraph above between the time by which Vendor should have assumed the Client defense and the time when Vendor assumes the Client's defense shall be reimbursed by Vendor. Any legal cost or expense, including attorney's fees, incurred by the Client 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 Vendor.

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 Client.

5.1.9 Insurance

The Vendor must have adequate insurance, for damage or loss, for all equipment and other valuables until such time as the Client receives good and clear title. In defining insurance coverage, the Vendor shall secure full replacement value for the system without the requirement that the Client be responsible for any payments or deductibles. In the event that it is necessary to make a claim under this policy, any funds received by the Vendor shall be used to secure replacement equipment for the Client.

The Client, at its option, may require the Vendor to provide certificates describing, to the satisfaction of the Client, evidence of proper (as required by the state of Ohio) workers compensation and liability insurance for all Vendor staff and representatives involved in the provision of Services by Vendor. The Client shall be named as a primary additional insured without any contribution from any insurance or self-insurance of Client, unless prohibited by Ohio Statutes.

The Vendor agrees to hold harmless and defend the Client and its agents, officials and employees from any liability, claim, or injury related to or caused by fault or negligence of Vendor employees or subcontractors. In order to demonstrate this responsibility, the Vendor shall furnish the Client with evidence of valid commercial general liability insurance coverage in the amount of a million dollars (\$1,000,000) for each occurrence for personal injury (including death or dismemberment) and property damage related to or resulting from shipping, installation, operation, or removal of the proposed automated system. The insurance policy shall make clear this coverage of the Client installation. The Client shall be named as a primary additional insured without any contribution from any insurance or self-insurance of Client, unless prohibited by Ohio Statutes. The insurance policy shall be initiated prior to the installation of the system and maintained until Final Acceptance of the system by the Client according to the prescribed procedures. The Vendor shall furnish to the Client

a copy of the insurance policy and all subsequent changes or updates. An endorsement or statement waiving the right of cancellation or reduction in coverage unless thirty (30) days prior written notice is given to the Client by registered or certified mail shall be included.

5.1.10 Insurance Coverage

As a condition of performing work for the Client, Vendor must provide satisfactory evidence of insurance coverage as follows:

- A. Commercial general liability of at least \$1,000,000;
- B. A minimum umbrella policy of \$2,000,000;
- C. Professional Liability or Errors and Omissions Insurance with the provision to purchase an unlimited tail and a limit of \$1,000,000.
- D. Statutory workers compensation with \$1,000,000 of Employers Liability for all sections.

The coverage shall be the minimum amounts and shall not be diminished during the term of this Agreement and the Vendor shall provide copies of all certificates of insurance to the satisfaction of the Client as to coverage and content and shall maintain such coverages for at least xxxxx (#) years from the completion of the Services associated with this Agreement.

Other Requirements

Evidence of insurance coverage, required herein, is to be provided to us in ACORD Certificate Form 25 or 25-S or an equivalent form and must indicate:

- A. That Commercial General Liability insurance policy includes coverage for item specified in 10.A above.
- B. A Best's rating for each insurance carrier at B+VII or better.
- C. That the insurance company will provide ten (10) days written notice of cancellation to the certificate holder and other words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" do not apply or have been removed.
- D. That the Client is additional insured on the General Liability policy certified.

Insurance Options

General Liability limits may be attained by individual policies or by a combination of underlying policies with umbrella and/or excess liability policies.

Notify Your Insurance Agent

Vendor may prevent unnecessary follow up resulting from incomplete insurance certificates, by sending or faxing a copy of these insurance requirements to Vendor's agent when requesting an insurance certificate.

5.1.11 Limitation of Liability

- A. Limitations. If Client should become entitled to claim damages from Vendor for any reason (including without limitation, for breach of contract, breach of warranty, negligence, other tort claim, or replacement of a solution), Vendor will be liable only for the amount of Client's actual direct damages. In no event, however, will Vendor be liable to Client (in the aggregate for all claims made) for more than:
- i. 2 times the Value of the Agreement to the extent the Client's actual direct damages are a result of the failure to gain Conditional Acceptance of phases or milestones as defined in the Project Schedule or Final Acceptance of the Solution as a whole up until Client's Conditional Acceptance or Final Acceptance of the Solution, as the case may be; or,
 - ii. Following Final Acceptance of the Solution, 2 times the Value of the Agreement for the Client's actual direct damages that are a result of any other claim brought under the Agreement that arises thereafter.

For avoidance of doubt: (a) "Value of the Agreement" shall mean the one-time charges hereunder for Services and Software licenses, but excluding ongoing charges such as maintenance, (b) failure to gain Conditional Acceptance does not include a decision by the Client to not put the Software in production following successful User Acceptance Testing, and (c) at no point will clause (i) and (ii) be cumulative; 2 times the Value of the Agreement will apply through Final Acceptance, and thereafter will be reduced to 1 times the Value of the Agreement.

- B. No Liability for Certain Damages. In no event will Vendor or any person or entity involved in the creation, manufacture or distribution of any software, services or other materials provided by Vendor under the Agreement be liable for: (i) any damages arising out of or related to the failure of Client or its suppliers to perform their responsibilities; (ii) any claims or demands of third parties (other than those third party claims covered by the indemnification obligations stated herein; or (iii) any consequential, incidental, indirect, exemplary or punitive damages, even if Vendor has been advised of the possibility of such damages.
- C. 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.

5.1.12 Freedom of Information Act

Vendor acknowledges that Client is subject by law to responding to all Freedom of Information Act ("FOIA") requests. Vendor shall comply with the FOIA in all respects and shall not restrict or otherwise inhibit Client from complying.

5.1.13 Confidentiality

Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein shall survive the termination or cancellation of this Agreement. This obligation of confidentiality shall not apply to (a) information that at the time of the disclosure is in the public domain; (b) information that, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party; (c) information that a party can establish by reasonable proof was in that party's possession at the time of disclosure; (d) information that a party receives from a third party who has a right to disclose it to that party; or (e) information that is subject to FOIA requests.

5.1.14 Title and Confidentiality

Title and full rights to the Software [licensed][subscribed to] under this agreement, including, without limitation, all intellectual property rights therein and thereto, and any copies Client may make, remain with Vendor. It is agreed the Software is the proprietary, confidential, trade secret property of Vendor, whether or not any portions thereof are or may be copyrighted, and Client shall take all reasonable steps necessary to protect the confidential nature of the Software, as Client would take to protect its own confidential information. Client further agrees that Client shall not make any disclosure of any or all such Software (including methods or concepts utilized therein) to anyone, except to employees, agents, or subcontractors working for Client to whom such disclosure is necessary to the use for which rights are granted hereunder. Client shall appropriately notify all employees, agents, and subcontractors to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by them. The obligations imposed by this section upon Client, its employees, agents, and subcontractors, shall survive and continue after any termination of rights under this Agreement. It shall not be a breach of this agreement if Client is required to disclose or make the Software available to a third party or to a court if the Software is required to be disclosed pursuant to Ohio "open records" law, or is subpoenaed or otherwise ordered by an administrative agency or court of competent jurisdiction to be produced.

5.1.15 Identification of Parties to the Agreement Clause

Both the Vendor and Client shall be clearly identified by name. Neither of the identified parties to the Agreement shall assign or encumber any of its rights, or delegate or subcontract any of its duties defined in the Agreement, in whole or in part, to other third parties unless the other party to the Agreement gives prior written consent. Subject to the foregoing covenant against assignment and delegation, the rights created by the Agreement shall pass to the benefit of the identified party and the duties and obligations resulting from the Agreement shall bind the identified party and their respective successors and assignees.

5.1.16 Notices Clause

All notices or communications required or permitted as a part of the Agreement shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when:

1. Actually received, or
2. Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party, or
3. If not actually received, 10 days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set out in the section of the Agreement titled "Identification of the Parties to the Agreement" or such other address as the party may have designated by notice or Agreement amendment to the other party, or
4. Upon delivery by the Client of the notice to an authorized Vendor representative while at Client site.

Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of the intended receiving party's new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

| | |
|-----------------|-----------------|
| Vendor | Client |
| <Contact Title> | <Contact Title> |
| <Address> | <Address> |

5.1.17 Agreement Extension and Modification Clause

The Agreement may be modified or extended in accordance with the following procedures. In the event that all parties to the Agreement agree that such changes would be of a minor and non-material nature, such changes may be effected by a written statement that describes the situation and is signed, prior to the effectiveness, by all parties. In the event that the changes are determined by either or all parties to the Agreement to be of a major or complex nature, then the change shall be by formal amendment of the Agreement signed by the parties and made a permanent part of the Agreement.

Under no circumstances, however, shall any parties to the Agreement forfeit or cancel any right presented in the Agreement by delaying or failing to exercise the right or by not immediately and promptly notifying the other party in the event of a default. In the event that a party to the Agreement waives a right, this does not indicate a waiver of the ability of the party to, at a subsequent time, enforce the right. The payment of funds to the Vendor by Client should in no way be interpreted as acceptance of the Software or the waiver of performance requirements.

5.1.18 Changes in Agreement

The Agreement may be changed only upon the written agreement between Client's R. Thomas Homan, City Manager or designee and the Vendor.

5.1.19 *Survival Clause*

All duties and responsibilities of any party that, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract term or cancellation of this Agreement.

5.1.20 *Effect of Regulation*

Should any local, state, or national regulatory authority having jurisdiction over the Client enter a valid and enforceable order upon the Client 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 Client of a material part of its Agreement with the Vendor. In the event this order results in depriving the Client of material parts or raising their costs beyond that defined in this Agreement, the Client 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 thirty (30) days written prior notice to the Vendor. Should the Agreement be terminated under such circumstances, the Client shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

The Client shall not be charged for such compliance beyond the cost of the annual [maintenance and support fees][subscription fees]. The Client 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].

5.1.21 *Assignments*

Client and the Vendor each binds themselves, their partners, successors, and other legal representatives to all covenants, agreements, and obligations contained in this Agreement. This Agreement or any part thereof shall not be assigned or subcontracted by Vendor without the prior written permission of the Client; any attempt to do so without said prior permission shall be void and of no effect.

The Vendor agrees not to assign, transfer, convey, sublet, or otherwise dispose of the Agreement or any rights, title, or interest created by the Agreement without the prior consent and written approval of the Client's R. Thomas Homan, City Manager or designee and the Vendor.

5.1.22 *Vendor as Independent Contractor*

It is expressly agreed that the Vendor is an independent contractor and not an agent of Client. The Vendor shall not pledge or attempt to pledge the credit of Client or in any other way attempt to bind the Client.

The relationship of the Vendor to the Client shall be that of independent contractor and no principal agent of employer-employee relationship is created by the Agreement.

5.1.23 Advertisement

Vendor shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of the Client unless Vendor receives specific written authorization in advance from the Client's R. Thomas Homan, City Manager. Vendor will limit and direct any of its advertising on the Client's premises and shall make arrangements for such advertising through the R. Thomas Homan, City Manager. Vendor shall not install any signs or other displays within or outside of the Client's premises unless in each instance the prior written approval of the Client's R. Thomas Homan, City Manager has been obtained. However, nothing in this clause shall preclude Vendor from listing the Client on its routine client list for matters of reference.

5.1.24 Pricing

All prices for Vendor's Software and Services hereunder are firm for the term of the Agreement. The Client shall pay Vendor for satisfactory performance of the Software and Services specified in this Agreement, the sums in accordance with Vendor's response to Client's RFP, this Agreement and any related addenda. Client 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 <##>.

5.1.25 Right to Withhold Payment

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

5.1.26 Funding Out

This Agreement shall terminate at such time, if any, that the City Council fails to appropriate sufficient sums in the budget year for which the Agreement applies to pay the amount due.

5.1.27 Non-Collusion

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

5.1.28 Conflict of Interest

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

5.1.29 Vendor Merger or Acquisition

In the event that the Vendor is merged or acquired, the acquiring entity shall honor all of the terms of the existing contract for five (5) years or until the end of the present Agreement term, whichever is longer.

5.1.30 Equal Opportunity Employment/Nondiscrimination Policy

It is the policy of the Client that all vendors who provide goods and services to the Client 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.

Vendor shall, as a condition of providing Software and Services, as required by law and/or the Client'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 Vendor has violated Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies, Vendor shall be barred from providing goods and services to the Client for ten (10) 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 Client'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 Vendor is providing Software or Services to the Client shall be regarded as a material breach of the Agreement between the Client and the Vendor, and the Client may terminate such Agreement effective as of the date of delivery of written notification to the Vendor.

Any employee of Vendor providing goods and services to the Client under his Agreement, or any employee of a subcontractor of Vendor providing goods and services to the Client 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 Vendor 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 Vendor 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 Client for a period of twenty (20) years from the date of such finding.

5.2 Software

5.2.1 Grant of Right to Use Software

Vendor hereby grants to Client a nonexclusive, nontransferable, [perpetual license][subscription] to use the Software described in Exhibit <##> solely for internal business purposes on a central processing unit owned, leased or otherwise used by Client and/or its designated service provider.

5.2.2 Documentation

Vendor shall deliver to Client two (2) complete copies of the user documentation describing the functionality and operation of the Software and technical documentation describing the technical support procedures to assist with the on-going support of the Software ("Documentation"), including an electronic version with the ability to modify to the needs of Client. Vendor agrees that Documentation provided with the Software will be updated to reflect any Customizations contracted by Client with Vendor. Client shall have the right to make as many additional copies of the Documentation for its own use as it may determine.

5.2.3 Software Warranty

- A. Vendor represents and warrants that it has the right to grant the [licenses][subscription] set forth under this Agreement. Vendor further represents and warrants that it has good and marketable title to the Software described herein free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. Vendor further represents and warrants that neither the Software in the form delivered by Vendor to Client, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by Client, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.
- B. In the event that any third party makes a claim or files a lawsuit challenging Client's right to use the Software, Vendor shall defend and indemnify Client and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of said claim or lawsuit, and for any monies paid in settlement thereof. Provided, however, that Vendor shall have the sole and exclusive right to select and retain counsel for Client in connection with the defense thereof, and shall make all decisions relating to the conduct of the Client's defense and any settlement made on behalf of Client. In resolving any such infringement claim, Vendor shall, in its reasonable discretion, either procure a license or other right to enable Client to continue to use the Software or develop or obtain a non-infringing substitute acceptable to Client at Vendor's cost.
- C. Vendor represents and warrants that the Software and related products as described with this Agreement will perform in accordance with all Documentation, Contract Documents, Vendor marketing literature, and any other communications attached to or referenced in this Agreement.

- D. Vendor represents and warrants that the Software and related products, including all modifications contracted under the terms of this Agreement, will meet the requirements of Client as set forth in the Contract Documents.
- E. Client has: (i) presented detailed technical specifications of the particular purpose for which the Software is intended, (ii) provided detailed descriptions and criteria of how the Software can be defined to accomplish particular purpose, and (iii) defined the exact procedures and techniques to be employed in testing whether the Software has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about, Client's particular purpose, Vendor, at the time this Agreement is in force, has (#) reason and opportunity to know the particular purpose for which the Software is required, (#) that Client is relying on Vendor's experience and knowledge of the Software to identify those components which are most suitable and appropriate, and (#) that Client is relying on Vendor's experience and knowledge to identify the appropriate Services that will assist in making the Software operational. Therefore, Vendor warrants that the Software including all products included in this Agreement are fit for the purposes for which they are intended as described in the Contract Documents.

5.2.4 Patents, Copyrights, and Proprietary Rights Indemnification

The Vendor, at its own expense, shall completely and entirely defend the Client from any claim or suit brought against the Client arising from claims of violation of United States patents or copyrights resulting from the Vendor or the Client'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 Client will provide the Vendor with a written notice of any such claim or suit. The Client will also assist the Vendor, in all reasonable ways, in the preparation of information helpful to the Vendor in defending the Client against this suit.

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

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

- A. Purchase for the Client 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 Client which are, in the Client's sole opinion, of equal or greater quality, or
- C. Refund all monies paid to the Vendor for the Solution subject to the court action. The Vendor shall also pay to the Client all reasonable losses related to the Solution and for all reasonable expenses related to the installation, implementation and conversion to the new Solution.

5.2.5 Unlimited Liability for Software Vendor Infringement

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

5.2.6 Password Security

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

5.2.7 Software Interfaces

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

5.2.8 Source Code Escrow

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

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

5.2.9 Right to Outsource

Software [licensed][subscribed] to Client may be used by a third-party vendor hired by Client to perform outsource services on Client’s behalf.

5.2.10 Use of Software by Personnel Who Are Not Employees

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

5.2.11 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.

5.2.12 Disclaimers and Limitations of Remedies

- A. 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 Vendor 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 Vendor or its agent has been advised of the possibility of such damages.

- B. 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 City of Delaware, Ohio, unless both parties agree to binding arbitration, which shall take place in City of Delaware, Ohio. 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.

5.3 Software License

This Software License section will only apply if a license is granted by the Vendor in either a hosted or on-premises scenario.

5.3.1 Replication of Software

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

5.3.2 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 Vendor. During the time period where the Software is in transit and until the Software is fully installed in good working order, the Vendor and its insurer shall be responsible for the Software and relieve the Client of responsibility for all risk or loss or damage to the Software. In addition, Vendor shall hold the Client and its officers, employees and agents harmless from any risk of loss or damage arising out of occurrences during the installation of the Software.

5.3.3 Warranty Pertaining to Hardware Recommendation

Vendor represents and warrants that all Software provided under this Agreement are compatible with and certified for use and operation in Client's operating environment. Furthermore, Vendor acknowledges that it has reviewed the hardware system ordered by Client and represents and warrants that such hardware system as defined in Exhibit <##> is sufficient for Client's current and reasonably projected use, including account and transaction volumes.

5.3.4 Payment Terms – Software License

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

Vendor shall invoice **Client** for the Total Amount on Exhibits <##> and <##> according to the following payment schedules:

Software License Fees

- \$0 Due upon Contract Execution
- Actual costs Due upon initial Software installation
- Actual costs Due in installments based upon Conditional Acceptance of each Software Module
- Final cost Due upon Final Acceptance

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

5.4 Software Maintenance and Support

5.4.1 Extended Services

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

- A. Vendor 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.
- B. Vendor shall provide Client 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.
- C. Vendor agrees that the rates specified for Extended Services shall remain in effect for a period of minimally two (#) years from initial contract signing.

- D. Vendor agrees not to assign its Extended Services obligations as contemplated herein, without prior written authorization of Client, which will not be unreasonably withheld. Vendor will not utilize subcontractors for any Extended Services provided herein without the express written authorization of Client.

5.4.2 Annual Fees

Annual Fees shall not be increased by an annual average percentage greater than the annual Consumer Price Index (CPI) for the Midwest region, for as long as Annual Fees are paid and this agreement between the Client and the Vendor is in effect.

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

5.4.3 Resolution and Response Time Warranty

Vendor 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 one (1) business hours.
- Resolution time limit – Vendor shall use its best efforts to resolve within xxxxx business days.
- If Vendor and Client are on a support telephone call to resolve a Priority 1 support issue at the time that normal support hours end, Vendor support representatives will remain on the call past the normal support hours to provide what assistance can be provided at no additional cost. Client acknowledges that programmers will not be available at that time.
- Penalty for not adhering to time limits - Client shall receive a fifty percent (50%) 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 two (2) business hours.
- Resolution time limit – Vendor shall use its best efforts to resolve within two (2) business days.
- Penalty for not adhering to time limits - Client shall receive a fifty percent (50%) 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 four (4) business hours.
- Resolution time limit – Vendor shall use its best efforts to resolve within five (5) business days.
- Penalty for not adhering to time limits - Client shall receive a fifty percent (50%) credit against the Annual Fees, per incident.

5.4.4 Termination of Annual Maintenance and Support

Client may cancel Extended Services upon thirty (30) day notification to the Vendor.

Extended Services may be reinstated by the Client 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 Client shall not be forced to move to a new [license][subscription] model.

The Vendor shall give the Client at least three (3) months' notice before unilaterally canceling Extended Services. In addition, the Vendor shall continue to support the Software as long as it is supporting such Software for other customers of Vendor.

5.4.5 Federally Mandated Changes

Vendor shall supply Client with all federally mandated changes to Vendor's Software. Vendor will make a good faith effort to provide Client with these changes within 30 days of their enactment dates prescribed by the aforementioned bodies. In the event that Vendor is unable to supply these changes within 30 days of the enactment, Client will be credited a prorated share of the Annual Fees for every week Vendor is tardy in delivering the required change.

5.4.6 Future Releases/Upgrades

Client 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 <##>.

5.4.7 Solution Longevity

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

5.4.8 Successor Software Products

In the event Vendor 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, Client may transfer the [license][subscription] for the Software to the Successor Products for no additional Vendor [license][subscription] fees. In such event, Client 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.

5.4.9 Functionality Replacement

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

5.4.10 Continuity of Warranty

Client 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.

5.4.11 Payment Terms – Annual Fees

Vendor shall invoice **Client** 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

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

5.5 Professional Services

5.5.1 Intellectual Property

All information, data, programs, publications and media created specifically for and paid for by the Client or as a result of the Services identified in this Agreement is the property of the Client unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement.

5.5.2 Contract Extension

If Vendor anticipates missing a milestone date identified in the Project Schedule, then Vendor must notify Client immediately so that a mutually acceptable revised milestone date can be agreed to. Such revisions will not alleviate Client's right to Liquidated Damages in the event such a delay is caused by Vendor resulting in a delay of the Go Live date as defined in Project Schedule.

5.5.3 Subcontractors

Vendors may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Vendor must obtain written prior approval from the Client for activities or duties to take place at the Client site. In using subcontractors, the Vendor agrees to be responsible for all of their acts and omissions to the same extent as if the subcontractors were employees of the Vendor.

5.5.4 Control of Sub-Contractor, Project Team and Project Manager Designation

The Vendor understands that the successful installation, testing, and operation of the Software that is the subject of this Agreement shall be accomplished by a cooperative effort. To most effectively

manage this process, the Vendor shall designate a single representative to act as an ex-officio member of the Client's project management team ("Project Manager") and who shall have the authority to act on behalf of the Vendor on all matters pertaining to this Agreement.

Client shall have the right to approve all subcontractors, Project Manager, and staff assigned to Client by Vendor ("Designated Staff"). In the event that a Designated Staff of the Vendor is, in the opinion of the Client, uncooperative, inept, incompetent, or otherwise unacceptable, the Vendor agrees to remove such person from the project. In the event of such a removal, the Vendor shall, within 30 days, fill this representative vacancy as described above. Regardless of whom the Vendor has designated to fill this representative vacancy, the Vendor organization remains the ultimate responsible party for performing the tasks and responsibilities presented in this Agreement.

5.5.5 Project Schedule and Acceptance

Vendor will develop a detailed project schedule that details both Vendor and Client's responsibilities, timeline for project activities, phases, milestones, and deliverables ("Project Schedule") in connection with Vendor'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 Vendor and Client agree that a mutually agreeable Project Schedule will be submitted and approved by Client within 20 days of the date the Agreement is signed by both parties ("Effective Date"). In the event Vendor is unable to provide the Project Schedule within 20 days, Client will have at its option, the ability to terminate the Agreement and obtain all fees paid to Vendor. The Project Schedule will also include the criteria by which the software will be tested and accepted by Client.

5.5.6 Programming Services

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

5.5.7 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: Vendor may submit interim drafts (stamped, noted or otherwise clearly marked "Draft") of a written deliverable to Client for review. Client agrees to review and provide comments to Vendor on each interim draft within 10 business days after receiving it from Vendor. Client will have the opportunity to review the written deliverable for an acceptance period of business days after delivery of the final version (stamped, noted or otherwise clearly marked "Final Draft") of the written deliverable (the "Acceptance Period").

Client agrees to notify Vendor in writing by the end of the Acceptance Period either stating that the written deliverable is accepted in the form delivered by Vendor or describing in reasonable detail any substantive deficiencies that must be corrected prior to acceptance of the written deliverable. If Vendor does not receive any such deficiency notice from Client 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 Client. If Client delivers to Vendor a timely notice of deficiencies and the items specified in the notice are deficiencies, Vendor will promptly correct the described deficiencies and return to Client for Acceptance. Client will not unreasonably withhold, delay or condition its approval of a final written deliverable.

Vendor is responsible for tracking status of each deliverable including but not limited to the date in which it was submitted to the Client 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 Vendor ("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.

Vendor will work with the Client 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").

1. The "Acceptance Test Period" for each Software Deliverable will be xxxxx (##) business days unless an alternate time is mutually agreed upon between Vendor and Client 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 Vendor and Client per the Project Schedule, after the Software Deliverable is installed at Client's designated site and Vendor has successfully completed Vendor's installation test and notified Client that the Software deliverable is "Ready for Acceptance Testing." Vendor will not be obligated to deliver a Software Deliverable to Client until Client demonstrates the readiness of the target technical platform and environment.
2. If Client determines during the Acceptance Test Period that the Software Deliverable contains a Defect, Client will promptly send Vendor a written notice reporting the alleged Defect describing it to Vendor in sufficient detail reasonably necessary for Vendor to recreate it. Vendor will modify the Software Deliverable to remove the reported Defect and will provide the modifications to Client for re-testing. Client will then re-test the modified portions of the Software Deliverable promptly after receiving the modifications from Vendor. In such a case, Vendor and Client will mutually agree upon an updated Acceptance Test Period.
3. By the end of the Acceptance Testing Period Client will provide Vendor with a final written list reporting any outstanding Defects (the "Punch List"). Client 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, Client will provide Vendor 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.

4. Vendor and Client each agrees to work diligently to achieve acceptance of Software Deliverable at the earliest possible date.
- C. "User Acceptance Testing" shall mean testing of each Phase identified in the Project Schedule using the process defined above for Software Deliverable.
 - D. "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, Vendor and Client will work diligently to put the Phase into Go Live operations.
 - E. "Final Acceptance" involves use of the Solution in totality in production operations for a period of xxxxx (##) calendar days, provision of all Services by Vendor, 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 Client and the Vendor 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.

5.5.8 Professional Services Warranty

- A. Vendor agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. Vendor agrees that, at all times, the employees of Vendor furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.
- B. Vendor agrees that all persons working for or on behalf of Vendor whose duties bring them upon the Client's premises shall obey the rules and regulations that are established by the Client and shall comply with the reasonable directions of the Client's officers. The Client may, at any time, require the removal and replacement of any of Vendor's employees for good cause.
- C. Vendor shall be responsible for the acts of its employees and agents while on the Client's premises. Accordingly, Vendor agrees to take all necessary measures to prevent injury and loss to persons or property located on the Client's premises. Vendor shall be responsible for all damages to persons or property caused by Vendor or any of its agents or employees.

Vendor shall promptly repair, to the specifications of the Client, any damage that it, or its employees or agents, may cause to the Client's premises or equipment; on Vendor's failure to do so, the Client may repair such damage and Vendor shall reimburse the Client promptly for the cost of repair.

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

5.5.9 *Ineffective Training*

Vendor will submit to Client an agenda in advance of any training sessions to be covered with the key materials provided during the course of the training. Further, Vendor will provide to Client details associated with the layout of the training facility, computer requirements, as well as all associated media necessary to deliver the course. Client will conduct a rating of the course after its completion and communicate the results of this rating to Vendor for future class improvements. In the event that Client asserts in good faith that any Vendor training consultant lacks the skill or capacity to adequately train Client's staff, Vendor shall replace such training consultant as soon as reasonably possible. If Client notifies Vendor within 20 business days of the completion of said training, that in Client's reasonable judgment the training sessions provided by such training consultant were inadequate or ineffective, then Vendor shall provide a credit in training days to Client for all such training sessions.

5.5.10 *Subcontracts*

The Vendor agrees not to subcontract any of the work required by this Agreement without the prior written approval of the Client's R. Thomas Homan, City Manager or designee. The Vendor agrees to be responsible for the accuracy and timeliness of the work submitted in the fulfillment of its responsibilities under this Agreement.

5.5.11 *Non-Performance Escalation Procedures*

In the event that the Client determines that Vendor is not performing in a manner consistent with the intent and spirit of this Agreement or in a manner consistent with commonly accepted business practices, then the Client shall have the right to, in the sequence shown: (a) formally notify Vendor of non-performance, (b) reserve the right to withhold any and all payments pending, including support and maintenance fees, until the non-performance is corrected, (c) request a joint meeting of Vendor

and Client decision makers to attempt to resolve the non-performance, (d) require a Vendor employee to be on-site at Client's location until the non-performance is resolved, (e) request arbitration in City of Delaware, Ohio per terms of the American Arbitration Association or at Client's sole option, commencing suit in the City Municipal Court, the venue of which is agreed to by Vendor, (f) invoke the Termination clause herein.

5.5.12 Force Majeure Clause

Timely performance is essential to the successful initial implementation and ongoing operation of the network described herein. However, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure.

5.5.13 Force Majeure Requisites

Force majeure shall not be allowed unless:

- A. Within 15 calendar days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.
- B. Within 15 calendar days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

5.5.14 120 Day Maximum

Under no circumstances shall delays caused by a force majeure extend beyond xxxxx hundred-twenty (120) days from the scheduled delivery or completion date of a task, unless by prior [to the end of the xxxxx hundred-twenty (120) day period] written approval is received from the other party. Failure to secure this written prior permission, even in the case of force majeure, shall constitute default by the party failing to meet the requirement.

5.5.15 Right of Cancellation

Either party shall have the right to cancel the Agreement if force majeure suspends performance of scheduled tasks by xxxxx or more parties for a period of xxxxx (#) or more days from the scheduled date of the task. If a cancellation due to a force majeure occurs before title passes to the Client, the Vendor may keep any parts of the system as it can salvage, but must remove same at its own expense. If cancellation occurs due to a force majeure after title passes to the Client, the system shall remain with the Client and the Vendor shall be entitled to any such payments as have accrued according to the payment schedule.

5.5.16 Liquidated Damages

Failure on the part of the Vendor to complete critical project milestones as established in the Project Schedule may result in liquidated damages being imposed on the Vendor by the Client for breach of contract and for non-compliance. The milestones will be defined in the Project Schedule and extent

of damages will be \$1000 per day for each day the project Go Live date as defined in the Project Schedule is extended.

5.5.17 Change Orders

The Project Managers appointed pursuant to this Agreement will meet periodically to review the Project Schedule. Changes to the scope of the project including additional Software and Services may be proposed by either party, and if accepted by the parties, the proposed changes shall be reduced to a written document, inclusive of any applicable pricing changes (“Change Order”). Written approval signed by a duly authorized representative of each of the parties of such Change Order must be obtained prior to the provision of any products or services related to such Change Order.

Vendor shall provide to Client a written quotation for any changes in this Agreement, including Software, Services, Customizations, etc. Each Change Order shall be reviewed and approved by Client, and shall be subject to the requirements in the section.

5.5.18 Travel Expense Reimbursement

All travel expense costs must be included in the Vendor’s fixed price cost. Client will not make a separate payment for reimbursable expenses. Per Force Majeure, Client shall not be liable for additional travel costs incurred due for any reason outside Vendor’s control.

5.5.19 Video and Audio Recording

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

5.5.20 Payment Terms – Professional Services

Vendor shall invoice **Client** for the Total Amount on Exhibits <##> and <##> according to the following payment schedules:

Services

- 85% Due in installments based on Conditional Acceptance of Milestones as defined in the Statement of Work
- 15% Due upon Final Acceptance

Customizations

- 10% Due as incurred upon completion of design
- 75% Due upon Conditional Acceptance of Customization
- 15% Due upon Final Acceptance

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

5.6 Hosting Services

This Hosting Services section will only apply if hosting or subscription services are provided by the Vendor in either a hosted or software as a service scenario.

5.6.1 Hosting Services

Vendor will provide hosting services consisting of system administration, system management, and system monitoring activities that Vendor 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), client data storage, client 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 Vendor at Vendor's data centers to host and operate the Software, support outside of Vendor's normal business hours, training, consulting or other professional services.

5.6.2 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. Vendor 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"), Vendor will provide Client with a summary of Vendor's SSAE-16 compliance report or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which Client makes a written request, Vendor will provide that same information.

5.6.3 Disaster Recovery

Vendor 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 Vendor's business continuity/disaster recovery program, Vendor 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 Client data has been lost or damaged due to an act or omission of Vendor or its subcontractors or due to a defect in Software, Vendor 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 Client data may be lost, measured in relation to a disaster Vendor declares, said declaration will not be unreasonably withheld. The Force Majeure provisions herein shall not limit Vendor's obligations under this section, meaning that, a Force Majeure event does not relieve Vendor 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.

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

5.6.4 Penetration Testing

Vendor conducts annual penetration testing of the production network and/or web application. Vendor will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. Vendor will provide Client with a written or electronic record of the actions taken by Vendor in the event that any unauthorized access to Client database(s) is detected as a result of Vendor security protocols. Further, Vendor recognize that Vendor is storing confidential Client data and any breach of security could have a detrimental impact on Client. The <Regulation> requires breach notification when residents' computerized personal information is accessed and acquired without authorization. In the event there is such a breach, Vendor will notify Client immediately while the issue is remediated, and all communications shall be coordinated with Client in conformance with applicable law. Vendor will indemnify Client for all costs reasonably incurred by Client due to a breach of security determined to be the result of Vendor's negligence, subject to the limitation of liability in the Agreement. Vendor will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at Client's written request. Client 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 Vendor network and systems (hosted or otherwise) is prohibited without the prior written approval of Vendor's IT Security Officer.

5.6.5 Back-up and Recovery

Vendor 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. Client will have the ability to download any of the backups to Client'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.

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

5.6.6 Secure Data Transmission

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

Vendor guarantees that all Client data that Vendor hosts will be located within the United States at all times.

5.6.7 Background Checks

For at least the past ten (10) years, all of Vendor's employees have undergone criminal background checks prior to hire. All employees sign Vendor's confidentiality agreement and security policies. Vendor'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.

5.6.8 Client Notification if Third-Party Request for Data

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

5.6.9 Provision of Client Data upon Termination

Upon termination or non-renewal of this Agreement, Vendor will promptly provide Client data to Client then residing in Vendor's hosted environment. The Client data shall be provided in ASCII or such other format as may be mutually agreed. Such Client 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 Client) and again seven (7) days after date of expiration or termination, as applicable.

5.6.10 Transition Services

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

5.6.11 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 Midwest region or three (3) %, whichever is less, for as long as Annual Hosting Fees are paid and this agreement between the Client and the Vendor is in effect.

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

5.6.12 Payment Terms – Annual Hosting Fees

Vendor shall invoice **Client** 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

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

5.7 Hosting Service Level Agreement

This Hosting Service Level Agreement section will only apply if hosting or subscription services are provided by the Vendor.

5.7.1 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 Vendor will provide to Client to ensure the availability of the application services and Software that Client has requested Vendor to provide. All other support services are documented in the Software Maintenance and Support Section.

5.7.2 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.

Client Error Incident: Any service unavailability resulting from Client applications, content or equipment, or the acts or omissions of any of Client service users or third-party providers over whom Vendor exercises no control.

Downtime: Those minutes during which the Software is not available for Client 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, Client Error Incidents and Force Majeure.

5.7.3 Service Availability

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

- A. Client Responsibilities: Whenever Client experiences Downtime, Client must make a support call according to the procedures outlined in the Software Maintenance and Support Section. Client will receive a support incident number. Client must document, in writing, all Downtime that Client has experienced during a calendar quarter. Client must deliver such documentation to Vendor within 30 days of a quarter's end.

The documentation Client 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. Vendor Responsibilities: When Vendor support team receives a call from Client that Downtime has occurred or is occurring, Vendor will work with Client to identify the cause of the Downtime (including whether it may be the result of a Client Error Incident or Force Majeure). Vendor will also work with Client to resume normal operations.

Upon timely receipt of Client's Downtime report, Vendor will compare that report to Vendor's own outage logs and support tickets to confirm that Downtime for which Vendor was responsible indeed occurred.

Vendor will respond to Client's Downtime report within 30 day(s) of receipt. To the extent Vendor has confirmed Downtime for which Vendor is responsible, Vendor will provide Client with the relief set forth below.

- C. Client Relief: When a Service Availability goal is not met due to confirmed Downtime, Vendor will provide Client with relief that corresponds to the percentage amount by which that goal was not achieved, as set forth in the Client 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 Vendor 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 Vendor of its obligations under the Agreement to correct the problem which created the service interruption.

Every quarter, Vendor will compare confirmed Downtime to Service Availability. In the event actual Attainment does not meet the targeted Attainment, the following Client relief will apply, on a quarterly basis:

| Targeted Attainment | Actual Attainment | Client 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. |

Client may request a report from Vendor 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 Vendor to Meet Attainment Levels: In the event Vendor fails to achieve an Actual Attainment Level of ##% or greater for three (3) consecutive quarters, Client shall be entitled to terminate the Agreement on written notice to Vendor with no liability, obligation, or penalty to Client by reason of such termination. Without limitation, if Client terminates the Agreement pursuant to this Section, then any early termination penalties shall not apply. Alternatively, Client shall have the option to terminate the Agreement, without penalty, and to purchase perpetual licenses from Vendor for the Software to be hosted by Client in-house or by its designated hosting provider. If Client exercises this option, Client 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. Client's license rights are not otherwise expanded, Client may not modify the Software so acquired or use it for any other purpose than was provided for in this Agreement.

5.7.4 Applicability

The commitments set forth in this SLA do not apply during Vendor maintenance windows, Client Error Incidents, and Force Majeure. Vendor performs maintenance during limited windows that are historically known to be reliably low-traffic times. Vendor will not perform maintenance during normal business hours (8 am-8 pm EST, Mon - Fri). If and when maintenance is predicted to occur, Vendor will provide at least one week advance notice and will coordinate to the greatest extent possible with Client. The foregoing notwithstanding, Vendor 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.

5.7.5 Force Majeure

Client will not hold Vendor 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, Vendor will file with Client a signed request that said failure be excused. That writing will at least include the essential details and circumstances supporting Vendor's request for relief pursuant to this Section. Client will not unreasonably withhold its acceptance of such a request.

6 Contract Terms and 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 | Scope of Agreement | | | |
| 5.1.2 | Incorporation by Reference | | | |
| 5.1.3 | Entire Agreement Clause | | | |
| 5.1.4 | Applicable and Governing Law Clause | | | |
| 5.1.5 | Wording Conflicts | | | |
| 5.1.6 | Standard Forms and Contracts | | | |
| 5.1.7 | Term and Termination Clause | | | |
| 5.1.8 | Indemnification | | | |
| 5.1.9 | Insurance | | | |
| 5.1.10 | Insurance Coverage | | | |
| 5.1.11 | Limitation of Liability | | | |
| 5.1.12 | Freedom of Information Act | | | |
| 5.1.13 | Confidentiality | | | |
| 5.1.14 | Title and Confidentiality | | | |
| 5.1.15 | Identification of Parties to the Agreement Clause | | | |
| 5.1.16 | Notices Clause | | | |
| 5.1.17 | Agreement Extension and Modification Clause | | | |
| 5.1.18 | Changes in Agreement | | | |
| 5.1.19 | Survival Clause | | | |
| 5.1.20 | Effect of Regulation | | | |
| 5.1.21 | Assignments | | | |
| 5.1.22 | Vendor as Independent Contractor | | | |
| 5.1.23 | Advertisement | | | |
| 5.1.24 | Pricing | | | |
| 5.1.25 | Right to Withhold Payment | | | |
| 5.1.26 | Funding Out | | | |
| 5.1.27 | Non-Collusion | | | |
| 5.1.28 | Conflict of Interest | | | |
| 5.1.29 | Vendor Merger or Acquisition | | | |

| # | Title | Comply | Exception | Not Comply |
|--------|---|--------|-----------|------------|
| 5.1.30 | Equal Opportunity Employment/ Nondiscrimination Policy | | | |
| 5.2.1 | Grant of Right to Use Software | | | |
| 5.2.2 | Documentation | | | |
| 5.2.3 | Software Warranty | | | |
| 5.2.4 | Patents, Copyrights, and Proprietary Rights Indemnification | | | |
| 5.2.5 | Unlimited Liability for Software Vendor Infringement | | | |
| 5.2.6 | Password Security | | | |
| 5.2.7 | Software Interfaces | | | |
| 5.2.8 | Source Code Escrow | | | |
| 5.2.9 | Right to Outsource | | | |
| 5.2.10 | Use of Software by Personnel Who Are Not Employees | | | |
| 5.2.11 | Disaster Recovery & Disaster Recovery Testing | | | |
| 5.2.12 | Disclaimers and Limitations of Remedies | | | |
| 5.3.1 | Replication of Software | | | |
| 5.3.2 | Risk During Software Installation | | | |
| 5.3.3 | Warranty Pertaining to Hardware Recommendation | | | |
| 5.3.4 | Payment Terms – Software License | | | |
| 5.4.1 | Extended Services | | | |
| 5.4.2 | Annual Fees | | | |
| 5.4.3 | Resolution and Response Time Warranty | | | |
| 5.4.4 | Termination of Annual Maintenance and Support | | | |
| 5.4.5 | Federally Mandated Changes | | | |
| 5.4.6 | Future Releases/Upgrades | | | |
| 5.4.7 | Solution Longevity | | | |
| 5.4.8 | Successor Software Products | | | |
| 5.4.9 | Functionality Replacement | | | |
| 5.4.10 | Continuity of Warranty | | | |
| 5.4.11 | Payment Terms – Annual Fees | | | |
| 5.5.1 | Intellectual Property | | | |
| 5.5.2 | Contract Extension | | | |
| 5.5.3 | Subcontractors | | | |
| 5.5.4 | Control of Sub-Contractor, Project Team and Project Manager Designation | | | |

| # | Title | Comply | Exception | Not Comply |
|--------|---|--------|-----------|------------|
| 5.5.5 | Project Schedule and Acceptance | | | |
| 5.5.6 | Programming Services | | | |
| 5.5.7 | Acceptance Testing | | | |
| 5.5.8 | Professional Services Warranty | | | |
| 5.5.9 | Ineffective Training | | | |
| 5.5.10 | Subcontracts | | | |
| 5.5.11 | Non-Performance Escalation Procedures | | | |
| 5.5.12 | Force Majeure Clause | | | |
| 5.5.13 | Force Majeure Requisites | | | |
| 5.5.14 | 120 Day Minimum | | | |
| 5.5.15 | Right of Cancellation | | | |
| 5.5.16 | Liquidated Damages | | | |
| 5.5.17 | Change Orders | | | |
| 5.5.18 | Travel Expense Reimbursement | | | |
| 5.5.19 | Video and Audio Recording | | | |
| 5.5.20 | Payment Terms – Professional Services | | | |
| 5.6.1 | Hosting Services | | | |
| 5.6.2 | Service Audits | | | |
| 5.6.3 | Disaster Recovery | | | |
| 5.6.4 | Penetration Testing | | | |
| 5.6.5 | Back-up and Recovery | | | |
| 5.6.6 | Secure Data Transmission | | | |
| 5.6.7 | Background Checks | | | |
| 5.6.8 | Client Notification if Third-Party Request for Data | | | |
| 5.6.9 | Provision of Client Data upon Termination | | | |
| 5.6.10 | Transition Services | | | |
| 5.6.11 | Annual Hosting Fees | | | |
| 5.6.12 | Payment Terms – Annual Hosting Fees | | | |
| 5.7.1 | Service Level Agreement Overview | | | |
| 5.7.2 | Definitions | | | |
| 5.7.3 | Service Availability | | | |
| 5.7.4 | Applicability | | | |
| 5.7.5 | Force Majeure | | | |

6.1 Contract Terms and Conditions – Exception Explanations

For all items marked as “Exception” in the Agreement Terms and Conditions Compliance Checklist, a Vendor 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
- Bid Guaranty and Contract Bond
- EEO Certification
- Non-Collusion Affidavit
- Delinquent Personal Property Tax Affidavit
- State of Auditor Finding For Recovery Affidavit
- Vendor Information Form
- Client Reference Form
- Pricing Forms

7.2 Minimum Criteria

As noted in section 1.8 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.

| <u>Minimum Criteria</u> | <u>Yes/No</u> |
|---------------------------------------|---------------|
| Minimum Client Software Installations | |
| 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. Delaware, OH:

PROPOSAL: ERP System Selection

| | |
|--|--|
| <p>\$ _____ (Total price spelled out in words)</p> <p>Firm Name: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <p>Signature: _____ (Person executing response and official capacity)</p> | <p>\$ _____ (Total figure in numbers – must equal the figure on the Pricing Form)</p> <p>Date: _____</p> |
|--|--|

| | | |
|---|---|--|
| <p>(Names of principal officers: designate official capacity)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> | <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> | <p>(If partnership or assumed name, indicate name of owners)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> |
|---|---|--|

7.4 Bid Guaranty and Contractor Bond

(Section 153.571 Ohio Revised Code)

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned

(Name and Address)

as Principal and _____

(Name of Surety)

_____, Surety, are hereby held and firmly bound unto the City of Delaware, hereinafter called Obligee, in the penal sum of the dollar amount of the bid submitted by the Principal to the obligee on

_____ to undertake the project known as

_____, the City of Delaware, City Hall, Delaware, Ohio 43015.

The penal sum referred to herein shall be the dollar amount of the Principal's bid to the Obligee, incorporating any additive alternate proposals made by the Principal on the date referred to above to the Obligee which are accepted by the Obligee. In no case shall the penal sum exceed the amount of:

_____ Dollars

\$ _____

(IF THE ABOVE LINE IS LEFT BLANK, THE PENAL SUM WILL BE THE FULL AMOUNT OF THE PRINCIPAL'S BID, INCLUDING ADD ALTERNATES. ALTERNATIVELY, IF COMPLETED, THE AMOUNT STATED MUST NOT BE LESS THAN THE FULL AMOUNT OF THE BID, INCLUDING ADD ALTERNATES, IN DOLLARS AND CENTS. A PERCENTAGE IS NOT ACCEPTABLE) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT whereas the above name Principal has submitted a bid on the above reference project;

NOW, THEREFORE, if the Obligee accepts the bid of the Principal and the Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications and bills of material and in the event the Principal pays to the Obligee the difference not to exceed ten percent of the penalty hereof between the amounts specified in the bid and such larger amount which the Obligee may in good faith contract with the next lowest and best bidder to perform the work covered by the bid or in the event the Obligee does not award the contract with the next lowest and best bidder to perform the work covered by the bid or in the event the Obligee does not award the contract with next lowest and best bidder and resubmits the project for bidding, the Principal will pay

the Obligees the difference not to exceed ten percent of the penalty hereof between the amount specified in the bid or the costs, in connection with the resubmission or printing new contract documents, required advertising and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be void, otherwise to remain in full force and effect; if the Obligees accept the bid of the Principal within ten days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications and bills of material which said contract is made apart of this bond the same as through set forth herein; and

IF THE SAID PRINCIPAL shall well and faithfully perform each and every condition of such contract and indemnify the Obligees against all damage suffered by failure to perform such contract according to the provisions thereof and in accordance with the plans, details, specifications and bills of material therefore; shall pay all lawful claims for subcontractors, material men and laborers, for work performed and materials furnished in the carrying forward, performing or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialmen or laborer having a just claim, as well as for the Obligees herein; then this obligation shall be void ,otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of said contract or in to the plans and specifications therefore shall in anyway affect the obligations of said Surety on this bond and it does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or the plans and specifications.

SIGNED AND SEALED This _____ day of _____, 200__

Principal:

By:

Title: _____

Surety: _____

Surety Company Address:

By:

(ATTORNEY-IN-FACT) (CITY) (STATE) (ZIP CODE)

SURETY AGENT'S ADDRESS

AGENCY NAME

STREET

CITY, STATE, ZIP CODE

7.5 Equal Employment Opportunity Certification

NOTE: Certification must be filled out and signed. Failure to comply may invalidate your bid.

_____ hereby adopts the goals and timetable
Name of Contractor
set out in Appendix "A" of the state EEO Bid Conditions and the "Specific Affirmative Action Steps"
set out in Appendix "B" as its Affirmative Action Program for this project.

_____ agrees to comply with all applicable
Name of Contractor
requirements of the State EEO Bid Conditions and to incorporate this Certification in all subcontracts
on this project regardless of tier.

Date Signature of Contractor or Authorized Representative

Please indicate if you are submitting your company's own Affirmative Action Plan _____

7.6 Non-Collusion Affidavit

The Bidder is required to execute and submit with the Bid, the Noncollusion Affidavit.

State of Ohio

County of Delaware

Bid Name and Number _____

Contractor _____ being
g first duly sworn, deposes and says that he is _____ (sole owner, a
partner, president, secretary, etc.) of _____

_____, the party making the foregoing Bid; that such Bid is not
made in the interest of or on behalf of any undisclosed person, partnership, company, association,
organization or corporation; that such Bid is genuine and not collusive or sham; that said Bidder has
not directly or indirectly colluded, conspired, connived or agreed with any Bidder or anyone else to put
in a sham Bid or that anyone shall refrain from bidding; that said Bidder has not in any manner, directly
or indirectly, sought by agreement, communication or conference with anyone to fix the Bid price of
said Bidder or of any Bidder, or to fix any overhead, profit or cost element of such Bid price, or that of
any other Bidder, or to secure any advantage against the City of Delaware awarding the contract or
anyone interested in the proposed contract; that all statements contained in such Bid are true; and
further, that said Bidder has not, directly or indirectly, submitted the Bid price or any other breakdown
thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not
pay any fee in connection therewith, to any corporation, partnership, company, association,
organization, Bid depository, or to any member or agent thereof, or to any individual except to a person
or persons as having a partnership or other financial interest with said Bidder in his general business.

Signed:

Subscribed and sworn before me this _____ day of _____ 20____

Seal of Notary

7.7 Delinquent Personal Property Tax Affidavit

7.8 State of Ohio Auditor Finding For Recovery Affidavit

State of Ohio

County of Delaware

Bid Name and Number _____
Contractor _____ being first
duly sworn, deposes and says that he is _____
of _____, the party making the foregoing Bid, hereby affirms under oath,
pursuant to Section 9.24 of the Ohio Revised Code, that at the time the Bid was submitted, my
company (was) (was not) charged with an auditor finding for recovery in the State of Ohio.

Signed:

Subscribed and sworn before me this _____ day of _____ 20____

Seal of Notary

7.9 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"/> |

| | | | |
|----|--|---|-------------------|
| 4. | How do you guarantee the services provided by your company? | | |
| | | | |
| 5. | Please describe the level of research and development investment you make in your products (i.e. – annual budget, head count, etc.). | | |
| | | | |
| 6. | How many fully operational (i.e. Live) customer installations of the version proposed in this RFP, currently in production, has the Vendor completed? | | |
| | | Ohio | Nationally |
| | Local government | | |
| | Other public sector | | |
| | Other non-public sector | | |
| | Overall: | | |
| 7. | How many fully operational customer installations (i.e. Live), of all versions, has the Vendor completed? | | |
| | | Ohio | Nationally |
| | Local government | | |
| | Other public sector | | |
| | Other non-public sector | | |
| | Overall: | | |
| 8. | How many current system implementations of your solution are <i>in-process</i> within both the State of Ohio and the Vendor-defined region of the Country that includes the State of Ohio? | | |
| | | Current in-process Implementations | |
| | State of Ohio | | |
| | Region | | |
| | Total: | | |
| 9. | Where is the Vendor's closest support facility/sales office to Delaware, OH? | | |
| | | | |
| 10 | Where is the Vendor's company headquarters? | | |
| | | | |

| | | | |
|--|--|---|---------------------------------|
| 11 Please list the Vendor's sales in the previous three years: | | | |
| | | Year | Sales |
| | | 2017 | |
| | | 2016 | |
| | | 2015 | |
| 12 How many total employees does the Vendor have in each of the following categories: | | | |
| | | Area | Number |
| | | Sales/Marketing | |
| | | Management/Administration | |
| | | Help Desk Staff | |
| | | Development Staff | |
| | | Other | |
| | | Total: | |
| 13 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. |
| 14 Please indicate two separate potential visits of four consecutive days each in which the Vendor will commit to being available for an onsite demonstration and your preference. | | | |
| | | Demonstration Date Options | |
| | | Option | Visit #1 Visit #2 |
| | | May 6 - May 17, 2019 | |
| | | May 6 - May 17, 2019 | |
| | | May 6 - May 17, 2019 | |
| 15 What would be the Vendor's preferred comparably sized, site visit location? | | | |
| | | | |
| 16 What is the total duration of your proposed implementation approach? | | | |
| | | | |
| 17 Please list all third party solutions proposed. | | | |
| | | | |
| 18 What database are you proposing? | | | |
| | | | |
| 19 Is the solution hosted by the vendor or a third-party? | | | |
| | | | |
| 20 Please describe the minimum commitment term (in years) for a vendor-hosted option and note the term assumed for determining the proposed costs. | | | |
| | | | |

| 21 | What is the query tool and report writer that Vendor is proposing? | | | | | | | | | | | | | | | | | | | | | | |
|--|--|---------------------|--|--|------------------|-----|----|--|--|--|-----------------------------|--|--|---|--|--|--|--|--|--|--|--|--|
| 22 | What is your recommended approach to training (End-user vs. train the trainer), for this City, and why? | | | | | | | | | | | | | | | | | | | | | | |
| 23 | Identify the degree to which Vendor staff will be onsite versus off-site during the project. | | | | | | | | | | | | | | | | | | | | | | |
| 24 | Will the vendor contractually agree to: | | | | | | | | | | | | | | | | | | | | | | |
| | <table border="1"> <thead> <tr> <th colspan="3">Contractual Inquiry</th> </tr> <tr> <th>Term / Condition</th> <th>Yes</th> <th>No</th> </tr> </thead> <tbody> <tr> <td>Provide <u>on-site</u> staff for training and implementation</td> <td></td> <td></td> </tr> <tr> <td>Non-performance hold-backs?</td> <td></td> <td></td> </tr> <tr> <td>Payment hold-backs until fully operational and formally accepted?</td> <td></td> <td></td> </tr> <tr> <td>Allow the City to approve Vendor staff assigned to help with implementation?</td> <td></td> <td></td> </tr> <tr> <td>One year warranty, during which the annual support conditions apply. The first, annual support payment would occur after the warranty period expires</td> <td></td> <td></td> </tr> </tbody> </table> | 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 | | | |
| 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 | | | | | | | | | | | | | | | | | | | | | | | |
| 25 | Describe how your software will be licensed to the City (e.g. site license, named users, concurrent users, etc.) | | | | | | | | | | | | | | | | | | | | | | |

7.11 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:

1. Vendor Checklist (including Hosting/Licensing Model, Travel & Lodging Costs, and Discount)
2. Proposal Summary (no direct input required)
3. Module Summary (no direct input required)
4. Application Software
5. Other Software
6. Hardware
7. Implementation Services
8. Train-the-Trainer Training
9. Optional End-User Training
10. Interfaces
11. Modifications
12. Other Implementation Services