CITY OF FARMINGTON
800 Municipal Drive
Farmington, NM 87401-2663
(505) 599-1373
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http://www.fmtn.org

REQUEST FOR PROPOSALS
FOR
GLOBAL POSITIONING SYSTEM (GPS) FIELD INVENTORY FOR THE
FARMINGTON ELECTRIC UTILITY SYSTEM (FEUS)
RFP #14-100302

IMMEDIATE ATTENTION
ADDENDUM ONE

October 9, 2013

Notice to Offerors: The above referenced Request for Proposal (RFP) is hereby amended as follows:

DRAFT AGREEMENT
EXHIBIT D: Add the attached pages 1-30

If your request for proposal has already been submitted to this office, and this addendum will affect your proposal, please contact this office and we will return your proposal. Any proposals that have been received, and are not requested to be returned will remain in this office unopened until **November 5, 2013 at 2:00 p.m.**

Receipt of this addendum shall be noted on Page 4 in the Request for Proposal documents for the above referenced RFP.

/s/Kristi Benson
Kristi Benson, CPPO, CPPB
Purchasing Supervisor
Phone: (505) 599-1368
Fax: (505) 599-1159
Email: kbenson@fmtn.org

EXHIBIT D
DRAFT AGREEMENT
GLOBAL POSITIONING SYSTEM (GPS) FIELD INVENTORY FOR THE FARMINGTON ELECTRIC UTILITY SYSTEM (FEUS)
RFP #14-100302

Services, Software License, Support Services, and Maintenance Agreement

THIS SOFTWARE LICENSE, SUPPORT SERVICES, and MAINTENENCE AGREEMENT (hereafter "Agreement") is made and entered into this ____ day of (month and year) ("Effective Date") by and between COMPANY NAME, a (State) corporation, LLC, LP, etc. (hereinafter referred to as "LICENSOR"), and the CITY OF FARMINGTON, a New Mexico municipal corporation (hereinafter referred to as "CITY"). This Agreement, No. 14-100302, establishes the terms and conditions for the provision of a Global Positioning System (GPS) Field Inventory for the Farmington Electric Utility System (FEUS) including services, software, maintenance and support services (hereafter "Services"). LICENSOR and CITY are at times referred to individually as Party or collectively as Parties.

1. Interpretation - Definitions

1.1 Agreement, this Agreement, "herein", "hereof", "hereunder", and similar expressions refer to this Agreement and the SCHEDULES attached hereto and including those referred to within.

1.1.2 Acceptance means the CITY accepts the Licensed Software in accordance with Schedule F – Acceptance Test.

1.1.3 Associated Documentation means all standard materials, including manuals, CD ROM documentation, programming aids, software related training materials and other relevant materials and documentation provided by LICENSOR and/or its subcontractor or supplier and thereby made available to the CITY as Licensed Software.

1.1.4 Contract Documents means the documents referred to in sub article 3.1 below.

1.1.5 Delivery means the deposit by LICENSOR or its shippers of the Licensed Software and LICENSOR provided Hardware (if any) at the Site.

1.1.6 Designated Equipment means the CITY's [COMPUTER NAME AND MODEL NO.___], operating environment including all related computer hardware, networking equipment and communication lines and computer equipment at the other end of such lines; and the usual and necessary operating system software provided with the equipment by its manufacturer or purchased by the CITY.

1.1.7 Installation Date means the date on which the initial system as defined in subarticle 1.1.14 below is fully installed (except for items that are not provided by LICENSOR or not available on the Installation Date as discussed by the Parties during the development of Schedule D - Installation Timetable, Site and Manner of Installation at the Site and the initial on-site training is complete.

1.1.8 _____ (company name) means the software developer, contracted through LICENSOR to the CITY for the use of the Licensed Software.

1.1.9 License means the License set forth in Article 8, License, granted by LICENSOR to the CITY for the use of the Licensed Software.

1.1.10 License Fee means the fee payable by the CITY to LICENSOR as specified in SCHEDULE C Payment Schedule & Summary of Costs for use of the Licensed Software.

1.1.11 Licensed Software or Software means any software, provided by LICENSOR under the terms of this Agreement consisting of a set of instructions or statements in machine readable medium, including software related training materials, Associated Documentation and any addition, supplement, enhancement, modification or new release.

1.1.12 Nonconformities and/or Error means any function that is performed incorrectly or inconsistently by the Licensed Software which is not performing in substantial accordance with the specifications in the Contract Documents and which results in incorrect data or failure of the System to provide the correct response.

1.1.13 Professional Services means the services as may be specified in SCHEDULE B, Professional Services and Travel and performed by LICENSOR personnel to provide the CITY with training and project management services during implementation.

1.1.14 System means the Licensed Software provided under the terms and conditions of this Agreement which operates on the CITY's server and hardware as an integrated group.

1.1.15 Site means the location designated in SCHEDULE D - Installation Timetable, Site and Manner of Installation for Delivery of the System.

1.2 Words importing a gender include any other gender.

1.3 A reference to a Schedule is a reference to a Schedule in this Agreement. A reference to an Article is a reference to an Article in this Agreement.

1.4 Words importing the singular include the plural and vice-versa.

1.5 Headings and titles used in this Agreement are for reference purposes only.

2. Scope of Agreement

2.1 Collecting and recording the Global Positioning System (GPS) points of specific electrical plan facilities described in RFP #14-100302. Work will include creating database features of each corresponding point, collecting respective attribute data and other related data information for CITY's Geospatial Information System spatial database.

2.1.1 All work will begin at FEUS substations with the demarcation point being the first pole outside the substation fence and will continue to the end of the line or open point between another feeder or substation. Collection will be taken on FEUS operated facilities regardless of ownership.

2.1.2 Minimum tasks:

2.1.2.1 GPS collection by feature point;

2.1.2.2 Collection of all other applicable units (eg RUS assemblies). This includes primary, secondary, and all other non-feature class construction units;

2.1.2.3 All feature class(es) and attribute data;

2.1.2.4 Any feature class not requiring a GPS point that is attached to a related feature of a GPS point (eg Light).

2.2 LICENSOR agrees to: a) supply and install the Licensed Software as specified in the Contract Documents as listed in SCHEDULE A, LICENSED SOFTWARE (including its Associated Documentation), b) to grant the CITY a non-transferable, non-exclusive License, in accordance with the terms and conditions of Article 8, License of this Agreement, in order to effectively use the Software on the CITY's Designated Equipment, and; c) to support and maintain the Licensed Software in accordance with SCHEDULE G – Software Support and Maintenance Agreement.

3. Contract Documents

3.1 The Contract Documents are:

3.1.1 The requirement specifications set forth in the CITY's Request for Proposal ("the RFP");

3.1.2 LICENSOR proposal (the Proposal) in response to the RFP (including LICENSOR's response to the Requirements for the Global Positioning System (GPS) Field Inventory for the Farmington Electric Utility System (FEUS); and all items in LICENSOR's detail response to CITY's RFP will be provided to CITY through currently existing SCHEDULE A - LICENSED SOFTWARE (including its Associated Documentation) capabilities and/or future enhancements to SCHEDULE A - LICENSED SOFTWARE (including its Associated Documentation) provided under a Software License, Support Services, and Maintenance Agreement in effect.

3.1.3 This Agreement including the attached SCHEDULES and EXHIBITS.

3.2 Each of these documents is/are incorporated herein by reference and shall constitute a part of this Agreement. In the event of any conflict, in the specifications or obligations created by these documents, the governing precedence of understandings and modifications (i.e., exceptions, clarifications, additions or deletions) shall be determined in the following order of priority:

3.2.1. This Agreement (including the attached SCHEDULES AND EXHIBITS);

3.2.2 The Request for Proposal (RFP) issued by the CITY;

3.2.3 The Offeror's response to the RFP issued by the CITY;

3.3. There shall be no binding oral commitments.

4. Term of Agreement

4.1 This Agreement shall remain in full force and effect from the Effective Date unless terminated earlier as provided herein. Expiration and/or termination of this Agreement are subject to the provisions herein, including Article 17, Termination for Cause.

5. Designated Equipment

5.1 If CITY upgrades the Designated Equipment at any time there will be no additional charge by LICENSOR and the software license shall transfer to the upgraded model, if the transfer is performed by the CITY. If the CITY requests LICENSOR to perform any of the data loading and/or software transfer services LICENSOR will provide such services at its then standard rates for the services requested.

6. Documentation

6.1 LICENSOR, at no additional cost, will supply the CITY one (1) copy of the Associated Documentation for each System licensed by the CITY.

6.2 The CITY may copy or otherwise reproduce LICENSOR developed Associated Documentation and training materials for CITY's internal uses only. The CITY agrees that all included LICENSOR markings and statements of confidentiality and copyright shall be included on each copy.

6.3 The CITY agrees that all training and procedural materials provided by LICENSOR in conjunction with the LICENSOR provided Software shall remain the property of LICENSOR or their relevant third party provider.

7. License Fee, Taxes and Other Payments

7.1 LICENSOR will submit invoices for Software, Professional Services and travel. The CITY shall make payments in accordance with payments and corresponding milestones as detailed in SCHEDULE C - Payment Schedule & Summary of Costs. Payments shall be submitted to LICENSOR within thirty (30) calendar days from receipt of an undisputed invoice.

7.2 LICENSOR shall provide an invoice which provides detailed billing for the Software and Professional Services and Travel in accordance with the milestones in SCHEDULE C - Payment Schedule & Summary of Costs. Such invoice shall be submitted no later than ninety (90) calendar days after the date services have been rendered unless, in accordance with the milestones, it is to be invoiced after the ninety (90) calendar days period or is mutually agreed by the Parties in the establishment of the SCHEDULE D - Installation Timetable, Site and Manner of Installation that the delivery and invoice will be outside of the milestones. Invoices received twelve (12) months after this time has elapsed may be considered null and void. The invoice shall reference the purchase order number assigned to this Agreement.

7.2.1 The invoice shall be addressed as follows:
City of Farmington
Attention: Accounts Payable
800 Municipal Drive
Farmington, New Mexico 87401

7.3 Payments shall be paid to LICENSOR within thirty (30) calendar days contingent upon the following:

7.3.1 Upon completion of the milestone by LICENSOR and from date of receipt by the CITY of invoices for payment in accordance with the milestones in SCHEDULE C - Payment Schedule & Summary of Costs;

7.3.2 On the condition that LICENSOR has accomplished the milestones in SCHEDULE C - Payment Schedule & Summary of Costs. LICENSOR will be responsible for the invoicing of any taxes (specifically including the New Mexico Gross Receipts tax), licenses, or other governmental fees and charges arising out of this Agreement, that are applicable or may become applicable to the CITY, and the CITY agrees to any such taxes. The CITY will not be held responsible for any tax penalties due to LICENSOR's negligence or default in the invoicing of or payment to the appropriate authority of any applicable taxes; and

7.3.3 Invoices received by the CITY are undisputed.

8. License

8.1 The CITY acknowledges and agrees that, subject to the terms and conditions of this Article 8 License, LICENSOR hereby grants to the CITY and, the CITY hereby accepts a non-transferable, non-exclusive License ("License"), under trade secrets and applicable USA copyrights, to use provided Software on the Designated Equipment. All Software will be provided to the CITY in machine-readable object code, compatible with the CITY's operating environment, only. The CITY acknowledges that by virtue of this License, the CITY acquires only the right to use the original and permitted duplicate copies of the Software and does not acquire any rights of ownership in the Software and Associated Documentation. Ownership, title and all proprietary rights shall at all times remain with LICENSOR or its relevant third party provider.

8.2 This License shall remain in force until the CITY ceases use of the Software and returns to or destroys all copies (including Software related Associated Documentation) of Software or until the CITY's rights are otherwise terminated for cause as provided in Article 17 Termination for Cause, of this Agreement.

8.3 Terms in any third-party LICENSOR-provided software licenses or support services contracts for Software shall be consistent with the requirements of this Agreement. In the event of a conflict between the terms of any such licenses and support services contracts, and this Agreement, this Agreement shall take precedence and supersede such license and support services contract terms.

8.4 The CITY may use the Licensed Software and related materials on the CITY's Designated Equipment for which licenses has been purchased and only to process the CITY's own work.

8.5 In no circumstance shall the CITY make available simultaneously, more than one instance of the application server Software, or more than the licensed number of concurrent users of the client Software to its staff or to the public, for production use.

8.6 The CITY shall not reverse assemble, reverse compile, or modify the Software without the express written consent of LICENSOR.

8.7 The CITY may make copies of the Software for the System, for back-up and archival purposes only. All such copies are subject to these licensing terms. No other copies of all or any part of the Software may be made without prior written consent.

8.8 The Licensed Software may be used on equipment other than the CITY's Designated Equipment if the Designated Equipment is temporarily inoperable. The Licensed Software shall not be run on more than one hardware platform at a time.

8.9 The CITY may use the Licensed Software on equipment which replaces or upgrades the Designated Equipment if the Software can be operated without modification.

8.10 The CITY shall not transfer, sub-license or assign, in whole or in part, the Software or any rights therein granted under the terms of this License, except as provided in Article 24 Assignment of this Agreement.

8.11 This Article 8 License establishes the sole understandings between the Parties regarding the licensing of Software. In the event of any conflict between the terms and conditions of this Article 8 License, and any other part of this Agreement (including documents referenced in this Agreement), that may effect interpretation of the understandings expressed in this Article, this Article shall control as if it was the singular expression of licensed rights.

9. Delivery

9.1 LICENSOR shall deliver the Licensed Software to the CITY's Site receiving facility no later than the date agreed in SCHEDULE D - Installation Timetable, Site and Manner of Installation, during the CITY's normal business hours.

10. Installation

10.1 LICENSOR shall install the Software, as specified in SCHEDULE B – Professional Services and Travel, in accordance with the mutually agreed Installation Timetable and in the manner specified in SCHEDULE D - Installation Timetable, Site and Manner of Installation. All shipping and insurance of the Software or any part thereof to the Site's receiving point, shall be the responsibility of LICENSOR, F.O.B. destination.

10.2 The CITY may, thirty (30) or more calendar days prior to the Installation Date, postpone the Installation Date of the Software by serving LICENSOR written notice to such effect. In such event, a new date will be established by mutual agreement of the Parties.

11. Acceptance Test

11.1 Acceptance Testing will be in accordance with SCHEDULE F - Acceptance Testing.

12. Training

12.1 LICENSOR will provide training for operation and use of the Software by the CITY's personnel as set out in SCHEDULE E- Training at the mutually agreed upon times for the cost specified in SCHEDULE C - Payment Schedule & Summary of Costs. Each class may contain up to (TO BE COMPLETED AFTER NEGOTIATIONS). The CITY may purchase additional training at standard rates, subject to mutual agreement as to scheduling.

13. Indemnification and Insurance

13.1 Indemnification; Minimum Liability Insurance Requirements - LICENSOR agrees to protect, defend, indemnify, and hold harmless, CITY and its officials, agents and employees from and against any and all liability, damages, claims, suits, liens, and judgments, of whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the property or other rights of any person or persons, caused by LICENSOR. LICENSOR's obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove and in Article 15 Intellectual Property Rights, shall include any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition, disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations. LICENSOR further agrees to protect, defend, indemnify, and hold harmless CITY and its officials, agents, officers and employees from and against any and all claims or liability for compensation under the Workers' Compensation Act arising out of injuries sustained by any employee of LICENSOR.

13.1.1 LICENSOR's Commercial General Liability Insurance - LICENSOR shall purchase and maintain such insurance as will protect him from claims for damages because of bodily injury, sickness, or disease, or death of any person including claims insured by standard personal injury liability, and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom, any or all of which may arise out of or result from LICENSOR's operations under the Contract Documents, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall include the types and specific coverages herein described and shall be written for not less than any limits of liability specified in these contract documents or required by law, whichever is greater. Insurance must include coverage for independent contractors, products/completed operations, contractual liability, broad form property damage, and personal injury.

13.1.2 LICENSOR's Automobile Liability Insurance - LICENSOR shall purchase and maintain such insurance as will protect him from claims for damages because of bodily injury, sickness, disease or death of any person, including claims insured by standard personal injury coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom, any or all of which may arise out of or result from the use of all owned, non-owned, or hired, automobile, vehicles, and other equipment both on and off work, arising from or in any way related to or as the result of LICENSOR's operations under the Agreement, whether such operations be by LICENSOR or by any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable.

13.1.3 LICENSOR's Workers' Compensation and Employer's Liability Coverage - LICENSOR shall comply with the provisions of the Workers' Compensation Act, and the New Mexico Occupational Disease Disablement Law. LICENSOR shall procure and maintain during the life of this Contract complete Workers' Compensation and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Sec. 52-1-10 NMSA 1978 for safety devices. If LICENSOR elects to be self-insured, he shall comply with the applicable requirements of law. If any portion of the work is to be sublet, LICENSOR shall require the Subcontractor similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. The CITY, including its officials, its officers, or its employees will not be responsible for any claims or actions occasioned by the failure of LICENSOR to comply with the provisions of this paragraph.

13.1.3.1 If any class of employee is not protected under the Workers' Compensation Statute, LICENSOR shall provide and shall cause each Subcontractor to provide adequate employer's liability coverage as will protect him and the CITY against any claims resulting from injuries to and death of workers engaged in work under this Agreement.

13.2. Coverage Limits - Insurance coverage limits required to be carried by the LICENSOR under this Article shall be as follows:

13.2.1. Commercial General Liability Insurance and Commercial Automobile Liability Insurance limits of coverage shall be the limits established by the New Mexico Tort Claims Act or:

13.2.1.1. Combined Single Limit coverage of $1,000,000, whichever is greater.

13.2.2 LICENSOR's Workers' Compensation coverage shall be those established by applicable statutes.

13.2.3 Certificates of Insurance - LICENSOR shall include as part of the Contract Documents certificates of insurance on forms acceptable to the CITY. The certificates shall specifically provide that the coverage afforded under the policy or policies will not be canceled or materially changed until at least thirty (30) calendar days prior written notice has been given to CITY.

13.2.4 CITY Named as Additional Insured, Cross Liability Provisions, and Waiver of Subrogation - The CITY shall be named as an additional insured on all policies except Workers' Compensation. Workers' Compensation, Commercial General Liability, and Automobile Liability Insurance coverage shall include a waiver of subrogation in favor of the CITY. The Certificate(s) of Insurance shall be explicit with regard to these requirements.

13.3 LICENSOR will provide a certificate of insurance within thirty (30) calendar days of receipt of a written request from the CITY.

14. Confidentiality

14.1 Confidential data is normally restricted to confidential financial information concerning LICENSOR's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978.

14.2 **It is understood by the LICENSOR and the CITY that the CITY is a New Mexico municipal corporation and, as such, is subject to the provisions of the New Mexico Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978. In the event LICENSOR has responded to a CITY Request For Bid (RFB) or a CITY Request For Proposal (RFP) and marked all or any part of the information submitted as "CONFIDENTIAL**

INFORMATION" or as "PROPRIETARY INFORMATION," CITY agrees to notify LICENSOR of any third party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, Agreement, or Contract. To the extent LICENSOR provides CITY with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, LICENSOR agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. LICENSOR, being aware of said facts, agrees to provide legal counsel on behalf of the CITY in any such litigation and shall bear the complete cost of litigation, including attorney fees and court costs. If LICENSOR fails or refuses to provide legal counsel at its expense within ten (10) calendar days after written notification, as aforesaid, such failure may result in the CITY agreeing to release the Purchase Order, Agreement, or Contract or any portion thereof which is relevant to the denied request.

15. Intellectual Property Rights

15.1 LICENSOR warrants that the Software does not infringe any USA patent, registered copyright or registered trademark, that it has the full right to deliver to the CITY the Software and, that the CITY shall be subject to Article 8 License, have License and good right to use the Software free from any lien, claims, charges (other than those set forth in SCHEDULE C- Payment Schedule & Summary of Costs) or encumbrances.

15.2 LICENSOR shall pay all copyright, patent or other royalties, if any, in respect of use of any software forming part of the Software, which is owned by a third party.

15.3 If the use of the Software provided by LICENSOR is alleged to violate any patent, registered copyright, trade secret or registered trademark, LICENSOR shall provide and control defense by counsel of it's own choice and CITY shall cooperate with said counsel. LICENSOR shall at its own expense, indemnify and hold harmless the CITY from and against any claim, loss, expense or judgment finally adjudicated to be owed by the CITY provided the CITY:

15.3.1 promptly gives LICENSOR written notice of any claim known to the CITY;

15.3.2 provides all reasonable assistance to defend against the claim;

15.3.3 has not breached any provision of this Agreement;

15.3.4 has not modified the Software.

15.4 Without limiting the generality of Articles 15.1 through 15.3, if it is determined by any independent tribunal or court of fact or law or if it is agreed between the Parties to the dispute that an infringement of the Software by itself and used in accordance with this Agreement, infringes any USA patent, registered copyright, trade secret or registered trademark, LICENSOR shall at its own expense:

15.4.1 modify or replace the Software so that such infringement, is removed; or

15.4.2 procure for the CITY the right to continue enjoying the benefit of this Agreement; or

15.4.3 if the solutions in this Article 15.4.1 or 15.4.2 cannot be achieved or are not practical in the reasonable opinion of LICENSOR, then LICENSOR may discontinue and terminate the License upon written notice to the CITY, and shall refund to the CITY the unamortized portion of the License Fee, based upon five (5) year straight-line depreciation, such depreciation to commence on the Acceptance of the Software.

16. Warranties

16.1 Software Performance Warranty

16.1.1 LICENSOR warrants that the Software shall perform in accordance with the Contract Documents. LICENSOR will provide to the CITY any amendments or alterations to the Software that may be required to correct Errors present at the time of delivery of the Software and which significantly affect performance. This warranty is contingent upon the CITY advising LICENSOR of such Errors in accordance with LICENSOR's prescribed reporting procedures.

16.1.2 This Warranty shall commence upon the Installation Date of the Software and shall continue for a period of ninety (90) calendar days (the Software Warranty Period).

16.2 LICENSOR's provision of Warranty services described in this Article 16 will be provided during LICENSOR's normal business hours of operation for the duration of the Software Warranty Period. LICENSOR may provide Software releases which contain corrections of the Errors discovered during the Warranty.

16.3 During the Warranty Period, LICENSOR shall provide support for all system deliverables supplied under this Agreement until completion of the Warranty Period. Service shall include all parts and labor, preventive and corrective maintenance, and shall be available on-site within ____ (words and then numbers) hours. Once a problem is demonstrated, qualified service personnel shall be dedicated full-time to correcting the problem until the problem is resolved to the satisfaction of the CITY. Telephone consultation shall be available "[TYPE 24/7 or other requirements]" per week, with on-site Software support available within one working day when deemed necessary by the CITY, at no additional cost to the CITY.

16.3.1 Emergency repairs that are made by CITY's personnel shall in no way void the LICENSOR's warranty whether or not under the direction of the LICENSOR.

16.3.2 LICENSOR's Warranty service responsibilities shall include but not be limited to the following while assisting the CITY in maintaining the System:

16.3.2.1 Promptly repair or replace the System, or any portion thereof, that has Deficiencies;

16.3.2.2 Maintain the System in accordance with the Specifications and terms of this Agreement;

16.3.3.3 Respond to questions relating to the hardware and/or Software, including without limitation isolating problems to the hardware and/or Software;

16.3.3.4 Develop, on a best efforts basis, of a temporary solution to or an emergency bypass of a deficiency;

16.3.3.5 Correct and repair errors, problems or deficiencies with the hardware and Software, to the extent technically feasible; and

16.3.3.6 Clarify Documentation.

16.4 The above Software Performance Warranty is contingent upon proper use of the Software and shall not apply if the CITY:

16.4.1 modifies the Software without express written consent of LICENSOR, or

16.4.2 deviates from the Software operating procedures described in the Associated Documentation without the express written consent of LICENSOR, or

16.4.3 violates any of the License or Confidentiality provisions hereunder, or

16.4.4 has connected equipment or is operating software, not recommended or approved in writing by LICENSOR and, which adversely affects the performance of the Software, or

16.4.5 refuses or fails to install or load Software corrections or releases provided by LICENSOR to correct an Error.

16.5 During the Software Warranty Period, the CITY shall have the right, as its sole remedy, to return any of the Software modules for a refund of the License Fees and proportionate installation, and training costs paid for the defective software module if LICENSOR is unable to correct any Errors which significantly affect performance.

16.6 THIS ARTICLE 16 WARRANTIES REPRESENTS THE ENTIRE OBLIGATION FOR WARRANTING THE SOFTWARE AND RELATED DELIVERABLES AND LICENSOR DISCLAIMS, TO THE EXTENT PERMITTED BY LAW IN THE APPROPRIATE JURISDICTION, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS OF PURPOSE.

17. Termination for Cause

17.1. The CITY may terminate this Agreement for cause if:

17.1.1 LICENSOR fails to fulfill its obligations to deliver and install the Software, or

17.1.2 the Software, when installed, does not obtain Acceptance, as set forth in SCHEDULE F - Acceptance Testing; or

17.1.3 LICENSOR is in material default of any covenant, representation, and/or warranty provided herein.

17.1.4 Upon the occurrence of any of the events of this Article 17.1, the CITY may upon thirty (30) calendar days notice to LICENSOR specifying LICENSOR's default, terminate this Agreement, if LICENSOR has not remedied such default within the said thirty (30) calendar day period.

17.2 LICENSOR may terminate this Agreement for Cause upon serving notice if the CITY:

17.2.1 fails to pay any sum payable to LICENSOR by the due date specified in SCHEDULE C - Payment Schedule & Summary of Costs and fails to make the payment within thirty (30) calendar days of receiving written notice from LICENSOR requiring the payment, or

17.2.2 violates any provision of the License as set forth in Article 8 License herein or any provision of confidentiality as set forth in Article 14 Confidentiality herein or is in material default of any other covenant representation and/or warranty provided herein.

17.3 The CITY agrees that it will either, within five (5) business days of the termination of this Agreement (howsoever occasioned), discontinue the use of all Software and related materials, and return all copies to LICENSOR, or if so requested by LICENSOR, destroy, the original and all copies of the Software (including its Associated Documentation) and confirm such to LICENSOR in writing within sixty (60) calendar days.

17.4 Termination of this Agreement shall not relieve either Party of any payment or other obligations under this Agreement, including without limitation the Parties' respective obligations to protect Confidential Information and the CITY's obligations under Article 17.3 of this Agreement.

18. Exclusive Remedies and Limitations of Liability

18.1 The entire liability of LICENSOR and its affiliates and subcontractors, (and the Directors, Officers, Employees, Agents, Representatives, Subcontractors and Suppliers of all of them) and the CITY's exclusive remedies for any product defect or failure, or arising from the performance or non performance of any work or service, regardless of the form or action, whether in contract, tort, including negligence, strict liability or otherwise, shall be:

18.1.1 for infringement, the remedies stated in Article 15 Intellectual Property Rights,

18.1.2 for damages to real or tangible personal property or bodily injury or death to any person for which LICENSOR's sole negligence was the proximate cause, the CITY's sole remedy shall be the right to proven damages to property or person together with the CITY's costs and expenses incurred in establishing the rights to those damages or in defending any claim as adjudicated by a court of competent jurisdiction.

18.2 For claims other than set forth above, LICENSOR's liability shall be limited to one million dollars ($1,000,000,000) or the accumulative compensation amount paid to LICENSOR, whichever is greater.

18.3 Access to Source Code - If LICENSOR, whether directly or through a successor or affiliate, shall cease to be in the information management software business, or if LICENSOR should file a voluntary petition in bankruptcy or have an involuntary petition in bankruptcy filed against it which is not dismissed within one hundred and twenty (120) calendar days after the date of filing of the petition, CITY shall have the right to access, only for its own and sole use, and for use only in CITY's maintenance of the Software, one copy of the source code to the Software. The source code accessed by CITY under this paragraph shall be subject to each and every restriction on use of the Software set forth in this Agreement, including, without limitation, the obligation of CITY not to disclose the source code or use it for any other purpose. CITY acknowledges that the source code and all associated documentation are extraordinarily valuable proprietary property of and agrees to guard against unauthorized use or disclosure with the same standard of care that CITY applies to the protection of its own most valuable trade secret information. CITY acknowledges that all proprietary rights, title and interest in and to the source code (other than the limited right of access granted hereunder) shall be retained by, and CITY hereby waives any claims to ownership of, or any other right in, source code or any modifications made to the source code.

The CITY may request and purchase a third party escrow arrangement at it's standard rate for such service at the time of purchase.

18.4 NEITHER LICENSOR NOR THE CITY IS LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL, LOSS OR DAMAGE, HOWEVER CAUSED, EVEN IF THEY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THIS WAIVER OF LIABILITY PROVISION DOES NOT INCLUDE CLAIMS RESULTING FROM DAMAGES TO PERSONAL PROPERTY AND PERSONAL INJURY, INCLUDING DEATH.

19. Arbitration:

19.1 Except for matters in which the dispute relates to unpaid license or service fees, or a breach of the provisions set forth in Article 8 (License) or Article 14 (Confidentiality), any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled in arbitration in accordance with the Uniform Arbitration Act (Section 44-7-1 et. Seq. NMSA 1978). Judgment upon any award rendered by the arbitrator(s) may be entered in any New Mexico court having jurisdiction thereof.

19.2 Before a demand for arbitration may be filed by either Party, the management of both Parties shall have met in face-to-face meetings in an effort to resolve any dispute or controversy through normal business management practices. Unless otherwise agreed to in writing, meeting(s) shall take place at the location where the software is being utilized.

19.3 In the event of arbitration, each Party shall appoint one arbitrator and the two (2) appointed arbitrators so chosen shall appoint a third (3rd) arbitrator. No arbitration, arising out of, or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement, except by written consent containing specific reference to this Agreement and signed by LICENSOR, CITY, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the Parties to this Agreement shall be specifically enforceable as provided in the Uniform Arbitration Act.

19.4 Notice to the demand for arbitration shall be filed in writing with the other Party to this Agreement. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

19.5 The arbitrators shall have no power or authority to add to or detract from this Agreement of the Parties. The arbitrators shall have no authority to award damages over and above those provided for in this Agreement.

19.6 Neither Party nor the arbitrators may disclose the existence or results of any arbitration hereunder, except if the arbitration results in a Court imposed judgment, the non-disclosure restriction shall not be effective to the extent the matter becomes a public record.

19.7 Each Party shall bear its own costs in preparing for and conducting arbitration, except that the joint costs, if any, of the actual arbitration proceeding shall be shared equally by the Parties.

19.8. The Arbitration shall be held in San Juan County, New Mexico.

20. Maintenance

20.1 LICENSOR will offer and CITY may obtain, continuing services for corrective maintenance and updates of the Software after expiration of the Software Warranty Period. If agreed by CITY and LICENSOR, a separately executed, then current LICENSOR SOFTWARE MAINTENANCE AGREEMENT will be incorporated into this Agreement as **SCHEDULE G – SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT.**

20.2 LICENSOR will provide the CITY with one copy of additional Associated Documentation or revisions of existing Associated Documentation as are developed in relation to the Software while the CITY has a SOFTWARE MAINTENCE AGREEMENT in effect with LICENSOR. Where such documentation is furnished without charge by LICENSOR to other licensees under the same version, LICENSOR shall furnish the documentation to the CITY without charge. Where it is not made available without charge to other licensees, LICENSOR shall offer it to the CITY at its then standard rates and terms.

20.3 LICENSOR will, upon request, under a then current LICENSOR software maintenance agreement, provide the CITY any and all new releases of the Software as such new releases become generally available to other LICENSOR clients who are currently under like or similar software maintenance agreements. When such release is requested:

20.3.1 LICENSOR will deliver and assist the CITY in installing the new release at no additional charge to the CITY;

20.3.2 The new release shall be considered Software and governed by the license terms set forth in Article 8 License of this Agreement.

21. No Waiver

21.1 No waiver of any breach of any term or condition of this Agreement by either Party shall be construed to waive any subsequent breach of the same or any other condition of this Agreement.

22. Force Majeure

22.1 Neither Party shall be deemed in default of this Agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, shortages of materials or supplies, or any other cause beyond the control of such Party. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

23. Independent Contractor

23.1 Neither LICENSOR nor LICENSOR's employees are considered to be employees of the CITY of Farmington for any purpose whatsoever. LICENSOR is considered as an independent contractor at all times in the performance of the Services described in this Agreement or any attachment or exhibit thereto. LICENSOR further agrees that neither it nor its employees are entitled to any benefits from the CITY under the provisions of the Workers' Compensation Act of the State of New Mexico.

24. Assignment

24.1 The CITY and LICENSOR, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Agreement. The CITY shall not assign, sublet or transfer any interest in this Agreement without the written consent of the other. If either Party assigns this Agreement in its entirety to a parent, subsidiary or successor in interest, the assignee shall notify the other Party as soon as possible after the assignment.

25. Publicity

25.1 LICENSOR agrees to submit to the CITY all press release, advertising, sales promotion, and other publicity matters related to any product furnished by LICENSOR to the CITY wherein the CITY's name is mentioned. LICENSOR shall not publish, nor knowingly permit to be published, any such material without the prior written consent of the CITY.

26. Severability

26.1 In the event that any provision of this Agreement is held by a court of competent jurisdiction to be legally ineffective or unenforceable, the validity of the remaining provisions shall not be affected.

27. Governing Law

27.1 This agreement shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of New Mexico.

28. Discrimination Prohibited

28.1 In performing the required Services, LICENSOR shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age or physical handicap.

29. Agreement Extension and Modification Article

29.1 This Agreement may be modified or extended in accordance with the following procedures. In the event that the Parties to this Agreement agree that such changes are of a minor and nonmaterial nature, such changes may be effected by a written statement which describes the situation and is signed by authorized representatives of both Parties. In the event that the changes are determined by either or both Parties to this Agreement to be of a major or complex nature, then the changes shall be by formal amendment of this Agreement signed by the Parties and made a permanent part of this Agreement. Any extension or modification shall conform to New Mexico laws.

30. Drug and Alcohol Policy

30.1 LICENSOR, in the performance of any Services requiring the physical presence of its employees on CITY's property or on the property of others for which CITY has acquired access rights, shall maintain a drug and alcohol policy, as respects its employees and subcontractors involved in the performance of such Services, which policy at a minimum includes reasonable testing procedures and which advances the policy of providing a work environment that is free from the use, consumption, possession, sale, or distribution of illegal drugs or alcohol, and from the misuse of legal drugs on CITY's premises and work sites, including vehicles used on company business. LICENSOR to provide a copy of their Drug and Alcohol Policy to the CITY.

30.2 LICENSOR shall also comply with all applicable laws concerning drug and alcohol use, including, if applicable, requirements of the United States Department of Transportation. LICENSOR shall require that each subcontractor complies with the drug and alcohol policy requirements and applicable laws as set forth herein and, upon request by CITY, will provide to CITY verification of LICENSOR's and subcontractor's compliance with such policy requirements and applicable laws.

30.3 LICENSOR shall provide CITY and any public Authority having jurisdiction with access to LICENSOR's facilities and records to audit LICENSOR's drug and alcohol policy, records and testing program including, if applicable, United States Department of Transportation requirements, as provided in **Section 34, Audit**.

30.4 LICENSOR shall provide to CITY, a current (within three (3) months) report of random drug screening for LICENSOR's employees scheduled to be on CITY property.

30.4.1. LICENSOR shall provide to CITY, upon request, reports of random and pre-employment drug screening for LICENSOR's employees.

30.5 CITY may remove a LICENSOR's employee from any work or work site if CITY reasonably suspects the employee is under the influence of controlled substances or alcohol until such time as LICENSOR confirms by testing that the employee is fit for duty.

30.6 LICENSOR shall notify CITY in writing within ten (10) days any time there is a change in the person or personnel administering LICENSOR's drug and alcohol program.

31. Notice

31.1 Except as expressly provided otherwise herein, any formal notice, demand, or request provided for in this Agreement shall be in writing and shall be deemed properly made if personally delivered, delivered by courier, or sent by first-class mail, postage prepaid, or by facsimile transmission to the

facsimile number to the person specified below and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U.S. mail, and if sent by facsimile, upon transmission as evidenced by a confirmation report generated by the facsimile device.

To LICENSOR:	Address:	[FILL IN "Address"]
	[FILL IN "Address"]	
Attention:	[FILL IN "Name or Department"]	
Phone:	[FILL IN "Phone #"]	
Fax:	[FILL IN "Fax #"]	
Email:	[FILL IN "Email"]	
To CITY:	Address: City of Farmington 800 Municipal Drive Farmington, New Mexico 87401	
Attention:	Purchasing Officer	
Phone:	505-599-XXXX	
Fax:	505-599-1377	
Email:	[FILL IN "Email"]	

31.2 The Parties may change their addresses, contact persons, or facsimile numbers to which notices are to be sent by providing the other Party with notice of such changes in the manner provided in this Article 31, Notice. Nothing contained herein shall preclude the transmission of routine invoices or correspondence, messages and information between the Parties by a representative of a Party in the ordinary course of performing their respective obligations under this Agreement.

32. Conflict of Interest

32.1 LICENSOR shall exercise reasonable care and diligence to prevent any actions or conditions which would result in a conflict with CITY's interest. LICENSOR shall immediately notify the person specified in Article 31, Notices of this Agreement in the event a conflict with the CITY's interest is recognized.

32.2 LICENSOR warrants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of an services or maintenance under this Agreement.

32.3 LICENSOR shall notify CITY's Purchasing Officer if any employee(s) of the requesting department or the Purchasing Division have a financial interest in the LICENSOR's business operations.

33. Bribes and Gratuities

33.1 By law (Section 13-1-191, NMSA, 1978) the CITY is required to inform Offerors/Bidders/Contractors/Consultants/Sellers/Suppliers/Licensors of the following:

(a) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978);

(b) it is a third-degree felony to commit the offense of demanding or receiving a bribe buy a public officer or public employee (Section 30-24-2, NMSA, 1978);

(c) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); and

(d) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

34. Audit

34.1 LICENSOR shall maintain complete and accurate records concerning this Agreement (including any Attachments and Exhibits) and all related transactions for at least three (3) years from the date of final payment for the License(s), Support Services, and Maintenance. At any time but not later than three (3) years after final payment under this Agreement, CITY may make such audit of the invoices and substantiating material (including time and/or travel records) as deemed necessary by CITY. Each payment made shall be subject to reduction and refund to CITY, or offset on future payments due LICENSOR, to the extent of amounts which are found by CITY not to have been properly payable or to have been overpaid, and shall also be subject to increase and payment to LICENSOR for underpayments to the extent of any amounts which are found by CITY to have been underpaid. Upon request by CITY, LICENSOR shall insert a clause containing all the provisions of this Article 34 in all subcontracts to permit CITY to make identical audits and inspections of the records of all subcontractors involved in performance of this Agreement (including Attachments and Exhibits).

35. Taxes

35.1 LICENSOR shall pay all taxes and contributions for unemployment insurance, retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on LICENSOR by law or collective bargaining agreements with respect to persons employed by LICENSOR for performance of the services and/or maintenance under this Agreement. LICENSOR shall be liable for and shall pay and shall indemnify, defend, and hold CITY harmless from, all such taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney fees and all taxes (including but not limited to, income, withholding, gross receipts, compensating, use and all other taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority on or because of LICENSOR's performance of services and/or maintenance, or because it provides materials, equipment, or supplies to CITY. On all invoices, LESSOR shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes which are reimbursable by CITY to LESSOR, provided that in no event will interest or penalties on such taxes be reimbursable by CITY. LESSOR shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales, and other similar taxes.

36. Designated Representative and Project Manager.

36.1 CITY's Designated Representative**.** CITY appoints the following individual as its "Designated Representative"**:**

Name:	
Address:	**City of Farmington, 800 Municipal Drive, Farmington, NM 87401**
E-mail:	
Telephone:	
Cell Phone:	
Fax:	

The Designated Representative's authority shall encompass but not be limited to (1) issuance of instructions, (2) interpretation of plans, (3) review and inspection of LICENSOR's services, (4) rejection of nonconforming work or services, (5) determination of when services are/is complete, (6) approval of progress payments and final payment, and (7) first point of contact for certain Change Orders as set forth in Article 29, Agreement Extension and Modification.

. All field communications from LICENSOR to CITY shall be directed to the Designated Representative. CITY may appoint another Contract Administrator at any time by written notice to LICENSOR.

36.2 LICENSOR's Project Manager. LICENSOR appoints the following individual as its "Project Manager" in charge of LICENSOR's performance and execution of the services:

Name:	
Address:	
E-mail:	
Telephone:	
Cell Phone:	
Fax:	

All instructions, requests for change to services and other technical communications from the CITY to the LICENSOR shall be directed to the Project Manager. LICENSOR may appoint another Project Manager upon ten (10) calendar days' prior written notice to CITY. If CITY objects to the new appointee, LICENSOR shall appoint a Project Manager acceptable to CITY.

37. Non-Disclosure

37.1 The Parties agree that, except as otherwise provided in this Agreement:

37.1.1. all material or property, including software and intellectual property (hereafter "property") received by each Party is and shall be treated as the confidential property of the other Party; and

37.1.2. the Parties shall exercise at least the same degree of care to safeguard the confidentiality of the property received as each Party would exercise to safeguard its own confidential property; and

37.1.3. no property received hereunder shall be disclosed except as otherwise provided herein.

37.2 Such prohibition on disclosure shall not apply to:

37.2.1. disclosures by either party to their employees; or

37.2.2. such governmental or regulatory agency having jurisdiction and authority that may request the property and associated documentation, provided such disclosures are reasonably necessary to the party's use of the material, property, or compliance with governmental requests, and provided further, that the requested Party takes all reasonable steps to ensure that the property is not duplicated or disclosed by such employees or governmental agencies; or

37.2.3. any material or property which now or at a later date is or becomes part of the public domain.

38. Security/Access

38.1 The LICENSOR and its employees, agents, contractors and subcontractors of any tier who are required, in the performance of the Services under the Agreement, to have access to the CITY's (or a third party from who the CITY has obtained a license) computer systems, programs, data, buildings, facilities, equipment and other property shall heed and adhere to CITY's appropriate internal policies and procedures for the purpose of protecting the confidential and secure nature of the CITY's systems and facilities and to limit such access. The LICENSOR shall restrict access to only those of its employees having a need for such access in the performance of the Services under the Agreement.

39. Laws, Ordinances and Permits

39.1 The LICENSOR shall comply with all applicable laws, rules, regulations, and ordinances of the United States and the state, county, and municipality, including state and federal occupational, safety, environmental and health laws and regulations, and also including the procurement of all

necessary permits and licenses. The Contractor shall indemnify and safe the CITY harmless from and against any claims, damage, and expense (including reasonable attorney fees) arising from the violation by the LICENSOR of any such law, rule, regulation, or ordinance.

40. Extent of Agreement

40.1 This Agreement represents the entire and integrated Agreement between the CITY and LICENSOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both CITY and LICENSOR.

IN WITNESS WHEREOF, said Parties hereto have hereunto set their hands and seals at Farmington, New Mexico effective the day and year first above written.

CITY OF FARMINGTON
A New Mexico Municipal Corporation

By: _____
Title: **Mayor**

Date: _____

(SEAL)

ATTEST:

_____
City Clerk

Date: _____

Approves Compliance NMSA 1978 Annotated, Chapter 13 Public Purchases and Property:

_____
Edward Smylie, CPPO
Purchasing Officer
Date: _____

_____
Department Head Approval

_____
Date

_____
Legal Department Approved to Form

_____
Date

(LICENSOR)

By:_____
Duly Authorized Signature

By:_____
(Printed Name)

Title:_____

Date: _____

Signer has read the document and affirms that it is true and complete and accurately represents the agreement of the Parties.

NOTARY PUBLIC SIGNATURE (REQUIRED)

State of New Mexico
County of San Juan

_____
(SEAL) **Signature of notarial officer**
My commission
expires:_____

New Mexico State Taxation and Revenue Department Taxpayer Identification Number

_____

Federal Taxpayer Identification or Social Security Number

_____

SCHEDULE A
LICENSED SOFTWARE

DESCRIPTION	**License Fee**	**Annual Maintenance & Support Fee**
Package includes:		
"[TO BE COMPLETED UPON FINAL NEGOTIATIONS]"		

SCHEDULE B – Professional Services and Travel

"[TO BE COMPLETED UPON FINAL NEGOTIATIONS]"

SCHEDULE C - Payment Schedule & Summary of Costs

The Payment Schedule is as follows:

"[TO BE COMPLETED UPON FINAL NEGOTIATIONS]"

SCHEDULE D - Installation Timetable, Site and Manner of Installation

A mutually agreed detailed implementation schedule and Installation Dates will be developed within ten (10) calendar days of all Parties executing this Agreement. Such mutually agreed implementation schedule shall be referenced as Schedule D and become part of this Agreement.

The implementation schedule will be developed with the goal of the initial on site training to be completed within one hundred and twenty (120) calendar days of all Parties executing this Agreement.

SCHEDULE E - Training

Training/Education is provided in multiple one day sessions for a total of xxxxxx (x) calendar days.

All training is at the CITY's Site, unless classes are provided at facilities as noted on Schedule B. The CITY's training facility consists of a classroom with xxxxxx (x) networked workstations, xxxxxx (x) projector, with Internet connection available. The initial training shall include xxxxx (x) administrators and xxxxxx (xx) users who will be performing scanning and image capture.

Charges noted in Schedule B, for on-site training includes travel and travel related expenses, unless otherwise noted on Schedule B.

Each on-site class provides hands on training for up to xxx (x) individuals.

A mutually agreed detailed training schedule will be developed within xxxx (xx) calendar days prior to the training sessions. Such mutually agreed training schedule shall be referenced as Schedule D and become part of this Agreement.

SCHEDULE F - Acceptance Testing

The CITY shall have xxxxxxxx (xx) calendar days from the Installation Date (Test Period) to test the Software on the Designated Equipment to confirm the Software functions in substantial accordance with the specifications set forth in the Contract Documents. CITY shall either notify LICENSOR in writing that acceptance (Acceptance) has occurred, or, that the Software has not been accepted, detailing the particular functions that are not in conformance with the Contract Documents. Upon such notification of any Non-conformities, within xxxxxx (xx) calendar days, shall demonstrate that the Software does properly function or shall correct such Nonconformities at its own expense and notify the CITY when such corrections are complete. Upon installation of such corrected Software, the terms of this Schedule F shall govern the retest. If the CITY fails to notify of either Acceptance or of any Nonconformities with the specifications within the, initial or if appropriate the subsequent, xxxxxxx (xx) day Test Period, the Parties agree that Acceptance shall, for all purposes of this Agreement, be considered to have been successfully accomplished.

The CITY may terminate this Agreement by serving written notice to that effect, if after the initial and subsequent Acceptance tests as described in the paragraph above, is not able to correct the Non-conformities. If such termination occurs, as its sole liability, shall refund payments received under this Agreement for the Software and Professional Services within thirty (30) calendar days after the CITY has relinquished the licensed rights granted in this Agreement by returning the Software and Associated Documentation and the provided Hardware (if any).

SCHEDULE G -Software Support and Maintenance Agreement

THIS SOFTWARE SUPPORT and MAINTENANCE AGREEMENT ("Maintenance Agreement") is made and entered into this "[TYPE DATE]" day of "[TYPE MONTH, YEAR]" ("Effective Date) by and between the Parties, (hereinafter referred to as LICENSOR), and City of Farmington, a New Mexico municipal corporation (hereinafter referred to as 'CITY" or "the CITY") to establish the terms and conditions for provision of software maintenance services for an "[TYPE Title of System]" "[TYPE (Abbrv)]" . LICENSOR and CITY are at times referred to individually as Party or collectively as Parties.

Section 1. Definitions

Down System Errors means the Software is completely inoperable, is unable to correctly search or is unable to perform critical system functions.

Other Support Errors means the Software is capable of productive operation but has intermittent critical function errors, errors which require human intervention to correct or is unable to perform non-critical functions.

Software means software provided by LICENSOR which is listed in the attached Exhibit A and maintained under the terms and conditions of this Maintenance Agreement. The Software is an integrated "[TYPE Abbrv]" system; therefore all modules licensed must be on the same revision level.

Software Updates or Updates means an on-line insertion by LICENSOR of code or a software release, which contains, temporary or final modified code to correct errors, malfunctions or unstable functions in the Software and, which affect the Software's ability to perform in substantial accordance with its published specifications, including the Agreement . Software Updates may contain minor functional enhancements.

Software Upgrades or Upgrades means a complete reissue of the Software which contains functional enhancements and may contain the final code modifications to correct errors, malfunctions or unstable functions in the Software and, which affect the Software's ability to perform in substantial accordance with its published specifications, including the Agreement. (Software Upgrades may occasionally require additional computer hardware to accommodate the enhanced capabilities.) LICENSOR shall give reasonable advance notification to CITY of any increased and/or additional hardware and/or software requirements.

Section 2. Term.

The term of this Maintenance Agreement shall commence on the Effective Date and shall continue thereafter for one (1) year from the expiration of the warranty expiration date and shall be automatically renewed for successive one (1) year periods unless notice of non-renewal is received by either Party from the other, not less than thirty (30) calendar days prior to the end of the then current one (1) year period. Renewal of the Maintenance Agreement is subject to the appropriation of funds by the City of Farmington City Council, from year to year.

Section 3. Service Fees.

The CITY agrees to pay for software maintenance and support services hereunder at the rate of "[TYPE Number]" percent ("[TYPE #]" %) of the total software cost. This rate remains firm for the duration of this Maintenance Agreement and does not change from year to year.

Section 4. Payments

The invoice shall be addressed as follows:

City of Farmington
Attention: Accounts Payable
800 Municipal Drive
Farmington, New Mexico 87401

Payments shall be paid to LICENSOR within thirty (30) calendar days of receipt of timely and undisputed invoices contingent upon the following:

From date of receipt by the CITY of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of the CITY;

LICENSOR will be responsible for the invoicing of any taxes (specifically including the New Mexico Gross Receipts tax), licenses, or other governmental fees and charges arising out of the this Maintenance Agreement, that are applicable or may become applicable to the CITY and the CITY agrees to any such taxes.

Section 5. Coverage.

5.1 During the term of this Maintenance Agreement and subject to the disclaimers set forth in Section 7. Limitation of Liability, LICENSOR will provide support by periodically supplying the CITY with Software Update or Upgrade releases which contain corrections to Software non-conformities or errors. LICENSOR will furnish such releases (including one copy of the related documentation when appropriate) for installation and loading by the CITY. Upgrades must be installed separately and sequentially. Should the CITY require assistance in installing or loading Updates or Upgrades, the CITY will provide access to the CITY's equipment on which the Software resides. If the CITY identifies any errors, malfunctions or defects in the Software, LICENSOR should be notified in accordance with LICENSOR's reporting procedures, detailed in the "[REVIEW & UPDATE]" Customer Service Handbook.

5.2 Although acceptance and installation is strongly advised, the CITY at its option may accept or reject the installation and use of each Software Update or Upgrade. The CITY shall be responsible for costs associated with the purchase, installation and maintenance of additional computer hardware as necessary, if any, to accommodate an Upgrade when installed.

When the CITY accepts a Software Update or Upgrade, LICENSOR will provide the CITY the necessary installation software to enable installation by the CITY. LICENSOR personnel will be available during normal Service Hours for consultation should the CITY encounter difficulties during installation.

If the CITY elects to not install or to delay installation of a Software Update or Upgrade, the CITY acknowledges and agrees that:

5.2.1 Subsequent Software Upgrades cannot be installed until the bypassed Upgrade has been installed, and

5.2.2 LICENSOR has no obligation to correct errors, malfunctions or defects in the Software for which corrections or remedies were included in a Software Update or Upgrade which has been rejected or delayed by CITY, and

5.2.3 LICENSOR has no obligation to continue services under this Maintenance Agreement or renewal of this Maintenance Agreement, when two (2) consecutive Software Upgrades have been bypassed.

5.3 LICENSOR will reasonably determine the priority level of an error, using the following protocols:

5.3.1 Down System Errors: LICENSOR shall acknowledge Down System calls within one (1)

Service Hour from the time that the call was placed during Service Hours. In addition, shall promptly initiate the following procedure:

5.3.1.1 assign LICENSOR specialists to correct the error,

5.3.1.2 provide ongoing communication on the status of the corrections; and,

5.3.1.3 commence to develop a work-around or a fix and provide such work-around or fix as soon as it is available.

5.3.2 Other Support Call Errors: LICENSOR shall acknowledge other Support Calls within one (1) business day from the time the call was placed. LICENSOR shall provide a fix or work-around as soon as practical, but not later than the next Software Upgrade.

5.4 The CITY agrees to provide LICENSOR with audit trails and other data, and with sufficient support and test time on the CITY's computer system to duplicate the problem and to verify that the error has been fixed.

Section 6. Hours.

Service hours (Service Hours) are "[REVIEW & UPDATE]" Monday through Friday from 6:00 a.m. to 6:00 p.m., "[TYPE time zone]" zone.

Section 7. Limitation of Liability.

The CITY's exclusive remedy for any defect in the Software, for which LICENSOR is responsible, shall be to repair or replace the Software as described above and if the repaired or replacement software provided to remedy a defect in the Software requires that the CITY attend training in order to utilize or install, such training will be provided by LICENSOR at no cost to the CITY. However, LICENSOR cannot guarantee that all programming or database errors can be corrected. Furthermore LICENSOR is not obligated to correct, cure, or otherwise remedy any defect in the Software if the Software or a Software Update or Upgrade; has not been properly installed by the CITY, is not operated and maintained under normal conditions by qualified personnel, is misused, is damaged, or is modified without LICENSOR's consent, or if the CITY has not notified LICENSOR promptly upon discovery of a defect. LICENSOR shall not in any event be liable for any loss of profits, incidental, special, exemplary or consequential damages to the CITY, or claims or demands against the CITY by any other party even if it has been advised of the possibility of such loss or damage.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT LICENSOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE. LICENSOR IS IN NO WAY RESPONSIBLE FOR AND MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE OPERATING SYSTEM SOFTWARE FURNISHED IN CONNECTION WITH ANY HARDWARE ON WHICH THE SOFTWARE IS USED.

LICENSOR is not responsible for delays or failure to perform resulting from acts or omissions beyond its control, failure of the CITY to provide prompt and reasonable access to the equipment where the Software is resident, or from events, acts or omissions attributable to manufacturers of the media on which the Software is delivered to the CITY.

Section 8. Travel Expenses.

LICENSOR shall provide the support services herein via _____ as detailed in "[REVIEW & UPDATE]" Section 8. If the CITY requests and LICENSOR agrees, that LICENSOR provide services on-site under this Maintenance Agreement, the CITY will reimburse LICENSOR for any travel or travel related expenses. (e.g., coach airfare to and from the CITY's site, local transportation, lodging, and meals). Travel and per diem or subsistence costs, if any, supported by a breakdown including destination,

duration and purpose. Reimbursement shall be limited to those that are allowable under Federal cost principles contained in 48 CFR, Chapter 1, Part 31, Federal Acquisition Regulation (FAR 31). Automobile mileage and per diem shall not exceed the amounts authorized by the New Mexico Per Diem and Mileage Act.

Section 9. Proprietary Rights.

Software Updates and Upgrades, software provided by LICENSOR to enable installation of Updates or Upgrades, and any fixes and/or work around, which may be provided under this Maintenance Agreement, shall remain the intellectual property of LICENSOR. Any such programming and documentation provided under this Maintenance Agreement shall be subject to the licensing terms, proprietary rights and restrictions contained in the Agreement between LICENSOR and the CITY under which the CITY's licensed rights for the Software were established.

Section 10. Termination.

In the event (i) of a breach by the CITY of any of the CITY's obligations hereunder; (ii) of a termination for any reason of the License Agreement; or (iii) of any modification of the Software by or on behalf of the CITY, then, in addition to any other remedies available, LICENSOR may, at its option, terminate this Maintenance Agreement without any continuing obligation to CITY.

10.1 Termination for Cause

If through any cause, LICENSOR fails to fulfill in a timely and proper manner LICENSOR's obligations under this Maintenance Agreement or if LICENSOR violates any of the covenants, agreements, or stipulations of this Maintenance Agreement, the CITY may order LICENSOR by written notice to stop the services or any portion of them until the cause for such order has been eliminated. If LICENSOR fails to correct the cause within the time period specified in this notice, which time period shall be reasonable under the circumstances, CITY shall have the right to immediately terminate this Maintenance Agreement. LICENSOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. LICENSOR will refund from the date of termination the prorated portion of any paid Service Fees for the remaining unused term of the Software License, Support Services, and Maintenance Agreement.

10.2 Termination for Convenience of CITY

The CITY may terminate this Maintenance Agreement at any time by giving at least "[REVIEW & UPDATE]" thirty (30) calendar days notice in writing to LICENSOR. If this Maintenance Agreement is terminated due to the fault of, the above paragraph, Termination for Cause, shall apply and no compensation or reimbursement to LICENSOR shall be due. If terminated for any other reason, CITY will reimburse for all reasonable documented out-of-pocket expenses incurred in connection with this Maintenance Agreement. LICENSOR will refund (or CITY may offset) from the date of termination the prorated portion of any paid Service Fees for the remaining unused term of the Software License, Support Services, and Maintenance Agreement.

Section 11. General .

This Maintenance Agreement shall be binding when accepted by both Parties and will be governed by the laws of the State of New Mexico.

No delay by LICENSOR in exercising, or failure to exercise any right hereunder, and no partial exercise thereof shall be deemed to constitute a waiver of any rights granted hereunder or at law

The terms and conditions stated herein supersede all prior agreements between Parties relating to the subject matter of this Maintenance Agreement. This Maintenance Agreement may be changed or modified only in writing signed by authorized representatives of LICENSOR and CITY.

EXHIBIT A

TO: SCHEDULE G - SOFTWARE SUPPORT and MAINTENCE AGREEMENT
"[TYPE Title of System]"

Maintenance Period: Indefinite, until terminated

DESCRIPTION

PACKAGE INCLUDES:	**ANNUAL MAINENENCE and SUPPORT FEE**

"[TO BE COMPLETED UPON FINAL NEGOTIATIONS]"