

**MASTER AGREEMENT FOR
ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM SOLUTION
THIRD PARTY SOFTWARE LICENSES, SUPPORT
In Association with
RFP 742-11378 Enterprise Resource Planning (ERP) System Solution and Professional
Services**

THIS AGREEMENT, made this ____ day of _____ 2017, (“Effective Date”), is by and between the City of Fort Lauderdale, a Florida municipality, (“City” or “Licensee”), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and **Emphasys Computer Solutions, Inc.**, a Michigan corporation authorized to transact business in the State of Florida, (“Emphasys,” “SymPro,” “Contractor,” or “Vendor”), whose address and phone number are 9675 NW 117 Ave, Suite 305, Medley, FL 33178 P: 305-599-2531.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

Emphasys, pursuant to the response to Request for Proposal No. 742-11378, submitted by Ciber, Inc. (“Contractor/Implementer” or “Ciber”), shall provide to the City certain Enterprise Resource Planning third party software (“Software”, Software Solution”) as set forth in Ciber’s proposal response. The Software, pricing, and support services fees are set forth in “Exhibit A- Emphasys Software License and Service Agreement,” which is incorporated herein.

I. PURPOSE AND DOCUMENTS

The Parties understand that this Agreement, together with that certain Master Services Agreement between the City and Ciber Inc., is the result of City’s procurement process and negotiations relating to Request for Proposal (“RFP”) No. 742-11378. The comprehensive solution proposed by Ciber Inc. and Emphasys Software, (“Contractors”), and accepted by City is an on premise and vendor-hosted ERP solution comprising various components. This Agreement includes software licenses and support services (“Exhibit A - Emphasys Software License and Service Agreement”).

All contract documents may also be collectively referred to as the “Documents.” In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, this Agreement
- B. Second, Exhibit A

II. AGREEMENT TERM

The Term of this Agreement is twelve (12) years commencing on _____.

Term of Support: Software Delivery Date through twelve (12) years from Software Delivery.

III. METHOD OF BILLING AND PAYMENT

Payment for approved deliverables will be made within forty-five (45) days after receipt of a proper invoice acceptable to the City, in accordance with the Florida Local Government Prompt Payment Act. Invoices and backup materials may be emailed to acctspayable@fortlauderdale.gov with a copy of such to the City's Project Coordinator/Project Manager.

Receipt of invoice shall mean the date that the contractor emails invoices to Licensee's designee at the email address provided by Licensee. Late payments are subject to interest in accordance with the Florida Local Government Prompt Payment Act.

If, at any time during the contract, the City shall not approve or accept the Contractor's work product, and agreement cannot be reached between the City and the Contractor to resolve the problem to the City's satisfaction, the City shall negotiate with the Contractor on a payment for the work completed and usable to the City.

IV. TAXES

The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.

V. COST ADJUSTMENTS

Annual Escalation Percentage Cap: 0% until the period ending three (3) years from delivery of the software deliverable, then 2% between the period ending four (4) years from delivery and twelve (12) years from delivery date. Any requested adjustment shall be fully documented and submitted to the City at least ninety (90) days prior to the Agreement anniversary date. Any cost adjustments shall become effective on the beginning date of the approved Agreement extension.

VI. TRAVEL AND LODGING

Any travel to the City of Fort Lauderdale from out of the tri-county (Dade, Broward and Palm Beach Counties) area shall be in accordance with the City's Travel Allowance and Subsistence Policy. The current policy may be viewed at the City website. No costs for travel, meals, or accommodations shall be charged to the City for travel within the tri county area unless the Contractor's office assigned to the project is located outside this area.

Contractor shall incur no travel or related expenses chargeable to the City without prior approval by the City's travel officer and the Project Coordinator. Contractor shall provide, if required by the City, documentation of all actual travel and related costs.

VII. QUALITY

Contractor acknowledges and agrees that all material shall be first quality and that items that are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by City.

VIII. EMPLOYMENT AND PERSONNEL

1) Independent Contractor

This is not an Agreement of partnership or employment of Contractor or any of Contractor employees by City. Contractor is an independent contractor for all purposes under this Agreement. Contractor shall not pledge or attempt to pledge the credit of City or in any other way attempt to bind City.

2) Personnel Qualifications

Contractor shall perform its services in a professional and workman like manner and shall only use qualified and experienced personnel.

3) Contractor Personnel Requirements

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

b) Contractor agrees that all persons working for or on behalf of Contractor whose duties bring them upon City's premises shall obey the reasonable rules and regulations that are established by City and shall comply with the reasonable directions of City's officers and employees. City may, at any time, request and Contractor will not reasonably deny the removal and replacement of any of Contractor employee(s).

4) Contractor' Responsibility for Employees

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

IX. REMOTE ACCESS

The Contractor will not access any software product separately licensed by the City ("Licensed Program(s)") remotely without prior authorization from the City and from the respective licensor if authorization from a licensor is required by an applicable license agreement.

The parties envision that services to City's production, development and/or test environment may be provided by remote electronic means (remote access). The manner, including any security restrictions, method, equipment, software and other considerations for remote access shall be provided on a request by request basis subject to City's internal security requirements. City, at its own expense, shall provide the equipment and software at its location to permit remote access by Contractor. Contractor, at its own expense, shall provide the equipment and software at its location to permit remote access by Contractor to City. Physical access for Contractor personnel to the system as necessary during services to allow Contractor to perform services shall be provided by City.

Contractor will assume its respective telephone access costs incurred to perform services on the system by remote access. Contractor represents and warrants that while performing services by remote access it will not transmit any type of undocumented software routines or other elements which are designed to, or capable of, permitting, allowing, or causing: (a) unauthorized access to or intrusion upon; (b) disabling of; (c) erasure of; or (d) interference with any hardware, software, data or peripheral equipment whether directly or by transference. In the event of a breach of this representation and warranty, Contractor, to the extent caused by Contractor, shall be responsible for, and pay City for, any and all actual damages, costs and reasonable expenses incurred by City by reason of the breach within thirty (30) calendar days after Contract Coordinator's written demand for same.

X. SOFTWARE DOCUMENTATION

Contractor shall provide, at no additional charge, software documentation that describes in detail the operation of the software. Contractor warrants that all such documentation provided by Contractor shall accurately describe the operation of the software in all material respects.

XI. SOFTWARE CODE IN ESCROW

The Vendor hereby agrees to escrow the source code for the Vendor's software solution in use at the City, on behalf of Licensee. The Vendor shall place the source code for the Emphasys software licensed by the City as defined in Exhibit A, Software License and Service Agreement, or as maybe amended, with an independent third-party escrow service provider located within the United States, (the "Escrow Agent").

The Vendor shall at all time keep the City informed of the location of the Source Code and shall provide to the City documentation of the Source Code's location forthwith upon the City's request.

The Vendor shall keep the escrowed Source Code current with the release(s) and version(s) of the Software in live use at the City.

1. The Vendor hereby grants the City a perpetual license, unlimited, unrestricted license, subject to the conditions of this section, for an infinite number of users to use the copy of the Source Code maintained by the Escrow Agent for support of the City's business operations shall become exercisable if and when any of the following release events occurs:

- a) the Vendor ceases to do business for any reason;

b) the Vendor fails to perform its material obligations under the Agreement and the City has issued written notice to the Vendor regarding such failure pursuant to the notice provision of the Agreement, and the Vendor has not cured the failure described in such written notice;

c) the Vendor seeks relief under any chapter of the bankruptcy laws of the United States or of any other nation or an involuntary petition for relief under any chapter of the bankruptcy laws of the United States or of any other nation is filed against the Vendor, or the Vendor seeks an assignment for the benefit of creditors under the laws of any state, province, or nation, or the Vendor becomes insolvent;

d) the Vendor institutes or has instituted against it receivership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings under any federal, state, or provincial laws;

e) the Vendor ceases supporting the licensed software; or

f) the Vendor undergoes a merger or is acquired and no longer supports the licensed software.

g) the Vendor ceases to exist as a legal entity or is administratively dissolved.

2. On the occurrence and during the continuance of any of the conditions listed above, at the City's request, validation of Source Code shall be performed as follows:

a) A duly qualified computer programmer selected by the City (the "Programmer") shall retrieve the Source Code from the Escrow Agent and shall perform the necessary Source verification and testing procedures at the City's premises on the City's computer systems;

b) The Programmer shall proceed to carry out the steps necessary to correct any deficiencies in the existing Software utilizing the Source Code.

The Vendor's agreement with the Escrow Agent shall provide that the Escrow Agent's duties shall be free of charge to the City.

XII. GENERAL CONDITIONS

A. Termination

1) Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is

necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided. This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the services to the City's satisfaction; or failure to continuously perform the services in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

2. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that it he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for the City's right to terminate this Agreement for convenience.

3. Cancellation for Unappropriated Funds

The Contractor understands and acknowledges that the City's purchase under this Agreement is and remains subject to annual budget appropriations. Thus, the obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law. Should funds not be appropriated any time after the first year of this Agreement, the City will provide at least thirty (30) days' notice to Contractor of such non-appropriation and any resulting necessary termination of this Agreement or any Exhibits hereto. Notwithstanding the foregoing, the City represents that upon signing of this Agreement, funds have been appropriated for the perpetually licensed software and for the initial year.

B. Insurance

The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at the Contractor's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes
Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at www.fldfs.com.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors

Automobile Liability Insurance

Covering all owned, hired and non-owned automobile equipment.

| | |
|-----------------------|---|
| Limits: Bodily injury | \$250,000 each person, \$500,000 each occurrence |
| Property damage | \$100,000 each occurrence |

Certificate holder should be addressed as follows:

City of Fort Lauderdale
Procurement Services Division
100 North Andrews Avenue, Room 619
Fort Lauderdale, FL 33301

C. Standard of Care

Contractor agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance of the Work, represents that he/she/it is qualified to perform the Work, that Contractor and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a proper, workmanlike and dignified manner consistent with that level of care and skill ordinarily exercised by other qualified contractors under similar circumstances.

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

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

Contractor agrees that, in the event of an accident of any kind, Contractor will immediately notify the City's contact person and thereafter, if requested, furnish a full written report of such accident.

D. Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement by the City are and shall remain the property of City; and Contractor disclaims any copyright in such materials. City acknowledges that Contractor is in the business of providing information technology consulting services and has accumulated expertise in this field and agrees that Contractor will retain all right, title, and interest in and to all Contractor Materials. "Contractor Materials" means all inventions, discoveries, concepts, and ideas, including, without limitation, patents, copyrights, trademarks, trade secrets, processes, methods, formulae, techniques, tools, solutions, programs, data, and documentation, and related modifications, improvements, and know how, that Contractor, alone, or jointly with others, its agents or employees, conceives, makes, develops, acquires, or obtains knowledge of at any time before, after, or during the term of this Agreement without breach of Contractor's duty of

confidentiality to City. To the extent Contractor Materials are included in any Deliverable, Contractor will grant City a personal, perpetual, irrevocable, nonexclusive, worldwide, royalty free license to use, execute, reproduce, and modify such Contractor Materials, but only for Customer's internal use in conjunction with the Deliverable. Contractor's grant to City of any interest in the Services and Deliverables is effective only upon City's payment of all fees and charges invoiced by Contractor.

E. Audit Right and Retention of Records

City shall, upon reasonable advance notice to Contractor, have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are directly related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor, as applicable, shall make same available at no cost to City in written form.

Contractor shall preserve and make available, upon reasonable advance notice to Contractor, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry. Nothing herein shall be deemed to conflict with the warranties, support and related remedies provided by Contractor.

The Contractor shall maintain during the term of this Agreement all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement.

F. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases

of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

G. Non-Waiver

The failure of the parties to insist upon strict performance of any terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by the other party as a waiver of the insisting party's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

H. Assignment

Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of the other party.

I. Conflicts

Contractor agrees that none of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding to which he, she or Contractor is not a party, unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required specifically by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

J. Compliance With Laws

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

K. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

L. Indemnification

Contractor shall protect and defend at Contractor's expense and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents ("Indemnitees") from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sub licensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

M. Limitation of Liability

NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOST DATA, LOST PROFITS, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR OTHER INDIRECT DAMAGES OF ANY KIND FOR ANY REASON WHATSOEVER INCLUDING, BUT NOT LIMITED TO, DAMAGES BASED UPON, CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each party agrees that the other party's liability under this agreement for damages, regardless of the form of action, will not exceed the total amount actually paid for software and services pursuant to this Agreement.

N. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

O. Prior Agreements

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject

matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

P. Representation of Authority

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

Q. Uncontrollable Circumstances ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

1. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
2. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
3. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
4. The non-performing party uses its best reasonable efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

R. Scrutinized Companies

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to

Section 215.4725, Florida Statutes (2016), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2016), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2016), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2016), as may be amended or revised.

S. Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954-828-5109, MMAIER@FORTLAUDERDALE.GOV, AND 100 N. ANDREWS AVENUE, INFORMATION TECHNOLOGY SERVICES, FORT LAUDERDALE, FL 33301).

Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost to the City, all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian

of public records, in a format that is compatible with the information technology systems of the City.

T. Contractor Merger or Acquisition

In the event that the Contractor is merged or acquired, the surviving entity shall honor all of the terms of this Agreement for the then-remaining term of the Agreement as set forth in Section II. above.

U. Governing Law, Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

V. Video and Audio Recording

City reserves the right to record video and/or audio, with proper consent, of any and all training sessions, held at City site, Contractor site, or via teleconference.

W. Data and Privacy

1. All data supplied by the City related to the performance of a service remains the City's property.
2. Privacy Laws

The City and the Contractor are each responsible for complying with any obligations applying respectively to items under the applicable data protection and personal information protection laws ("Privacy Laws") governing the City's data.

If there is a security breach involving protected City data, the Contractor will notify the City promptly upon discovery and provide the City with the information about the breach necessary to meet the Contractor's and City's responsibilities and business needs.

X. Malicious Code

Vendor represents that it has used commercially reasonable best efforts utilizing generally accepted industry tools and practices to provide Software that does not contain any "time bombs," "worms," "viruses," "Trojan horses," "protect codes," "data destruct keys," or other programming devices that are intended to access, modify, delete, damage, deactivate or disable the software ("Malicious Code"). Contractor shall take action immediately to investigate, identify and remove such Malicious Code from any part of the software solution.

IN WITNESS WHEREOF, the City and the Contractor execute this Agreement as follows:

City of Fort Lauderdale

By: _____
City Manager

Approved as to form:
Cynthia A. Everett, City Attorney

By: _____
Assistant City Attorney

ATTEST:

Emphasys Computer Solutions, Inc.

Larry Huckle
Secretary

By: _____
Michael Byrne
President

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Michael Byrne as president for Emphasys Computer Solutions, Inc., a Michigan corporation authorized to transact business in the State of Florida.

(SEAL)

Notary Public, State of _____
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known ____OR Produced Identification ____
Type of Identification Produced _____



EXHIBIT A

EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

This Emphasys Software License and Service Agreement ("Agreement") is entered into effective the ____ day of _____, 2017, ("Effective Date") by and between Emphasys Computer Solutions Inc., a Michigan corporation authorized to transact business in the State of Florida with its principal place of business located at: 9675 NW117TH Ave, Suite 305, Medley, FL 33178 ("Emphasys," "SymPro," "Vendor," or "Contractor"), and the City of Fort Lauderdale, a Florida municipality, with its principal place of business located at: 100 N. Andrews Avenue, Fort Lauderdale, FL 33301 ("Licensee" or "City").

RECITALS

A. Emphasys designs, develops and licenses a computer software solution ("Software", "Software Solution") known as the SymPro Treasury Management Software.

B. Licensee desires to obtain a personal, nontransferable, non-exclusive limited right and license to use such software and related documentation and services for Licensee's own internal business purposes only and Emphasys is willing to grant such a license on the terms and subject to the conditions of this Agreement.

THEREFORE, in consideration of the license and support fees to be paid by Licensee to Emphasys hereunder and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree:

1. Certain Definitions. As used in this Agreement, the following terms shall have the following definitions:

A. "Annual Maintenance and Support Plan" or "Plan" shall mean the then-current support services Licensee elects to purchase from Emphasys. The Annual Maintenance and Support Plan as of the Delivery Date is summarized in the attached Exhibit 2. Emphasys may change the method by which the Licensee interfaces with Emphasys's support services department with a 60 day written notice to Licensee regarding changes that will be effective with the next Annual Support and Maintenance renewal date.

B. "Authorized Users" shall mean Licensee and its employees and no other persons or entities; the number of which is stated in the attached Exhibit 1 and which may be changed by amendment to the attached Exhibit 1 or authorized purchase order issued by Licensee and accepted by Emphasys.

C. "Designated Equipment" shall mean a single Intel based computer or a network file server on which Licensee uses the Software pursuant to this Agreement and which is more fully described in the attached Exhibit 1.

D. "Designated Site(s)" shall mean the location at which the Designated Equipment and Licensed Products are located during the term of this Agreement as identified on Exhibit 1 to this Agreement or such other location as may be expressly approved in writing by Emphasys.

E. "Documentation" shall mean all user/operation manuals and other materials or information describing the Software, as hereinafter defined, its performance characteristics, technical features and other relevant information reasonably required for use of the Software, including all physical media upon which the materials or information are provided.

F. "Licensed Products" shall mean the Software and the Documentation.

G. "Software" shall mean that certain Emphasys computer software solution known as SymPro Treasury Management Software, in machine readable, object code form, as listed on Exhibit 1, and any modules, bug fixes, modifications, enhancements and other SymPro or third party software provided to and licensed hereunder by Emphasys to the Licensee during the Term.

2. Software License.

A. License Grant. Subject to the terms of this Agreement, Emphasys hereby grants to Licensee, and Licensee accepts, a limited, personal, non-transferable and non-exclusive perpetual license to use the Licensed Products solely for Licensee's own internal business purposes and solely on the Designated Equipment located at the Designated Site by the number of Authorized Users stated in the attached Exhibit 1 or such Authorized Users added during the Term. Licensee may also make copies of the software that are part of the software solution for development, testing, disaster recovery, back-up, archival purposes. Each copy must reproduce all copyright and other proprietary notices. To the extent they are trade secrets pursuant to Florida law; all materials reproduced shall be maintained by Licensee and are not subject to disclosure for commercial purposes.

B. Warranty of Ownership. Emphasys warrants to Licensee (and no other person or entity) that it is the author and owner or proper Licensee of the Licensed Products and has the right to enter into this Agreement.

C. Emphasys Retains Title. Licensee acknowledges that Emphasys and its licensors retain title to the Licensed Products, all copyrights, trade secrets and other

intellectual property rights licensed to Licensee even if Licensee's suggestions are incorporated into subsequent versions of the Software. To the extent the Licensed Products constitute a trade secret pursuant to Florida law, they are confidential to Emphasys.

D. No Ownership Rights. Other than the limited right of use of the Licensed Products described in this Agreement, Licensee neither shall have nor shall it acquire any right, title or interest in or to any of the Licensed Products or in any intellectual or proprietary rights represented thereby.

E. License Restrictions. Licensee agrees that it will not modify, decompile, disassemble, translate or reverse engineer the Software, in whole or in part. Except as expressly stated, this Agreement does not include any rights to the extent any of them is a trade secret pursuant to Florida law, to use, disclose, sublicense, or otherwise transfer the Software, Documentation, or other proprietary information of Emphasys. Licensed Products shall not be used to process data except for Licensee's internal purposes.

F. Licensee shall immediately notify Emphasys in writing of any actual or suspected breach of this Agreement, including, without limitation, its terms limiting use.

G. Audit. Upon 10 days prior written request, Emphasys may audit and examine such records at Licensee's offices during normal business hours, solely for the purpose of confirming the accuracy of all amounts due and paid hereunder. In the event that an audit reveals an overpayment by Licensee, Emphasys agrees to pay the City the amount of such overpayment within 45 days from the City's written notice. In the event that such audit reveals an underpayment by Licensee, Licensee agrees to pay Emphasys the amount of such underpayment within 45 days from Emphasys' written notice.

H. Mandated Changes. So long as Licensee is current under Vendor's applicable support agreement ("Exhibit 2"), Licensee will receive any updates, upgrades and enhancements to the software that are mandated by federal law or regulation, and are the then-current, general release version of such software solution that are not separately priced or licensed as new products, at no additional charge.

3. Delivery of Licensed Products. Software may be delivered to Licensee by CD or by remote telecommunications from Emphasys' place of business unless the parties agree in writing to an alternative method of delivery. Emphasys is not responsible for installing the Software unless Emphasys is specifically contracted to perform installation and training services.

A. Annual Maintenance and Support Plan. Annual Maintenance and Support Fees are outlined in Exhibit 1 for the 12 year period of this agreement. Licensee shall pay the annual service fees within 45 days of Licensee's receipt of Emphasys's proper invoice. After the 12 year period, if Licensee elects to purchase services under the Annual Maintenance and Support Plan, Licensee shall

pay the then current annual service fees within 45 days of Licensee's receipt of Emphasys's proper invoice.

B. Payments. All payments (i) shall be made by bank check or Licensee's check or wire transfer of immediately available funds and (ii) shall be due and payable to Emphasys in U.S. Dollars, at Emphasys's address as stated above, or such other places as Emphasys may from time to time designate in writing.

C. Invoices and Late Charges. Licensee will pay each Emphasys invoice within forty-five (45) days after Licensee's receipt of a proper invoice. Late payments are subject to interest in accordance with the Florida Local Government Prompt Payment Act.

D. Taxes: Licensee is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.

4. Warranty.

A. Emphasys warrants that: (i) Software will perform in accordance with Emphasys's standard specifications stated in its Documentation for a period of 180 days from the date of first installation of the Software (exclusive of bug fixes, modifications and enhancements provided during the warranty period or under the Annual Maintenance and Support Plan); and, (ii) Services provided under the Plan will be performed in a professional and workmanlike manner and bug fixes, modifications, enhancements provided under the Plan will perform in accordance with Emphasys's standard specifications. **EXCEPT FOR THE WARRANTIES STATED ABOVE, EMPHASYS AND ITS LICENSORS MAKE NO OTHER WARRANTIES, WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED. EMPHASYS AND ITS LICENSORS EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE. For warranty support, Licensee should contact: Technical Support at telephone number 510 655 0900.**

B. Licensed Products are of a complex nature resulting in operations that may be interrupted or errors that may be encountered. Emphasys's sole obligation and Licensee's sole remedy under this warranty is for Emphasys, at its option, to provide such services, bug fixes or other modifications it deems appropriate, provide a functional equivalent or reperform services, if: (i) Emphasys receives proper notice of any claimed Software defect during the warranty period or a claim of defective services or Software under the Plan within 10 business days of the related occurrence. Proper notice includes copies of the data, reports and written procedures documenting the claim; and, (ii) the Licensee is otherwise in compliance with this Agreement and using the current version of the Software in accordance with Emphasys's standard specifications; and, (iii) Emphasys is able to reproduce any claimed defect. Should Emphasys determine in its sole

judgment after reasonable effort that a covered defect cannot be remedied, Emphasys may elect to terminate this Agreement as to the affected Software and refund the paid, unused License Fees as to the affected Software only upon certification the Software is no longer in use by Licensee.

C. Further Limitations. The limited warranties provided in this Section 4, as limited by other provisions of this Agreement, are non-transferable by Licensee except as set forth below and shall immediately become void in the event of any unauthorized use, modification or repair of the Licensed Products or any part thereof or upon breach by Licensee of any provision of this Agreement. Except as otherwise may be provided in any technical support and maintenance agreement between the parties, Licensee shall pay, at Emphasys's then current rates, for services performed by Emphasys to correct problems or defects not covered by warranty, including, without limitation, those traceable to Licensee's errors.

D. Licensee shall pay, at Emphasys's then current rates, for services performed by Emphasys to address any problems or defects not covered by warranty or the Plan, including, without limitation, those traceable to Licensee's errors. All such services will be provided pursuant to a specific proposal outlining the scope of work, time and material rates and delivery schedules.

5. General.

A. Notices. All notices and demands hereunder shall be in writing and shall be served by personal service or by mail at the address of the receiving party stated below (or at such different address as may be designated by such party by written notice to the other party) and shall be deemed complete upon receipt.

City of Fort Lauderdale
Information Technology Services
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

B. Survival. Sections 2(C), (D) and (G), and 9 shall survive any termination or expiration of this Agreement.

Exhibit 1

EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

By and Between

Emphasys Computer Solutions, Inc., and the City of Fort Lauderdale, FL, Licensee

Effective Date _____

1. **Designated Equipment:**

Workstations: Current generation workstation; 32 or 64 bit operating system; Windows operating systems (Windows 7, Windows 10); minimum 2 GB RAM; 2 GB of storage.

Networking: Microsoft Windows Server (2005, 2008, 2012 R2, VMware version 5.5/6.).

Hard drive storage: Minimum 4 GB for software and portfolio data, depending on size and type of portfolio(s); 4 GB of RAM; Licensee's Installation: Installation is on a network server.

For equipment or operating systems not named in this section, contact SymPro for compatibility information.

2. **Designated Sites:**

City of Fort Lauderdale
100 N. Andrews Street
Fort Lauderdale, FL 33301

City of Fort Lauderdale
Domestic Preparedness and Emergency Management Bureau
2200 Executive Way
Fort Lauderdale, FL 33309 (Disaster Recovery/Archival)

3. **Software and Services:**

Debt Management

Debt Module
General Ledger Module
(Creation of Journal Entries & Interface to General Ledger)

Investment Portfolio Management:

Fixed Income
Multi-User License (3 concurrent users, Network)
Earning Allocation Module
Market Pricing Module *

General Ledger Module
(Creation of Journal Entries & Interface to General Ledger)

4. **Authorized Users: Network installation with concurrent access and support for 1-3 Authorized Users.**

5. **License Fees:**

| | |
|--|-----------------|
| Total Software License Fee: | \$79,000 |
| Annual Maintenance and Support (Year 1): | <u>\$15,000</u> |
| Total | \$94,000 |

Annual Maintenance and Support Renewed Annually

| | |
|---------|----------|
| Year 2 | \$15,000 |
| Year 3 | \$15,000 |
| Year 4 | \$15,300 |
| Year 5 | \$15,606 |
| Year 6 | \$15,918 |
| Year 7 | \$16,236 |
| Year 8 | \$16,561 |
| Year 9 | \$16,892 |
| Year 10 | \$17,230 |
| Year 11 | \$17,575 |
| Year 12 | \$17,926 |

6. **Payment Schedule:**

License fees and year one (1) of the Annual Maintenance and Support fees will be invoiced upon product delivery date. Thereafter, the Annual Maintenance and Support fees will be paid in annual installments during the twelve (12) year term and Emphasys will submit invoice for the City's review and approval thirty (30) days in advance of the annual expiration date.

Annual Escalation Percentage Cap (effective after the Initial Term): 0% until the period ending three (3) years from delivery date then 2% between the period ending four (4) years from delivery date and twelve (12) years from delivery date. Thereafter, the parties will negotiate any escalations in good faith.

Payment will be made within forty-five (45) days after receipt of a proper invoice acceptable to the City, in accordance with the Florida Local Government Prompt Payment Act. Invoices and backup materials may be emailed to Acctspayable@fortlauderdale.gov with a copy of such to the City's Project Coordinator/Project Manager. Paper copies, maybe submitted in duplicate, and mailed to:

CITY OF FORT LAUDERDALE
Finance Department
Accounts Payable
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

Exhibit 2

EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

By and Between

Emphasys Computer Solutions, Inc., and the City of Fort Lauderdale, FL, Licensee
Effective Date _____

Annual Support and Maintenance Plan

The following SymPro Support and Maintenance Plan applies as of the software delivery date. Emphasys reserves the right to change this Plan at any time, with 60 days written notice. All changes will be posted at its website: www.sympro.com and will become effective as of the next annual Renewal Term. However, any Support and Maintenance Plan will include at least the following essential elements:

- Priority service from technical support and client service representatives
- Free SymPro version corrections and enhancements released in the license and service term
- Access to the SymPro Internet Site for Support (www.sympro.com)
- Unlimited telephone technical support in the following areas:

Loading and configuring of SymPro Software

Operational Questions, including standard SymPro reports

Data entry support for all debt and investment types supported within SymPro, including:

Debt

- Serial Bonds
- Term Bonds
- Discount Bonds
- Variable Rate Coupon
- Commercial Paper
- Commercial Paper Discount
- Medium Term Notes

Investments

- Certificates of Deposits
- Negotiable Certificates of Deposits
- Checking Accounts
- Commercial Paper
- Commercial Paper Discount
- United States Treasury Issues, Coupon & Discount
- Federal Agency Issues, Coupon & Discount
- Rolling Repurchase Agreements
- GNMA, Pass Through
- Bankers Acceptances
- Corporate Bonds
- Medium Term Notes

Tele-consultation is provided during normal business hours (6:30AM TO 5:00PM - Pacific Time), Monday through Friday for questions dealing with the operations of the Licensed Software on Designated Equipment. Support issues may be reported via voicemail (510-655-0900 Selection 2), fax (510-655-4064), or email (support@sympro.com), 24 hours a day. Answers to "Frequently Asked Questions" are available at www.sympro.com, 24 hours a day. The resolution of some issues may require that Licensee provide Emphasys with a copy of Licensee's data. Licensee agrees to provide Emphasys with a copy of their data for the purpose of resolving Licensee's issue and, except as otherwise provided by Florida law, Emphasys agrees to maintain full confidentiality of any required data, and will use it only for the resolution of the Licensee's issue.

Not Included: Consulting on issues concerning investment accounting matters, specific financial or investment matters, research on investments not supported within the Licensed Software, or data entry for investments not supported in the Licensed Software system are not included.