

**CITY OF FORT LAUDERDALE
HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA)
PARTICIPANT TECHNOLOGIES, INC.
PURCHASE AGREEMENTS
FY 2014 – 2015**

Dated this 22nd day of December 2014
With an Effective Date of October 1, 2014

2015 JAN -7 PM 2:15

CITY CLERK

THIS AGREEMENT is made by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as "City",

and

Groupware Technologies, Inc., a Wisconsin corporation authorized to transact business in the State of Florida, hereinafter referred to as "Participant".

WHEREAS, the City approved CAM #14-0775 on July 1, 2014 awarding HOPWA funding to Participant; and

WHEREAS, Participant is the owner of all right, title and interest, including all proprietary rights, in the computer software program, Provide Enterprise, which was created to support the management and administration of the HOPWA Homeless Management Information System (HMIS) program and whereas, the Participant is qualified and experienced in installing, designing, programming, and maintaining the HOPWA software; and

WHEREAS, City wishes to secure certain services from Participant as described herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

**ARTICLE I
COMPENSATION, REPRESENTATION**

1.1 For services as described herein, Participant shall receive compensation not to exceed \$70,000.00 for the City's fiscal year 2014-2015 starting October 1, 2014 and ending September 30, 2015. Compensation shall be allocated for services as set forth

below.

- 1.3 Participant acknowledges the City has paid for a one-time fee of \$1,200 per license for a total of 59 licenses for software users. If additional software user licenses are needed, the City shall pay a one-time user license fee of \$1,200 per license. These software users are authorized recipients of grants under the City's HOPWA program. The annual fees shall not exceed \$730.00 per license.
- 1.4 To support the existing licenses, the City shall pay the following annual fees:

ANNUAL FEE DESCRIPTIONS	Unit Price	Number License	Amount
PE Licenses Annual Maintenance & Support	\$300.00	59	\$ 17,700.00
PE Licenses Enhanced Maintenance & Support	\$120.00	59	\$ 7,080.00
PE DATA Management & Hosting	\$240.00	59	\$ 14,160.00
AMA ICD-9 & CPT Code Licensing Fees	\$ 20.00	59	\$ 1,180.00
Document Scanning & Image Storage	\$ 50.00	59	\$ 2,950.00
GRAND TOTAL			\$43,070.00

- 1.5 In addition, the City shall pay a fee not to exceed \$7,500 for five (5) eight hour days of on-site training for City personnel and its grant recipients. Subject to availability, the City, at no expense to the City, may provide suitable space at City Hall or other suitable location. The Participant is responsible for all training materials, supplies, computers and other necessary materials.
- 1.6 The balance of the Compensation is reserved for discretionary, enhancement or programmatic changes as authorized by the City pursuant to a Work Authorization as described below. The Participant shall bill for such services at \$125.00 per hour.
- 1.7 Payment of the Annual fees shall be paid as follows: The annual fees shall be paid over two (2) invoices between October 1, 2014 and December 31, 2014.

Payment for the annual training shall be paid within 60 days after training is complete.

Payment for the discretionary/enhancement/programmatic services shall be paid as set forth in the Work Authorization.

- 1.8 Participant hereby represents and warrants that it owns and possesses all rights, whether proprietary or otherwise, to all patents, copyrights, trademarks in and to the Provide Enterprise software and has the power and authority to grant licenses to use said software.

ARTICLE II

SCOPE OF WORK

- 2.1 The City is the recipient of funding from the Department of Housing and Urban

Development for the HOPWA program. These funds are provided to recipients who are the authorized licensees under this Agreement. The Participant will provide the necessary support and services for the City's HOPWA program and its recipients. These services include, without limitation, maintaining the database of information provided by the City and its recipients, facilitating grant management and billing, providing the forms to administer the HOPWA program, generating the necessary and custom reports for all local, state and federal regulatory authorities, including the City, maintaining firewalls and other security protections, collecting data from the recipients, providing quality improvements and quality management services, providing technical assistance and user set up services for the City and its recipients, maintaining the confidentiality of the clients of the recipients according to HIPAA laws and other privacy laws and such other services as requested by the City.

- 2.2** Participant and City recognize that City may request Participant perform additional services. For additional services, City shall prepare a Professional Services Work Authorization ("Work Authorization") agreement that defines the work to be completed by Participant. City recognizes that each Work Authorization applies to a single defined project that Participant has been requested by City to complete. Each Work Authorization shall be considered as containing the terms of this Agreement and execution by City of this Agreement shall be considered as consent to apply the terms and conditions herein to any and all Work Authorization agreements executed by the City. Participant shall exert reasonable efforts to complete the services described in the subject Work Authorization on or before the Completion Date indicated therein.

City will pay Participant for the services in the manner indicated in the Work Authorization. Participant shall submit invoice(s) to City at the times noted in the Work Authorization. City will pay Participant the amounts stated in correct invoices within thirty (30) days of receipt. City will pay Participant in accordance with the Florida Local Government Prompt Payment Act on any amount for which payment is not received by Participant within such thirty (30) day period.

City is hereby granted a perpetual, non-exclusive, royalty-free license to use, modify and make copies of any technical notes, training materials, and other documentation prepared or developed by Participant ("Work Product") as part of providing the services for City, except as otherwise provided by the Florida public records laws. City is prohibited from copying, distributing, marketing, sub-licensing, or otherwise conveying or providing access to any Work Product to any third party without the prior written consent of Participant.

ARTICLE III **WARRANTY**

- 3.1** Participant does not warrant the performance or result that may be obtained by utilizing the services provided hereunder and Participant cannot and does not

warrant the performance or result that may be attained by use of any work product provided here under. However, the Participant does provide the following limited warranty.

Participant warrants that the services it performs will be substantially as described in the subject Work Authorization and as described in the Scope of Work. City must raise any claim for breach of the foregoing warranty within ninety (90) days of Participant's completion of the services. City's remedy for breach of the aforesaid warranty shall be, at Participant's option, either re-performance of the services or a refund of the fee paid by the City for such services.

The remedy provided above is exclusive. Except as provided above, Participant makes and City receives no warranties, whether expressed, implied, statutory or otherwise with respect to services provided or any work product delivered, and Participant specifically disclaims any implied warranty of merchantability of fitness for particular purpose.

ARTICLE IV **INDEMNIFICATION**

- 4.1** Participant shall protect and defend at Participant's expense, subject to the City's right to select its own counsel, and indemnify and hold harmless the City and the City's officers, employees, volunteers, HOPWA grant recipients and agents 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 Participant or by any officer, employee, agent, invitee, subcontractor, or sub-licensee of the Participant. 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 Participant 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.

ARTICLE V **PUBLIC ENTITY CRIME ACT**

- 5.1** Participant 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 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.

ARTICLE VI
INDEPENDENT CONTRACTOR

- 6.1 Participant is an independent contractor under this Agreement. Services provided by Participant pursuant to this Agreement shall be subject to the supervision of the Participant. In providing such services, neither Participant nor Participant agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Participant or Participant's agents any authority of any kind to bind City in any respect whatsoever.

ARTICLE VII
COMPLIANCE WITH LAWS

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

ARTICLE VIII
SEVERANCE

- 8.1 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.

ARTICLE IX
LIMITATION OF LIABILITY

- 9.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Participant hereby expresses its willingness to enter into this Agreement with Participant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Participant pursuant to this Agreement.
- 9.2 Accordingly, and notwithstanding any other term or condition of this Agreement, Participant hereby agrees that the City shall not be liable to Participant for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Participant pursuant to this Agreement, for any action for

breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

ARTICLE X
JURISDICTION, VENUE, WAIVER, WAIVER OF JURY TRIAL

- 10.1** This Agreement shall be interpreted and construed in accordance with and governed by 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 the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

ARTICLE XI
AMENDMENTS

- 11.1** 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 Participant or others delegated authority to or otherwise authorized to execute same on their behalf.

ARTICLE XII
PRIOR AGREEMENTS

- 12.1** 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.

ARTICLE XIII
PUBLIC RECORDS

- 13.1** Participant shall:
- a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
 - (b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2014), as may be

amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

ARTICLE XIV **UPDATES AND FUTURE RELEASES**

14.1 City acknowledges that it may receive information relating to future releases of new or existing Participant products ("Product Information"). City further acknowledges that such information is confidential, and City will not disclose any Product Information to any third party without Participant's prior written consent.

ARTICLE XV **INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS**

15.1 Participant shall defend and hold harmless City or their grant recipients ("Licensees") against any judicial proceeding based upon infringement or violation of any U.S. patent, copyright, or trademark arising from the City or Licensee use ("Work Product") of the Provide Enterprise software provided that (a) the City or Licensee notifies Participant of such a proceeding promptly after the City or Licensee is served with initial process, (b) Participant has exclusive control over the defense and settlement of the proceeding, (c) the City or Licensee provides such assistance in defense of the proceeding as Participant may reasonably request, and (d) the City or Licensee complies with any settlement approved by the City or Licensee or court order entered in connection with such proceeding. If the work product is held to infringe any right referred to in this paragraph, and if an injunction issues, Participant, solely at its own discretion, may, but has no obligation to, 1) use reasonable efforts to obtain the necessary rights to allow City or Licensee to continue to use the work product, or 2) modify the work product in such a way such that it no longer constitutes an infringement..

ARTICLE XVI **TERMINATION**

16.1 Either party may terminate this Agreement on thirty (30) days prior written notice. However, the City shall be obligated to pay Participant for any services and/or materials provided prior to the effective date of termination.

ARTICLE XVII
GENERAL PROVISIONS

17.1 This Agreement may not be assigned by either party without the prior written consent of the other. The parties are independent contractors, and neither party shall have the right to bind the other to any agreement with a third party or incur any obligation or liability on behalf of the other. This Agreement shall not be modified in any way except in writing signed by both parties. This Agreement shall be governed by Florida law, without application of conflict of laws principles.

The parties agree that any action related to this Agreement may be brought in any court of general jurisdiction located in Broward County, Florida and the parties hereby consent and submit to the personal jurisdiction and venue of any such court.

17.2 That all Agreements are amended to be consistent with the amendments provided herein.

17.3 That except to the extent modified herein, the Agreements between the parties are hereby ratified and reaffirmed and shall remain in full force and effect as provided by their terms.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

Groupware Technologies, Inc., a Wisconsin corporation authorized to transact business in the State of Florida

[Handwritten Signature]

By: Bret Ballinger, President

Date: 12/22/2014

STATE of Wisconsin:
COUNTY OF Milwaukee:

The foregoing instrument was acknowledged before me this 22 day of December 2014 by Bret Ballinger as President of Groupware Technologies, Inc., a Wisconsin corporation, on behalf of the corporation, who is personally known to me or has produced _____ as identification.

(NOTARY SEAL)

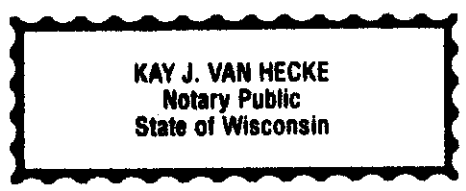
Kay J. Van Hecke
Notary Public, State of Wisconsin (Signature Of Notary taking Acknowledgment)

KAY J. VAN HECKE

Name of Notary Typed, Printed or Stamped

My Commission Expires: 06/05/16

Commission Number: _____



IN WITNESS WHEREOF, the parties hereto have set their hands and seal the date first written above:

CITY:

WITNESSES:


Mario DeSantis

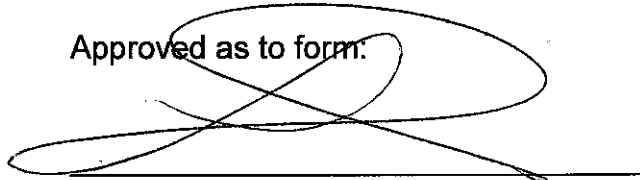

Avis Wilkinson

CITY OF FORT LAUDERDALE

By 
JONATHAN BROWN, HCD Manager

By 
LEE R. FELDMAN, CITY Manager

Approved as to form:


Assistant City Attorney