



**CITY OF FORT LAUDERDALE
City Commission Agenda Memo
REGULAR MEETING**

② Public Sector Agr.
② ENSTOA Consulting Agr. (L)
2/26/14

PM-11
#13-0892

TO: Honorable Mayor & Members of the Fort Lauderdale City Commission

FROM: Lee Feldman, ICMA-CM, City Manager

DATE: June 18, 2013

TITLE: Motion to approve the purchase of project and asset management software – Invitation to Bid (ITB) 432-11230 - \$434,828

Forwarded to
Deena V. →
Hardeep.

Recommendation

It is recommended that the City Commission approve the purchase of project and asset management software and maintenance from the single bidder, Enstoa, Inc., in the amount of \$434,828, over a five-year period.

Background

The Public Works Department (PWD) is responsible for the City's engineering, architectural and project management services for community investment and public right-of-way projects. PWD aims to ensure that all City projects are in compliance with approved plans, specifications, and applicable building codes, and that each City construction project meets high standards in quality, time and cost.

In order to deliver high quality projects on-time and within budget, over the past several months the PWD Engineering Division has been implementing several project management strategic initiatives including the development of design and construction policies and procedures manual, project management training, and process mapping, as well as the procurement of a project management system for PWD capital planning and project lifecycle management.

At the March 5, 2013 Conference meeting, PWD made a presentation to the City Commission regarding these initiatives, including the plan to procure the project management software.

In May 2013, the Procurement Services Division sent an ITB to 1,735 vendors and received one response. Enstoa, Inc. was the single bidder in the amount of \$434,828, for a five-year period. The Oracle Primavera Unifier cloud-based solution includes an automated method of capturing and displaying City project management data, and allows for efficient access and control of project information to effectively manage projects so that they are completed on schedule and within budget. The software

combines cost management and control, document management, schedule and resource management, fund management, invoicing, and business process automation capabilities tailored specifically for the City's control of capital programs. Additionally, this tool will allow the staff from PWD to proactively manage projects and initiate corrective actions in a timely manner to manage and mitigate any potential project related risks.

The current project management tool being used by the department is limited, hindering the management of all aspects of project management expectations through the planning, design, and construction management phases. The Oracle Primavera Unifier, as compared to the current reporting system, will bring added value by having a more accurate and robust reporting mechanism to management, elected officials, and the community.

Resource Impact

There will be a fiscal impact to the City in the amount of \$434,828, which includes 60 licenses and maintenance cost of \$67,680 per year for five years (total \$338,400), and a one-time cost for implementation services and training in the amount of \$96,428.

Future expenditures are contingent upon approval and appropriation of the FY 2014 – FY 2017 annual budgets.

FUNDS AVAILABILITY LOCATION:

FY	FUND	SUB FUND	FUND NAME	INDEX #	INDEX NAME	SUB OBJ #	SUBJECT NAME	AMOUNT
2013	450	01	Water and Sewer	PBS060101	Utilities Engineering Operations	3925	Office Equip <\$5,000	\$96,428
2013	450	01	Water and Sewer	PBS060101	Utilities Engineering Operations	3401	Computer Maintenance	\$67,680
TOTAL								\$164,108

Attachment

Exhibit 1 – Bid Tabulation 432-11230

Prepared by: Robert McKenney, Procurement Specialist II
 Carrie Keohane, Administrative Assistant I

Department Director: Hardeep Anand, P.E., Public Works

PUR-1 13-0890
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NINE-MONTH CONTRACT EXTENSION FOR CREDIT CARD PROCESSING SERVICES in the amount of \$664,500 from Elavon, Inc. and authorize proper City Officials to execute all necessary documents contingent upon vendor agreeing to extension

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PUR-11 13-0892

PURCHASE OF PROJECT AND ASSET MANAGEMENT SOFTWARE AND MAINTENANCE in the amount of \$434,828 for five-year period from Enstoa, Inc.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

RESOLUTIONS

R-1 13-0919

APPOINTING CYNTHIA A. EVERETT AS CITY ATTORNEY OF THE CITY OF FORT LAUDERDALE - effective July 1, 2013

ADOPTED

Aye: 4 - Mayor Seiler, Vice-Mayor Roberts, Commissioner DuBose and Commissioner Rogers

Nay: 1 - Commissioner Trantalis

R-2 13-0904

DESIGNATING CITY'S CODE ENFORCEMENT SPECIAL MAGISTRATES AS LOCAL HEARING OFFICERS and authorizing City Manager to utilize current staff to act as the clerk to the hearing

ADOPTED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

R-3 13-0835

APPOINTMENT OF CITY BOARD AND COMMITTEE MEMBERS - vacancy information provided under Conference Item BD-2

ADOPTED

Aye: 4 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis and Commissioner Rogers

Not Present: 1 - Commissioner DuBose



PUBLIC SECTOR AGREEMENT FOR ORACLE CLOUD SERVICES

This Public Sector Agreement for Oracle Cloud Services (this "Agreement") is between Oracle America, Inc., a Delaware corporation authorized to transact business in the State of Florida, ("Oracle") and the City of Fort Lauderdale, a Florida municipality, ("You"). This Agreement sets forth the terms and conditions that govern orders placed by You for Services under this Agreement.

1. AGREEMENT DEFINITIONS

- 1.1. **"Ancillary Program"** means any software agent or tool owned or licensed by Oracle that Oracle makes available to You for download as part of the Cloud Services for purposes of facilitating Your access to, operation of, and/or use with, the Services Environment. The term "Ancillary Program" does not include Separately Licensed Third Party Technology.
- 1.2. **"Auto Renew" or "Auto Renewal"** is the process by which the Services Period of certain Cloud Services under an order is automatically extended for an additional Services Period unless such Services are otherwise terminated in accordance with the terms of the order or this Agreement. The Service Specifications incorporated into Your order define which Cloud Services are eligible for Auto Renewal as well as any terms applicable to any such renewal. Please note: Auto Renewal does not apply to purchases under this Agreement. Please see Section 9.1 *infra* for renewal requirements.
- 1.3. **"Cloud Services"** means, collectively, the Oracle cloud services (e.g., Oracle software as a service offerings and related Oracle Programs) listed in Your order and defined in the Service Specifications. The term "Cloud Services" does not include Professional Services.
- 1.4. **"Data Center Region"** refers to the geographic region in which the Services Environment is physically located. The Data Center Region applicable to the Cloud Services is set forth in Your order.
- 1.5. **"Oracle Programs"** refers to the software products owned or licensed by Oracle to which Oracle grants You access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services. The term "Oracle Programs" does not include Separately Licensed Third Party Technology.
- 1.6. **"Professional Services"** means, collectively, the consulting and other professional Services which You have ordered. Professional Services include any deliverables described in Your order and delivered by Oracle to You under the order. The term "Professional Services" does not include Cloud Services.
- 1.7. **"Program Documentation"** refers to the program user manuals for the Oracle Programs referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for such Oracle Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the Oracle Programs. You may access the documentation online at <http://oracle.com/contracts> or such other address specified by Oracle.
- 1.8. **"Separate Terms"** refers to separate license terms that are specified in the Program Documentation, Service Specifications, readme or notice files and that apply to Separately Licensed Third Party Technology.
- 1.9. **"Separately Licensed Third Party Technology"** refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement.
- 1.10. **"Services"** means, collectively, both the Cloud Services and Professional Services that You have ordered.
- 1.11. **"Services Environment"** refers to the combination of hardware and software components owned, licensed or managed by Oracle to which Oracle grants You and Your Users access as part of the Cloud Services which You have ordered. As applicable and subject to the terms of this Agreement and Your order, Oracle Programs, Third Party Content, Your Content and Your Applications may be hosted in the Services Environment.

- 1.12. **"Service Specifications"** means the descriptions on www.oracle.com/contracts, or such other address specified by Oracle, that are applicable to the Services under Your order, including any Program Documentation, Oracle Cloud Hosting and Delivery Policies (e.g., support and security policies), and other descriptions referenced or incorporated in such descriptions.
- 1.13. **"Services Period"** refers to the period of time for which You ordered Cloud Services as specified in Your order.
- 1.14. **"Third Party Content"** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Oracle and made available to You through, within, or in conjunction with Your use of, the Cloud Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, and data libraries and dictionaries. Third Party Content does not include Separately Licensed Third Party Technology.
- 1.15. **"Users"** means those employees, contractors, and end users, as applicable, authorized by You or on Your behalf to use the Cloud Services in accordance with this Agreement and Your order.
- 1.16. **"You"** and **"Your"** refers to the entity that has executed this Agreement.
- 1.17. **"Your Applications"** means all software programs, including any source code for such programs, that You or Your Users provide and load onto, or create using, any Oracle "platform-as-a-service" or "infrastructure-as-a-service" Cloud Services. Services under this Agreement, including Oracle Programs and Services Environments, Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term "Your Applications."
- 1.18. **"Your Content"** means all text, files, images, graphics, illustrations, information, data (including Personal Data as that term is defined in the Data Processing Agreement for Oracle Cloud Services described in Section 11.2 below), audio, video, photographs and other content and material (other than Your Applications), in any format, provided by You or Your Users that reside in, or run on or through, the Services Environment.

2. TERM OF AGREEMENT

Unless this Agreement is terminated earlier as described below, You may place orders governed by this Agreement for a period of five years from the effective date of this Agreement (indicated below in Section 25). This Agreement will continue to govern any order for the duration of the Services Period of such order.

3. RIGHTS GRANTED

3.1 For the duration of the Services Period and subject to Your payment obligations, and except as otherwise set forth in this Agreement or Your order, You have the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use the Services that You ordered, including anything developed by Oracle and delivered to You as part of the Services, solely for Your internal business operations and subject to the terms of this Agreement and Your order, including the Service Specifications. You may allow Your Users to use the Services for this purpose and You are responsible for Your Users' compliance with this Agreement and the order.

3.2 You do not acquire under this Agreement any right or license to use the Services, including the Oracle Programs and Services Environment, in excess of the scope and/or duration of the Services stated in Your order. Upon the end of the Services ordered, Your right to access and use the Services will terminate.

3.3 To enable Oracle to provide You and Your Users with the Services, You grant Oracle the right to use, process and transmit, in accordance with this Agreement and Your order, Your Content and Your Applications for the duration of the Services Period plus any additional post-termination period during which Oracle provides You with access to retrieve an export file of Your Content and Your Applications. If Your Applications include third party programs, You acknowledge that Oracle may allow providers of those third party programs to access the Services Environment, including Your Content and Your Applications, as required for the interoperation of such third party programs with the Services. Oracle will not be responsible for any use, disclosure, modification or deletion of Your Content or Your Applications resulting from any such access by third party program providers or for the interoperability of such third party programs with the Services.

3.4 Except as otherwise expressly set forth in Your order for certain Cloud Services offerings (e.g., a private cloud hosted at Your facility), You acknowledge that Oracle has no delivery obligation for Oracle Programs and will not ship copies of such programs to You as part of the Services.

3.5 The Services may contain or require the use of Separately Licensed Third Party Technology. You are responsible for complying with the Separate Terms specified by Oracle that govern Your use of Separately Licensed Third Party Technology. Oracle may provide certain notices to You in the Service Specifications, Program Documentation, readme or notice files in connection with such Separately Licensed Third Party Technology. The third party owner, author or provider of such Separately Licensed Third Party Technology retains all ownership and intellectual property rights in and to such Separately Licensed Third Party Technology.

3.6 As part of certain Cloud Services offerings, Oracle may provide You with access to Third Party Content within the Services Environment. The type and scope of any Third Party Content is defined in the Service Specifications applicable to Your order. The third party owner, author or provider of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Your rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author or provider.

4. OWNERSHIP AND RESTRICTIONS

4.1 You retain all ownership and intellectual property rights in and to Your Content and Your Applications. Oracle or its licensors retain all ownership and intellectual property rights to the Services, including Oracle Programs and Ancillary Programs, and derivative works thereof, and to anything developed or delivered by or on behalf of Oracle under this Agreement.

4.2 You may not, or cause or permit others to:

- a) remove or modify any program markings or any notice of Oracle's or its licensors' proprietary rights;
- b) make the programs or materials resulting from the Services (excluding Your Content and Your Applications) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services You have acquired);
- c) modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Oracle;
- d) perform or disclose any benchmark or performance tests of the Services, including the Oracle Programs, without Oracle's prior written consent;
- e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure without Oracle's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- f) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, Oracle Programs, Ancillary Programs, Services Environments or materials available, to any third party, other than as expressly permitted under the terms of the applicable order.

4.3 The rights granted to You under this Agreement are also conditioned on the following:

- a) except as expressly provided herein or in Your order, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and
- b) You make every reasonable effort to prevent unauthorized third parties from accessing the Services.

5. SERVICE SPECIFICATIONS

5.1 The Services are subject to and governed by Service Specifications applicable to Your order. Service Specifications may define provisioning and management processes applicable to the Services (such as capacity planning), types and quantities of system resources (such as storage allotments), functional and technical aspects of the Oracle Programs, as well as any Services deliverables. You acknowledge that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. If the Services permit You to exceed the ordered quantity (e.g., soft limits on counts for Users, sessions, storage, etc.), then You are responsible for promptly purchasing such additional quantity to account for Your excess usage.

5.2 Oracle may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Specifications are subject to change at Oracle's discretion; however, Oracle changes to the Service Specifications will not result in a material reduction in the level of performance or availability of the applicable Services provided to You for the duration of the Services Period.

5.3 Your order will specify the Data Center Region in which Your Services Environment will reside. As described in the Service Specifications and to the extent applicable to the Cloud Services that You have ordered, Oracle will provide production, test, and backup environments in the Data Center Region stated in Your order. Oracle and its affiliates may perform certain aspects of Cloud Services, such as service administration and support, as well as other Services (including Professional Services and disaster recovery), from locations and/or through use of subcontractors, worldwide.

6. USE OF THE SERVICES

6.1 You are responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Your and Your Users' usernames, passwords and accounts with Oracle, You accept responsibility for the timely and proper termination of user records in Your local (intranet) identity infrastructure or on Your local computers. Oracle is not responsible for any harm caused by Your Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Your local identity management infrastructure or Your local computers. You are responsible for all activities that occur under Your and Your Users' usernames, passwords or accounts or as a result of Your or Your Users' access to the Services, and agree to notify Oracle immediately of any unauthorized use.

6.2 You agree not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Your Content, Your Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Oracle under this Agreement, Oracle reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the removal or disablement of access to such material. Oracle shall have no liability to You in the event that Oracle takes such action. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content and Your Applications. To the extent not prohibited by applicable law, You agree to defend and indemnify Oracle against any claim arising out of a violation of Your obligations under this section.

6.3 You are required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including for the Oracle Programs, as such Patches are generally released by Oracle as described in the Service Specifications. Except for emergency or security related maintenance activities, Oracle will coordinate with You the scheduling of application of Patches, where possible, based on Oracle's next available standard maintenance window.

7. TRIAL USE AND PILOT CLOUD SERVICES

7.1 Oracle may make available certain Cloud Services for trial, non-production purposes. Cloud Services for trial purposes must be ordered under a separate Agreement. Cloud Services acquired for trial purposes are provided on an "as is" and "as available" basis and may not be used with production data that has not been masked, anonymized or otherwise rendered unreadable. Oracle does not provide technical or other support or offer any warranties for such Services.

7.2 Oracle may make available "conference room pilots" for certain Cloud Services under this Agreement. Conference room pilots ordered by You are described in the Service Specifications applicable to Your order and are provided solely for You to evaluate and test the Cloud Services for Your internal business purposes. Conference room pilots are provided by Oracle on an "as is" and "as available" basis, and Oracle does not provide technical or other support or offer any warranties for such Services. You agree not to include any production data in Your conference room Services Environment. You may be required to order certain Professional Services as a prerequisite to an order for a conference room pilot.

7.3 Oracle may make available "production pilots" for certain Cloud Services under this Agreement. Production pilots ordered by You are described in the Service Specifications applicable to Your order, and are provided solely for You to evaluate and test Cloud Services for Your internal business purposes. You may be required to order certain Professional Services as a prerequisite to an order for a production pilot.

8. FEES AND TAXES

8.1 All fees payable to Oracle are due within 30 days from the invoice date. Once placed, Your order is non-cancelable and the sums paid nonrefundable, except as provided in this Agreement or Your order. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the Services You ordered, except for taxes based on Oracle's income. Fees for Services listed in an order are exclusive of taxes. Reimbursement of expenses related to providing any Professional Services, if any, will be addressed in the relevant ordering document and/or statement of work.

8.2 You understand that You may receive multiple invoices for the Services You ordered. Invoices will be submitted to You pursuant to Oracle's Invoicing Standards Policy, which may be accessed at <http://oracle.com/contracts>.

8.3 You agree and acknowledge that You have not relied on the future availability of any Services, programs or updates in entering into the payment obligations in Your order; however, the preceding does not relieve Oracle of its obligation during the Services Period to deliver Services that You have ordered per the terms of this Agreement.

9. SERVICES PERIOD; END OF SERVICES

9.1 Services provided under this Agreement shall be provided for the Services Period defined in Your order, unless earlier suspended or terminated in accordance with this Agreement or the order. Even though You order Cloud Services that are designated in the Service Specifications or Your Order as Auto Renew, such services will NOT automatically renew. In order to renew, You must provide Oracle with written notice no later than thirty (30) days prior to the end of the applicable Services Period of Your intent to renew and You must execute a contract modification evidencing such renewal. The preceding sentence shall not apply if Oracle provides You with written notice no later than ninety (90) days prior to the end of the applicable Services Period that it will not renew such Cloud Services.

9.2 Upon the end of the Services, You no longer have rights to access or use the Services, including the associated Oracle Programs and Services Environments; however, at Your request, and for a period of up to 60 days after the end of the applicable Services, Oracle will make available to You Your Content and Your Applications as existing in the Services Environment on the date of termination. At the end of such 60 day period, and except as may be required by law, Oracle will delete or otherwise render inaccessible any of Your Content and Your Applications that remain in the Services Environment.

9.3 Oracle may temporarily suspend Your password, account, and access to or use of the Services if You or Your Users violate any provision within the 'Rights Granted', 'Ownership and Restrictions', 'Fees and Taxes', 'Use of the Services', or 'Export' sections of this Agreement, or if in Oracle's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Oracle will provide advance notice to You of any such suspension in Oracle's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Oracle will use reasonable efforts to re-establish the affected Services promptly after Oracle determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Oracle will make available to You Your Content and Your Applications as existing in the Services Environment on the date of suspension. Oracle may terminate the Services under an order if any of the foregoing causes of suspension is not cured within 30 days after Oracle's initial notice thereof. Any suspension or termination by Oracle under this paragraph shall not excuse You from Your obligation to make payment(s) under this Agreement.

9.4 If either of us breaches a material term of this Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the order under which the breach occurred. If Oracle terminates the order as specified in the preceding sentence, You must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services ordered under this Agreement plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under this Agreement, You may not use those Services ordered.

9.5 You may terminate this Agreement at any time without cause by giving Oracle 30 days prior written notice of such termination. Termination of the Agreement will not affect orders that are outstanding at the time of termination. Those orders will be performed according to their terms as if this Agreement were still in full force and effect. However, those orders may not be renewed subsequent to termination of this Agreement.

9.6 If You have used an Oracle Financing Division contract to pay for the fees due under an order and You are in default under that contract, You may not use the Services that are subject to such contract.

9.7 Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

10. NONDISCLOSURE

10.1 By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). We each agree to disclose only information that is required for the performance of obligations under this Agreement. To the extent permitted by law, Confidential information shall be limited to the terms and pricing under this Agreement, Your Content and Your Applications residing in the Services Environment, and all information clearly identified as confidential at the time of disclosure.

10.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

10.3 Subject to applicable law, we each agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Oracle will hold Your Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. We each may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Oracle will protect the confidentiality of Your Content or Your Applications residing in the Services Environment in accordance with the Oracle security practices defined as part of the Service Specifications applicable to Your order. In addition, Your Personal Data will be treated in accordance with the terms of Section 11 below. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders placed under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

The parties acknowledge and agree that You and this Agreement are subject to applicable freedom of information or open records law. Should You receive a request under such law for Oracle's Confidential Information, You agree to give Oracle adequate prior notice of the request and before releasing Oracle's Confidential Information to a third party, in order to allow Oracle sufficient time to seek injunctive relief or other relief against such disclosure.

11. DATA PROTECTION

11.1 In performing the Services, Oracle will comply with the *Oracle Services Privacy Policy*, which is available at <http://www.oracle.com/html/Services-privacy-policy.html> and incorporated herein by reference. The *Oracle Services Privacy Policy* is subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of protection provided for Your Personal Data provided as part of Your Content during the Services Period of Your order.

11.2 Oracle's *Data Processing Agreement for Oracle Cloud Services* (the "Data Processing Agreement"), which is available at <http://www.oracle.com/dataprocessingagreement> and incorporated herein by reference, describes the parties' respective roles for the processing and control of Personal Data that You provide to Oracle as part of the Cloud Services. Oracle will act as a data processor, and will act on Your instruction concerning the treatment of Your Personal Data residing in the Services Environment, as specified in this Agreement, the Data Processing Agreement and the applicable order. You agree to provide any notices and obtain any consents related to Your use of the Services and Oracle's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

11.3 The Service Specifications applicable to Your order define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. You are responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content and Your Applications, including any viruses, Trojan horses, worms or other programming routines contained in Your Content or Your Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.

11.4 If available, You may purchase, or may be required to purchase, additional Services from Oracle (e.g., Oracle Payment Card Industry Compliance Services, Oracle HIPAA Security Services, Oracle Federal Security Services, etc.) to address particular data protection requirements applicable to Your business or Your Content.

12. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

12.1 Oracle warrants that it will perform (i) Cloud Services in all material respects as described in the Service Specifications, and (ii) Professional Services in a professional manner in accordance with the Service Specifications. If the Services provided to You were not performed as warranted, You must promptly provide written notice to Oracle that describes the deficiency in the Services (including, as applicable, the service request number notifying Oracle of the deficiency in the Services).

12.2 ORACLE DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ORACLE WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY ORACLE, AND (C) THE SERVICES WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT ORACLE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ORACLE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT, YOUR APPLICATIONS OR THIRD PARTY CONTENT. ORACLE DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

12.3 FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO YOU THE FEES PAID FOR THE DEFICIENT SERVICES FOR THE PERIOD OF TIME DURING WHICH THE SERVICES WERE DEFICIENT.

12.4 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

13. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO ORACLE FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM LESS ANY REFUNDS OR CREDITS RECEIVED BY YOU FROM ORACLE UNDER SUCH ORDER.

14. INDEMNIFICATION

14.1 Subject to the terms of this Section 14 (Indemnification), if a third party makes a claim against either You or Oracle ("Recipient" which may refer to You or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either You or Oracle ("Provider" which may refer to You or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will, to the extent not prohibited by law, defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- b. gives the Provider sole control of the defense and any settlement negotiations; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

14.2 If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

14.3 The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient, or (c) continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by the Provider. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or Services not provided by Oracle. Oracle will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible to You within or from the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, etc.). Oracle will not indemnify You for infringement caused by Your actions against any third party if the Services as delivered to You and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time Services rights are obtained.

14.4 The term "Material" defined above does not include Separately Licensed Third Party Technology. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use the Cloud Services and that is used: (a) in unmodified form; (b) as part of or as required to use the Cloud Services; and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of this Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for Materials under the terms of the Agreement.

14.5 This Section 14 provides the parties' exclusive remedy for any infringement claims or damages.

15. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

15.1 The Services may enable You to link to, transmit Your Content to, or otherwise access, other Web sites, content, products, services, and information of third parties. Oracle does not control and is not responsible for such Web sites or any such content, products, services and information accessible from or provided through the Services, and You bear all risks associated with access to and use of such Web sites and third party content, products, services and information.

15.2 The Services may enable You to link to, transmit Your Content to, or otherwise access, other Web sites, content, products, services, and information of third parties. Oracle does not control and is not responsible for such Web sites or any such content, products, services and information accessible from or provided through the Services, and You bear all risks associated with access to and use of such Web sites and third party content, products, services and information.

15.3 Any Third Party Content made accessible by Oracle in or through the Services Environment is provided on an "as-is" and "as available" basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and You acknowledge that Oracle is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Oracle reserves the right to take remedial action if any such content violates applicable restrictions under Section 6.2 of this Agreement, including the removal of, or disablement of access to, such content.

15.4 You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a "Third Party Service"), depend on the continuing availability of such third parties' respective application programming interfaces (APIs) for use with the Services. Oracle may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Oracle in its sole discretion, Oracle may cease providing access to the affected Third Party Content or Third Party Services without any liability to you. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Your obligations under this Agreement or the applicable order, and You will not be entitled to any refund, credit or other compensation due to any such changes.

15.5 Any Third Party Content that You store in Your Services Environment will count towards any storage or other allotments applicable to the Cloud Services that You ordered.

16. SERVICES TOOLS AND ANCILLARY PROGRAMS

16.1 Oracle may use tools, scripts, software, and utilities (collectively, the "Tools") to monitor and administer the Services and to help resolve Your Oracle service requests. The Tools will not collect or store any of Your Content or Your Applications residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Your Content and Your Applications) may also be used to assist in managing Oracle's product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license and Services management.

16.2 As part of the Cloud Services, Oracle may provide You with on-line access to download certain Ancillary Programs for use with the Services. If Oracle does not specify Separate Terms for such Ancillary Programs, You shall have a non-transferable, non-exclusive, non-assignable, limited right to use such Ancillary Programs solely to facilitate Your access to, operation of, and/or use of the Services Environment, subject to the terms of this Agreement and Your order. Your right to use such Ancillary Programs will terminate upon the earlier of Oracle's notice (which may be through posting on <https://support.oracle.com> or such other URL designated by Oracle), the end of the Cloud Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs.

17. SERVICE ANALYSES

Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information in a form that could serve to identify You or any individual, and Service Analyses do not constitute Personal Data. Oracle retains all intellectual property rights in Service Analyses.

18. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. You agree that such export laws govern Your use of the Services (including technical data) and any Services deliverables provided under this Agreement, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

19. FORCE MAJEURE

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services.

20. NOTICE

20.1 Any notice required under this Agreement shall be provided to the other party in writing. If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification Section of this Agreement, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA 94065. Attention: General Counsel, Legal Department.

20.2 To request the termination of Services in accordance with this Agreement, You must submit a service request to Oracle at the address specified in Your order or the Service Specifications.

20.3 Oracle may give notices applicable to Oracle's Cloud Services customer base by means of a general notice on the Oracle portal for the Cloud Services, and notices specific to You by electronic mail to Your e-mail address on record in Oracle's account information or by written communication sent by first class mail or pre-paid post to Your address on record in Oracle's account information.

21. ASSIGNMENT

You may not assign this Agreement or give or transfer the Services (including the Oracle Programs) or an interest in them to another individual or entity. If You grant a security interest in any portion of the Services, the secured party has no right to use or transfer the Services or any deliverables, and if You decide to finance Your acquisition of the Services, You will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights You may otherwise have with respect to Separately Licensed Third Party Technology licensed under open source or similar license terms.

22. OTHER

22.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance. To the extent not prohibited by law, You shall defend and indemnify Oracle against liability arising under any applicable laws, ordinances or regulations related to Your termination or modification of the employment of any of Your employees in connection with any Services under this Agreement. You understand that Oracle's business partners, including any third party firms retained by You to provide consulting services or applications that interact with the Cloud Services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner, unless the business partner is providing Services as an Oracle subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Oracle would be responsible for Oracle resources under this Agreement.

22.2 If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

22.3 Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two years after the cause of action has accrued.

22.4 Oracle Programs and Services are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Oracle Programs and Services in such applications.

22.5 You shall obtain at Your sole expense any rights and consents from third parties necessary for Your Content, Your Applications, and Third Party Content, as well as other vendor's products provided by You that You use with the Services, including such rights and consents as necessary for Oracle to perform the Services under this Agreement.

22.6 You agree to provide Oracle with all information, access and full good faith cooperation reasonably necessary to enable Oracle to provide the Services and You will perform the actions identified in Your order as Your responsibilities.

22.7 You remain solely responsible for Your regulatory compliance in connection with Your use of the Services. You are responsible for making Oracle aware of any technical requirements that result from Your regulatory obligations prior to entering into an order governed by this Agreement. Oracle will cooperate with Your efforts to determine whether use of the standard Oracle Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by Oracle or changes to the Services.

22.8 Oracle may audit Your use of the Services (e.g., through use of software tools) to assess whether Your use of the Services is in accordance with Your order. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to pay within 30 days of written notification any fees applicable to Your use of the Services in excess of Your rights. If You do not pay, Oracle can end Your Services and/or Your order. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit.

22.9 The purchase of Cloud Services, Professional Services, or other service offerings, programs or products are all separate offers and separate from any other order. You understand that You may purchase Cloud Services, Professional Services, or other service offerings, programs or products independently of any other order. Your obligation to pay under any order is not contingent on performance of any other service offerings or delivery of programs or products.

23. ENTIRE AGREEMENT

23.1 You agree that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, is the complete agreement for the Services ordered by You and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

23.2 It is expressly agreed that the terms of this Agreement and any Oracle order shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Oracle document and no terms included in any such purchase order, portal, or other non-Oracle document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an order and the Agreement, the order shall take precedence; however, unless expressly stated otherwise in an order, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in an order. Except as otherwise permitted in Section 5 (Service Specifications) and Section 11 (Data Protection) with respect to the Services, this Agreement and orders hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of You and of Oracle. No third party beneficiary relationships are created by this Agreement.

24. CLOUD SERVICES EFFECTIVE DATE

The Effective Date of this Cloud Services Agreement is _____ (DATE TO BE COMPLETED BY ORACLE)

CITY OF FORT LAUDERDALE

[Signature]
John B. "Jack" Seiler, Mayor

ATTEST:

[Signature]
Jonda K. Joseph, City Clerk

Approved: [Signature]
Lee R. Feldman, City Manager

Approved as to form:

[Signature]
Asst. City Attorney

Signature Date: 2/19/14

Oracle America, Inc.

Authorized Signature: [Signature]

Name: Dawn M. Allen

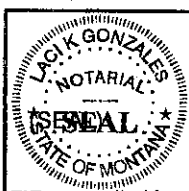
Title: Manager, CRM

Signature Date: 21-Feb-14

STATE OF Montana
COUNTY OF Gallatin

The foregoing instrument was acknowledged before me this 21st day of February, 2014, by Dawn M. Allen as Deal Manager (an individual authorized by the corporation to bind the corporation) for Oracle America, Inc., a Delaware corporation authorized to transact business in the State of Florida.

Laci K. Gonzales
Notary Public
for the State of Montana
Residing at:
Bozeman, Montana
My Commission Expires:
June 07, 2015



[Signature]
(Signature of Notary Public)
State of Montana
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification X

Type of Identification Produced United States Passport

Agreement No.: US-CSA-7416 [to be completed by Oracle]

Agreement Information

This Amendment amends the Public Sector Agreement for Oracle Cloud Services, US-CSA-7416, and all amendments and addenda thereto (the "Agreement") between the City of Fort Lauderdale, a Florida municipality, ("You") and Oracle America, Inc., a Delaware corporation authorized to transact business in the State of Florida, ("Oracle").

The parties agree to amend the Agreement as follows:

1. In 1. AGREEMENT DEFINITIONS

Delete **1.15. "Users"** and replace it with the following:

"1.15. "Users" means those employees, contractors, and end users, as applicable, authorized by You to use the Cloud Services in accordance with this Agreement and Your order."

2. In 4. OWNERSHIP AND RESTRICTIONS

a. Delete "e)" in subsection 4.2 and replace it with the following:

"e) perform or, subject to the provisions of section 10 of this Agreement, disclose any of the following security testing of the Services Environment or associated infrastructure without Oracle's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and"

b. Delete "f)" in subsection 4.2 and replace it with the following:

"f) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose (subject to the provisions of section 10 of this Agreement), permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, Oracle Programs, Ancillary Programs, Services Environments or materials available, to any third party, other than as expressly permitted under the terms of the applicable order."

c. Delete subsection 4.3 in its entirety.

3. In 6. USE OF THE SERVICES

a. Delete the first two sentences in subsection 6.1 and replace them with the following:

"6.1 You are responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and, except as otherwise provided by Florida law, for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Your and Your Users' use names, passwords and accounts with Oracle, You accept responsibility for the timely and proper termination of user records in Your local (intranet) identity infrastructure or on Your local computers in accordance with Florida law."

b. Delete subsection 6.2 in its entirety and replace it with the following:

"6.2 You agree not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Your Content, Your Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or

promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Oracle under this Agreement, Oracle reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the segregation of such material away from the remainder of Your Content. Oracle shall have no liability to You in the event that Oracle takes such action, so long as Oracle removes or disables it upon Your request, and provides You access to such material for retrieval purposes. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content and Your Applications."

4. In 8. FEES AND TAXES

Add "Except to the extent You are exempt," to the start of the third sentence of subsection 8.1, so that the sentence reads as follows:

"8.1 Except to the extent You are exempt, You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the Services You ordered, except for taxes based on Oracle's income."

5. In 9. SERVICES PERIOD; END OF SERVICES

Add "nondisclosure" to the one sentence in subsection 9.7, so that the subsection reads as follows:

"9.7 Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, infringement indemnity, payment, nondisclosure, and others which by their nature are intended to survive."

6. In 11. DATA PROTECTION

Delete subsection 11.4 in its entirety and replace it with the following:

"11.4 You may not provide Oracle access to health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless specified in Your order. If available, You may purchase services from Oracle (e.g., Oracle Payment Card Industry Compliance Services, Oracle HIPAA Security Services, Oracle Federal Security Services, etc.) designed to address particular data protection requirements applicable to Your business or Your Content."

7. In 14. INDEMNIFICATION

Delete the entire section 14 and replace it with the following:

"14.1 Subject to the terms of this Section 14 (Indemnification), if a third party makes a claim against You that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by and used by You infringes the third party's intellectual property rights, Oracle, at Oracle's sole cost and expense, will defend You against the claim and indemnify You from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Oracle, if You do the following:

- a. notify Oracle promptly in writing, not later than 30 days after You receive notice of the claim (or sooner if required by applicable law) (Your failure to notify Oracle within thirty (30) days or sooner if required by law shall only relieve Oracle of its obligation to indemnify You under this paragraph if Oracle's defense of such claim is prejudiced by such failure.);
- b. give Oracle sole control of the defense and any settlement negotiations (provided, however, that without Your written consent, Oracle may not settle a claim requiring payment by You of any non-reimbursable sum); and
- c. give Oracle the information, authority and assistance Oracle needs to defend against or settle the claim.

14.2 If Oracle believes or it is determined that any of the Material may have violated a third party's intellectual property rights, Oracle may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Oracle may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees You may have paid to Oracle for such Material. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

14.3 Oracle will not indemnify You if You (a) alter the Material or use it outside the scope of use identified in Oracle's user or program documentation or Service Specifications, (b) use a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to You, or (c) continue to use the applicable Material after the end of the license to use that Material. Oracle will not indemnify You to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by Oracle. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or Services not provided by Oracle. Oracle will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible to You within or from the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, etc.). Oracle will not indemnify You for infringement caused by Your actions against any third party if the Services as delivered to You and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time Services rights are obtained.

14.4 The term "Material" defined above does not include Separately Licensed Third Party Technology, except that solely with respect to Separately Licensed Third Party Technology that is part of or is required to use the Cloud Services and that is used: (a) in unmodified form; (b) as part of or as required to use the Cloud Services; and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of this Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for Materials under the terms of the Agreement.

14.5 This Section 14 provides Your exclusive remedy for any infringement claims or damages."

8. In 15. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

Delete this section in its entirety and replace it with the following:

"15.3 Any Third Party Content made accessible by Oracle in or through the Services Environment is provided on an "as-is" and "as available" basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and You acknowledge that Oracle is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Oracle reserves the right to take remedial action if any such content violates applicable restrictions under Section 6.2 of this Agreement, including the segregation of such content."

9. In 17. SERVICE ANALYSES

Delete this section in its entirety and replace it with the following:

"Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information, and Service Analyses do not contain Personal Data. Oracle retains all intellectual property rights in Service Analyses."

10. In 19. FORCE MAJEURE

Delete this section in its entirety and replace it with the following:

"Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services provided."

11. In 20. NOTICE

Delete subsection 20.1 in its entirety and replace it with the following:

"20.1 Any notice required under this Agreement shall be provided to the other party in writing. If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification Section of this Agreement, or if You become subject to bankruptcy, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA 94065. Attention: General Counsel, Legal Department."

12. In 21. ASSIGNMENT

Delete this section in its entirety and replace it with the following:

"You may not assign this Agreement or give or transfer the Services (including the Oracle Programs) or an interest in them to another individual or entity. You may not finance Your acquisition of the Services. You may not grant a security interest in any portion of the Services to another entity."

13. In 22. OTHER

a. Delete the third sentence of subsection 22.1 in its entirety and replace it with the following:

"Except as prohibited by the Florida Constitution or by the Laws of the State of Florida, and subject to the limitations contained in Section 768.28, Florida Statutes (2013), as may be amended or revised, You shall defend and indemnify Oracle against liability arising under any applicable laws, ordinances or regulations related to Your termination or modification of the employment of any of Your employees in connection with any Services under this Agreement."

b. Delete subsection 22.2 in its entirety and replace it with the following:

"22.2 If any term of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement."

c. Delete subsection 22.3 in its entirety and replace it with the following:

"22.3 This subsection is reserved."

d. Delete subsection 22.4 in its entirety and replace it with the following:

"22.4 Oracle Programs and Services are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Oracle Programs and Services in such applications, if any."

14. 25. GOVERNING LAW AND JURISDICTION

Add this new section as follows:

"This Agreement is governed by the substantive and procedural laws of the State of Florida and You and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division, in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement or to orders placed under it."

Subject to the modifications herein, the Agreement shall remain in full force and effect.

The Effective Date of this amendment is _____ (to be completed by Oracle)

City of Fort Lauderdale
[Signature]
John P. "Jack" Seiler, Mayor

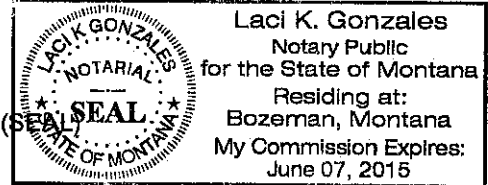
ATTEST:
[Signature]
Jonda K. Joseph, City Clerk
[Signature]
Lee R. Feldman, City Manager

Oracle America, Inc.
Authorized Signature: [Signature]
Name: Dawn M. Allen
Title: Manager CDM
Signature Date: 21-feb-14

Approved as to form:
[Signature]
Asst City Attorney
Signature Date: 2/19/14

STATE OF Montana
COUNTY OF Gallatin

The foregoing instrument was acknowledged before me this 21st day of February, 2014, by Dawn M. Allen as Deal Manager (an individual authorized by the corporation to bind the corporation) for Oracle America, Inc., a Delaware corporation authorized to transact business in the State of Florida.



[Signature]
(Signature of Notary Public)
State of Montana
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification X
Type of Identification Produced United States Passport

CERTIFICATE OF ASSISTANT SECRETARY
OF
ORACLE AMERICA, INC.

I, the undersigned, hereby certify that I am the duly elected, qualified and acting Assistant Secretary of Oracle America, Inc., a Delaware corporation (the "Corporation") and that, as such, I am authorized to execute this Certificate on behalf of the Corporation and further certify that:

1. The following is a true copy of such portion of the Document Signing Authority Policy, effective as of the date hereof, as is relevant to the transaction concerning which this Certificate was requested:

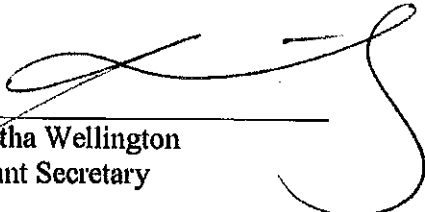
"For contracts up to \$2,000,000 only (all lines of business)

- Manager, Deal Management (all lines of business)
- Manager, Deal Management Operations (all lines of business)

... may sign any contract relating to transactions generated by the Corporation for the line of business supported by your position (e.g. consulting services, systems or licensing) provided that such contract complies with all relevant policies and procedures of the Corporation. A Manager listed above may appoint someone who is in their management chain to sign a contract on their behalf if the manager first reviews the contract, confirms all approvals for the contract, and sends an email to the appointee which confirms that the agreement may be signed. After receipt of the manager's confirmation and after validating the authenticity of the contract, the appointee may sign the contract in the name of the manager. The appointee shall indicate the appointment by writing "by" and inserting the appointee's name below the signature line."

2. Dawn Allen currently serves as Manager, Cloud Deal Management.

IN WITNESS WHEREOF, I have executed this Certificate on this 28th day of October 2013.



Samantha Wellington
Assistant Secretary

ENSTOA – CONSULTING AGREEMENT

Consultant: Enstoa, Inc., a Delaware corporation authorized to transact business in the State of Florida,
("Consultant" or "Enstoa")

Address: 655 Third Avenue, Floor 7, New York, NY 10017, USA

Primary Contact: Arnaud Giret email: agiret@enstoa.com

Customer: City of Fort Lauderdale, a Florida municipality ("Customer")

Address: _____

Primary Contact: _____ email: _____

1. Engagement

(a) Customer hereby engages Consultant to provide the services and deliverables set forth on Appendix A (the "Project") in accordance with the timetable set forth on Appendix A (as the same may be amended from time to time) (the "SOW"), and Consultant hereby accepts the engagement. Consultant will perform, and cause its employees and agents to perform, the Project in a competent and efficient manner and in compliance with all applicable laws, rules and regulations and Customer's policies and procedures.

(b) Except as otherwise expressly set forth in any Appendix hereto, Consultant will supply, at Consultant's sole cost and expense, all materials and supplies necessary for completing the Project. Any materials and supplies furnished by Customer shall remain at all times the property of Customer, and upon completion of the Project shall be returned to Customer in good condition, reasonable wear and tear excepted.

(c) Customer shall cooperate with Consultant by providing reasonable facilities and timely access to data, information and personnel and shall provide instructions and decisions in a timely manner.

2. Term and Termination.

(a) Term. The term of the engagement is set forth in Appendix A.

(b) Termination for Breach. Each party shall have the right to terminate this Agreement upon written notice to the other party if: (i) the other party is in material breach of the terms of this Agreement, and the breaching party fails to remedy such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party; or (ii)(A) the other party makes an assignment for the benefit of creditors or makes an admission in writing of its inability to pay debts as they mature; (B) the other party files a voluntary petition for reorganization or arrangement under the U.S. Bankruptcy Code or files an answer consenting to or acquiescing in any such petition; (C) there is filed against the other party an involuntary petition under the U.S. Bankruptcy Code, an application for the appointment of a receiver for its assets, or an involuntary petition seeking liquidation, reorganization or arrangement under any other federal or state bankruptcy or insolvency laws, provided the same will not have been vacated, set aside or stayed within sixty (60) days after filing; (D) there is entered against the other party a final, non-appealable order for relief under any other bankruptcy, insolvency or similar law now or hereafter in effect; or (E) the other party ceases business operations in the ordinary course.

(d) Effect of Termination. Except as expressly set forth herein, upon termination or expiration of this Agreement or any engagement hereunder: (i) Except as otherwise provided by Florida law or Florida public records retention schedules, Customer shall promptly return to Enstoa all of Enstoa's Confidential Information in its possession or under its control; (ii) Enstoa shall promptly return to Customer all of Customer's Confidential Information in Enstoa's possession or under its control; (iii) Customer shall promptly pay to Enstoa any undisputed fees which have accrued and are otherwise outstanding hereunder as of the effective date of termination.

3. Payment.

(a) Fees. The fees for the Project are specified in Appendix A hereto. Payments are due 45 calendar days from Customer's receipt of proper invoice. No retainage shall be applied on invoice amounts.

(b) If on an invoice due date Customer has not paid it in full (subject to any deductions Customer is entitled to make), Consultant shall be entitled to give 14 (fourteen) days' notice of non-payment where after Consultant have the right to suspend all services provided to Customer. In these circumstances Consultant shall not be liable for any damages, delays, losses or expenses resulting from such suspension.

(c) Invoice payments are subject to Florida Prompt Payment Act for non-construction services.

4. Confidentiality.

(a) Consultant shall hold in confidence, and not disclose, distribute, sell, copy or otherwise disseminate or use, any information about or relating to the Project or any information (whether oral, electronic, automated, audio, video and image) pertaining to Customer's employees, research, development, plans, business affairs, properties, records, processes, techniques, contract terms or operating procedures (collectively, "Customer Confidential Information") disclosed to Consultant, except that Consultant may disclose Confidential Information to a third party that is performing work in connection with the Project on a "need to know" basis. Customer shall hold in confidence, and not disclose, distribute, sell, copy or otherwise disseminate or use, any non-public information of Consultant about or relating to the Project that is confidential pursuant to Florida law (whether oral, electronic, automated, audio, video and image) (collectively, "Consultant Confidential Information"), except that Customer may disclose Consultant Confidential Information to a third party that is performing work in connection with the Project on a "need to know" basis. Upon termination of the engagement, Consultant shall return to Customer any and all Customer Confidential Information in its possession or control and, except as otherwise provided by Florida law or Florida public records retention schedules, Customer shall return to Consultant any and all Consultant Confidential Information in its possession or control. Notwithstanding the foregoing, Confidential Information shall not include information that is in the public domain or has been generally known by Consultant prior to disclosure of the information.

(b) Each party shall promptly advise the other party of any unauthorized use or disclosure of the other party's Confidential Information.

5. Work for Hire.

(a) All data and information developed or prepared by Consultant in connection with the Project other than the Enstoa Panoptra, Enstoa Panoptra DataBridge, Enstoa Unifier AfterMods products and all other products listed on Enstoa's website (including the Object Codes and Source Codes thereof), ("Deliverables") shall be the sole property of Customer, and any copyrightable work or materials included in the Deliverables shall be deemed a work made for hire under federal copyright law, and shall belong solely to Customer. To the extent that any Deliverable may not, by operation of law, be a work made for hire, Consultant hereby grants, transfers, assigns and conveys to Customer the ownership of the copyright, patent or other intellectual property right in such Deliverable and Customer shall have the right to obtain and hold in its own name any such right or similar protection which may be available in such Deliverable. At Customer's request, Consultant shall promptly deliver, execute, file and record any and all documentation evidencing such assignment. Consultant shall indemnify and hold harmless Customer in connection with any claim by a third party (including, without limitation, any Consultant Personnel) to a Deliverable that infringes upon Customer's patent, copyright, license, trade secret or other proprietary right in the Deliverable. For the avoidance of doubt, Enstoa Panoptra, Enstoa Panoptra DataBridge, Enstoa Unifier AfterMods products and all other products listed on Enstoa's website (including the Object Codes and Source Codes thereof), the Documentation and the Know-how are not Deliverables hereunder.

(b) To the extent that Consultant uses any of its intellectual or other property in connection with performance of its services, Consultant shall retain all right, title and interest in and to such property and, except for the license expressly granted in the License Agreement, Customer shall acquire no right, title or interest in or to such property.

6. Independent Contractor. In the performance of the Project Consultant shall act solely as an independent contractor. Nothing in this Agreement shall constitute or be construed to be or create a partnership, joint venture, principal/agent or employment relationship between Customer and Consultant, nor shall Consultant have the right or authority to contractually bind or obligate Customer. Under no circumstances shall Consultant or any employee, agent or representative of Consultant ("Consultant Personnel") be deemed to be an employee,

agent or representative of Customer, and neither Consultant nor any Consultant Personnel shall be entitled to any disability benefit, workers' compensation or participation in any of Customer's pension, health or other benefit plans. Consultant agrees that all Consultant Personnel are employees, agents or representatives of the Consultant, and that during the course of providing services on behalf of Customer, Consultant retains authority and responsibility for (i) the supervision and control of the Consultant Personnel; (ii) determining the means and methods by which each Consultant Personnel provides services hereunder; and (iii) the compensation (and benefits) of the Consultant Personnel for their services, including, without limitation, the setting, modification and payment thereof, and the payment of all federal, state and local payroll taxes, including, without limitation, income taxes, Social Security taxes, federal unemployment compensation taxes and any other fees, charges licenses or payments required by law. Consultant hereby agrees to indemnify and hold harmless Customer against any fines, damages, assessments or attorneys' fees incurred by Customer in the event a court or administrative agency finds that Consultant or any Consultant Personnel is an employee of Customer.

7. Covenants; Representations and Warranties.

(a) Consultant covenants that (i) it shall comply with all Project specifications set forth in Appendix A; (ii) Customer shall have good title to all Deliverables free from any lien, claim, charge or encumbrance; (iii) the Deliverables will not infringe, misappropriate or violate the rights of any third party, including any copyright or patent rights, existing as of the date of delivery thereof and (iii) upon completion of the Project, the work product shall conform with Customer's specifications and intended use for ninety (90) days after the services delivery. In the event of a breach of the provisions of clause (iii), Consultant shall, at its sole cost and expense, promptly correct, repair or modify any defect or deviation identified by Customer in writing within thirty (30) days of Customer's written demand. If Consultant fails to correct, repair or modify the defect or deviation to Customer's satisfaction, Consultant shall promptly refund any and all sums previously paid to it by Customer in connection with the Project attributable to the time period after such notice of breach and this Agreement shall be deemed terminated without the need for further notice.

(b) Consultant represents and warrants that (i) it has full power and authority to enter into this Agreement and to perform its obligations hereunder, (ii) the Project and any materials created by or for Consultant in connection therewith will not violate or infringe upon any proprietary or other right of a third party in existence as of the date of delivery of the allegedly infringing item, and (iii) performance by Consultant of the terms and conditions of this Agreement is not restricted by or in violation of any applicable law to which it is subject or any agreement, commitment, order, ruling or proceeding to which it is a party or to which it or any of its assets are subject.

8. Warranty Disclaimer. THERE ARE NO OTHER WARRANTIES OR CONDITIONS (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARISING UNDER LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE) FOR THE SERVICES. ENSTOA DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, THE CONDITIONS AND/OR WARRANTIES OF MERCHANTABILITY, AND MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, PARTICULAR, SPECIFIC OR OTHERWISE. ENSTOA DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. FURTHER, ENSTOA DOES NOT WARRANT THAT ALL ERRORS IN THE SERVICES CAN OR WILL BE CORRECTED. CUSTOMER UNDERSTANDS AND AGREES THAT ANY MATERIAL OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE SERVICES IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK, AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA. INASMUCH AS SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER.

9. Limitation Of Liability.

(a) Disclaimer of Consequential Damages. IN NO EVENT SHALL CONSULTANT BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.

(b) Limitation on Direct Damages. IN NO EVENT SHALL CONSULTANT'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE PREVIOUS TWELVE (12) MONTHS IF SUCH CLAIM IS BASED IN CONTRACT.

10. Insurance. Consultant shall maintain throughout the term of this Agreement (i) commercial general liability insurance, written on an occurrence basis, on a combined single limit of \$1,000,000 per occurrence for bodily injury or property damage \$2,000,000 annual aggregate, which insurance shall include broad form property damage and contractual liability endorsements; (ii) professional liability (errors and omissions) insurance in an amount not less than \$2,000,000 per claim and (iii) statutory workers' compensation insurance with Employers' Liability limits of \$500,000 per occurrence. Consultant shall provide certificate(s) of insurance evidencing the required overages to Customer. The certificates shall name Customer as an additional insured with respect to the commercial general liability coverage.

11. Indemnification.

(a) Consultant shall defend, indemnify and hold harmless Customer and Customer's officers, trustees, employees and agents from and against any and all claims, liabilities, losses, expenses (including attorneys' fees), fines, penalties, taxes or damages (collectively, "Claims") arising out of bodily injury, death or physical damage to real or tangible personal property to the extent caused by or resulting from the negligence, recklessness, or willful misconduct of Consultant while engaged in the performance of its obligations hereunder.

(b) To the extent an SOW specifies Deliverables which have intellectual property rights appurtenant thereto, Consultant shall defend, indemnify and hold harmless Customer from all Claims attributable to third parties relating to infringement by the Deliverables of any federal patent or copyright or any unauthorized use of a trade secret. If the Deliverables, or any portion thereof, are found by final, non-appealable order of a court of competent jurisdiction to be such an infringement or unauthorized use, Consultant may, at its option and expense, (i) secure for Customer the right to continue the use of such infringing item or (ii) replace or modify such Deliverable so it becomes non-infringing, provided that such replacement or modification is capable of performing substantially the same function. If Consultant, in its reasonable discretion, is unable to perform either option, Customer shall return the Deliverable to Consultant and Consultant's sole liability shall be to refund to Customer the amount paid to Consultant for such item attributable to the time period after the return of such Deliverable, provided that the foregoing shall not be construed to limit Consultant's indemnification obligation set forth herein.

(c) The party seeking indemnification under this Agreement will give prompt written notice to the other party of the Claim against which it seeks to be indemnified; provided, however, that failure to give prompt notice will not relieve such other party of any liability hereunder (except to the extent the other party has suffered actual material prejudice by such failure). The party seeking indemnification will allow the other party to direct the defense and settlement of any such Claim, with counsel of such other party's choosing subject to the reasonable approval of the party seeking indemnification, and will provide such other party, at such other party's expense, with information and assistance reasonably necessary for the defense and settlement of the claim. The party seeking indemnification will have the right, at its sole expense, to retain separate counsel and to participate in (but not control) any such action. The other party will not settle any such action without the written consent of the party seeking indemnification, which consent will not be unreasonably withheld or delayed. The other party will not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to the party seeking indemnification a release from all liability with respect to the Claim.

12. Use of Name. Consultant shall not use the name of Customer in any advertising or for any commercial or promotional purpose without Customer's written consent.

13. Compliance with Law. Consultant shall comply with all applicable federal, state and local laws, including, without limitation, the prohibition against discrimination on the basis of race, religion, creed, color, national origin, age, disability, sex, marital status or veteran status.

14. Notices. All notices, demands and other communications hereunder ("Notice") shall be in writing and shall be effective for any purpose if hand delivered against receipt or sent by registered or certified mail, return receipt requested, postage prepaid. Notices to Consultant shall be sent to the address set forth above, or such other address designated by a party pursuant to the provisions of this paragraph; notices to Customer shall be sent to the address set forth above.

15. Assignment. Neither Party shall assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, provided that such consent shall not be unreasonably withheld.

16. Survival. The provisions of this Agreement pertaining to confidentiality, public records, work for hire, use of name and indemnification shall survive the expiration or early termination of this Agreement.

17. Governing Law and Claims.

(a) This Agreement shall be governed and construed in accordance with the laws of the State of Florida without regard to any applicable conflicts of law. 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 courts in Broward County, Florida, or in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida, Fort Lauderdale Division.

(b) [Reserved.]

18. Miscellaneous. This Agreement and the appendices hereto constitute the entire agreement between the parties and supersede any and all prior and collateral negotiations and agreements, both written and oral, between the parties. This Agreement may be amended only in writing signed by the parties hereto. The invalidity or unenforceability of any provision of this Agreement, as determined by a court of competent jurisdiction, shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. No waiver of any provision of this Agreement shall be binding on any party unless consented to in writing by such party. No waiver of any provision hereof shall constitute a waiver of any other provisions, nor limit or affect such party's rights with respect to any future breach of any of the provisions of this Agreement. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last date set forth below.

CITY OF FORT LAUDERDALE:

[Signature]
John P. "Jack" Seiler, Mayor

ATTEST:

[Signature]
Jonda K. Joseph, City Clerk

[Signature]
Lee R. Feldman, City Manager

Approved as to form:

[Signature]
City Attorney

WITNESSES:

[Signature]
Print Name: Sandra Kim
Witnesses:

Print Name: PATRICK RABAGO

Print Name: *[Signature]*

(Corporate Seal)

Enstoa, Inc.

By: *[Signature]*
Print Name: ARNAUD GIRET
President CFO

ATTEST:

[Signature]
Print Name: JORRI JOERGENSEN
Secretary

STATE OF NY
COUNTY OF NY

The foregoing instrument was acknowledged before me this 21 day of Feb., 2014, by Arnaud G. Giret as president for Enstoa, Inc., a Delaware corporation authorized to transact business in the State of Florida.

[Signature]
(Signature of Notary Public)
State of NY
(Print, Type, or Stamp Commissioned Name of Notary Public)

KERRY LATOYA MITCHELL
No. 01M16243289
Notary Public, State of New York
Qualified in New York City County
My Commission Expires June 20, 2015

(SEAL)

Personally Known _____ OR Produced Identification

Type of Identification Produced French Passport # 12ch 48747
Enstoa Consulting Agreement

Appendix A
THE PROJECT

The services to be provided by Consultant are detailed in the Statement of Work entitled Project & Asset Management Software for City of Fort Lauderdale Bid Number 432-11230 submitted May 16th, 2013.