



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

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Today's Date: 10/31/2016

DOCUMENT TITLE: CONTRACT FOR PURCHASES OF ENTERPRISE RESOURCE PLANNING
SYSTEM SOLUTION AND PROFESSIONAL SERVICES – CIBER, INC.

COMM. MTG. DATE: 9/7/2016 **CAM #:** 16-0900 **ITEM #:** PUR-14 **CAM attached:** ☒ YES ☐ NO

Routing Origin: CAO **Router Name/Ext:** Astrid Sperling/5001 **Action Summary attached:** ☒ YES ☐ NO

CIP FUNDED: ☐ YES ☐ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 1

Is attached Granicus document Final? ☒ YES ☐ NO

Approved as to Form: ☒ YES ☐ NO

Date to CCO: 10/31/16

Cole Copertino
Attorney's Name

M
Initials

2) City Clerk's Office: # of originals: 1 Routed to: Gina Ri/CMO/X5013 Date: 10/31/16

3) City Manager's Office: CMO LOG #: Nov-2 Document received from: _____

Assigned to: L. FELDMAN ☐ S. HAWTHORNE ☐ C. LAGERBLOOM ☐
L. FELDMAN as CRA Executive Director ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE (Initial/Date) C. LAGERBLOOM

(Initial/Date) ☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward ___ originals to ☐ Mayor ☐ CCO Date: _____

4) City Clerk's Office: Retains 1 original and forwards 1 original(s) and 1 copy to: Linda Blanco/
Procurement/ 5141

Attach ___ certified Reso # ___ ☐ YES ☒ NO

Original Route form to CAO

Rev. 7/6/16

**AGREEMENT
FOR
PROFESSIONAL SERVICES
RFP 742-11378 ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM SOLUTION**

THIS AGREEMENT, made this 31 day of October 2016 ("Effective Date"), is by and between the City of Fort Lauderdale, a Florida municipality, ("City" or "Client"), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and Ciber, Inc., ("Contractor") a Delaware corporation authorized to transact business in the State of Florida, whose address and phone number are 6312 S Fiddler's Green Circle Suite 600E, Greenwood Village, Colorado, 80111, Phone: (303)220-0100, (800)242-3799, Fax: (303) 224-4125.

Definitions

Acceptance Criteria means the criteria based upon which City accepts or rejects each Deliverable, which Acceptance Criteria will be mutually agreed as set out in the applicable Task Order.

Acceptance Testing means conducting of the series of tests and protocols, as mutually agreed as set out in this Agreement, utilizing Acceptance Criteria, for Deliverables.

Application Software means the application component or product and technology software and specific modules that City has licensed from the Application Software providers which will be used for the project.

BAFO means the Contractor's Best and Final Offer and all addenda thereto prepared, and agreed to, by Contractor and City as attached hereto and made a part hereof as Exhibit B.

Business Day means Monday through Friday of each week except for holidays observed by the City.

Change Order is as defined in Section 2-127 of the Code of Ordinances of the City of Fort Lauderdale, FL.

City Manager means the City Manager of the City of Fort Lauderdale, FL or his/her designee.

City's Facilities means City's own equipment, systems, network, facilities, premises, operations and/or data environment.

City's Project Manager means the City's staff member who serves as the primary contact responsible for coordination with Contractor. The primary responsibilities of the City's Project Manager are to coordinate and communicate with Contractor and to manage and supervise execution and completion of the Task Order and the other terms and conditions of the Agreement.

City's Security Procedures means all appropriate security procedures as required by prudent business practices for its operations, consistent with industry standards, designed to avoid any security incident and any other unauthorized use or disclosure or the like.

Conditional Acceptance means the City's acceptance of Deliverables or Services that: (1) the parties agree not to subject to Acceptance Testing; or (2) do not successfully complete Acceptance Testing under the condition that Contractor will rectify the situation within an agreed or reasonable period.

Contract Documents means the RFP, the BAFO, Contractor's Response and all Task Orders.

Contractor's Project Manager means the person who serves as Contractor's primary contact responsible for coordination with the City.

Contractor's Response means Contractor's response to the RFP, dated October 17, 2014, including Contractor's responses to the City's addendum to the RFP. The Contractor's Response is attached hereto and made a part hereof as Exhibit C.

Core Project Team means a team consisting of the City's functional business and technical leads. Functional business leads shall include key personnel responsible for decision making and process design, and system configuration in business areas such as General Ledger, Accounts Payable, Financial Budgeting, Cash Management, Procurement, Contract Management, Human Resources, Payroll, and Benefits. The Core Project Team will participate in product training, current and future state business process design, system design, integrated system testing, user acceptance testing, courseware development, and project activation (Go-Live).

Customizations means additional modifications, interfaces, conversion, report writing, and other similar services requested by City from Contractor.

Defect means a failure of any Deliverable to conform to the Acceptance Criteria or to perform in material accordance with the Documentation and requirements of the applicable Task Orders. In the event of a conflict between the Acceptance Criteria and the Documentation, the Acceptance Criteria shall prevail. The term "Defect" expressly excludes any defect arising solely from a defect or malfunction of the Application Software, other than such that arises as the result of a customization or interface to the Application Software provided by Contractor or a functionality specifically stated in the Specifications in the Request for Proposal or Contractor's response to the RFP dated October 17, 2014, ("Exhibit C") including Contractor's responses to the City's addendum to the RFP.

Deliverable(s) means all "Deliverables" as such are defined and set out in a Task Order to be delivered by Contractor and all Services to be performed for and provided to City by Contractor in accordance with this Agreement and the applicable Task Orders.

Delivery means that the applicable Deliverable has been provided or has taken place as follows:

A. In case of items to be delivered in tangible form, upon the transfer of possession of the item to the control of the respective City personnel designated to receive such possession at the designated time and place, or, if no place is designated, at such person's regular business office;

B. In the case of items to be delivered by electronic transmission, upon successful completion of such transmission to the designated City computer and verification by the City of the accuracy of such transmission;

C. In the case of items subject to the completion of Acceptance Testing, upon successful completion of such Acceptance Testing; and

D. In all other cases, upon completion of the Services encompassed by such Deliverable as set forth in the applicable Task Order.

Designated Staff means all Contractor subcontractors, Contractor's Project Manager, and staff assigned to City by Contractor as may be identified in individual Task Orders.

Documentation means such documentation as described in the RFP and as further clarified in any Task Order. City is authorized to reproduce any such documentation or other materials in a sufficient number to provide training to City staff. All such copies shall retain the owner's copyright and proprietary rights notices in the same form as on the original. All materials reproduced shall be maintained by the City and are not subject to disclosure for commercial purposes.

Effective Date means the date identified as such as first set out above.

Event means an incident whereby the System is either not working or its operation is inconsistent with the Documentation or the agreed upon Task Orders during Acceptance Testing. Events are divided into categories as below. City shall determine Priority levels pursuant to the following definitions. The categories are Priority 1, 2, 3, or 4 in accordance with the definitions below.

PRIORITY 1 - CRITICAL BUSINESS IMPACT EVENT means the production System or the database is inoperable, a critical application failure has occurred, business processes are halted and there is no workaround available. Priority 1 issues that occur after standard support hours must be reported by telephone.

PRIORITY 2 - SIGNIFICANT BUSINESS IMPACT EVENT means important features of the System are not working in accordance with the applicable warranty set out in this Agreement. While other areas of the System may not be impacted, the reported Defect has created a significant, negative impact on City's productivity or service level.

PRIORITY 3 - SOME BUSINESS IMPACT EVENT means important features of the System are not working in accordance with the applicable warranty set out in this Agreement. City impact is minimal loss of operational functionality.

PRIORITY 4 - MINIMAL BUSINESS IMPACT EVENT means a City clarification or information request which has no operational impact. The implementation or use of the System by City is continuing and there is no negative impact on productivity.

Final System Acceptance means the acceptance of the System /Solution in its totality by City as provided in this Agreement.

Fixed Cost means the cost specified in Exhibit B and attached hereto.

Go-Live means an application is being used in a production status.

Go-Live Date means the date that Contractor and City agree in writing that an application or Roll-Out is "production-ready" and is being used in a production status.

Initial Agreement Term means the period beginning upon the Effective Date and expiring ten (10) years from Final System Acceptance, unless otherwise terminated pursuant to the terms of this Agreement.

Licensed Program(s) means any software product separately licensed by the City.

Milestone(s) means certain events regarding Deliverables as such Milestone(s) are described in a Task Order.

Parallel Testing is the process that is performed to make sure that critical processes, such as payroll, are being accurately calculated by the new system. During parallel testing, the old or "legacy" system is run parallel to new software and the results are compared and verified. Parallel testing will be used at a minimum to test and validate processes, verify data conversion mapping, and data cleanup, prior to cutover. Parallel testing will be used for those critical processes in the applicable Task Orders.

Project Coordinator means the person(s) identified by the City who works across groups, aligning internal team members and external stakeholders. The Project Coordinator(s) may coordinate project phases and schedules, arrange support services, order supplies, and track progress. The Project Coordinator typically reports to the City's Project Manager.

Project Plan means the plan mutually agreed by the City and Contractor which will act as a guideline for a project.

Project Planning means activities undertaken by the City and Contractor to derive a Project Plan.

Proposed Acceptance Criteria means the preliminary criteria submitted by Contractor, which are subject to reasonable approval by City, which would (if approved by City) determine the criteria by which City would undertake Acceptance Testing.

RFP means the Request for Proposals No. 742-11378, Enterprise Resource Planning (ERP) System Solution and Professional Services, including any and all addenda, prepared by the City, and attached thereto. The RFP is attached hereto and made a part hereof as Exhibit A.

Roll-Out means one of the major phases of the Services as identified in each of the Task Orders.

Services means the work, duties, and obligations to be carried out and performed by Contractor under this Agreement and each Task Order provided pursuant to this Agreement.

Specifications means functional specifications mutually agreed by the City and Contractor and identified in a Task Order.

System/Solution means all of the services, work products and third party application software components and services, including but not limited to project plans, design documents, configured software, interfaces, conversions, status reports, test results, user guides, training, training materials, process documentation, workflows, custom reports, project management

reports and other such work products that comprise the "Solution" as specified in the RFP and proposed by Contractor.

Task Order is as defined in Section 2-127 of the Code or Ordinances of the City of Fort Lauderdale, Florida.

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

WITNESSETH:

I. CONTRACT DOCUMENTS ORDER OF PRECEDENCE

In the event of any conflict between or among the Contract Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, this Agreement for Professional Services, including definitions and Sections I. through XXIII. of this Agreement, dated _____, 2016, and any attachments;
- B. Second, the RFP;
- C. Third, the BAFO; and
- D. Fourth, Contractor's Response.

II. SCOPE OF SERVICES

The Contractor shall perform the Services under the general direction of the City as set forth in the Contract Documents and the Task Orders.

Unless otherwise specified herein, the Contractor shall perform all Services identified in this Agreement. The parties agree that the scope of Services is a description of Contractor's obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the Services that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the Project Coordinator has no authority to make changes that would increase, decrease, or otherwise modify the Services to be provided under this Agreement.

By signing this Agreement, the Contractor represents that it has thoroughly reviewed this Agreement and the Contract Documents and that it accepts the description of the Services and the conditions under which the Services are to be performed.

III. AGREEMENT TERM

The initial term of this Agreement shall be for ten (10) years (Initial Agreement Term). The City and the Contractor may each extend the Initial Agreement Term for two (2) additional one (1)-year terms (for an aggregate of two [2] additional years after the Initial Agreement Term) providing all terms, conditions, and specifications remain the same.

The Contractor will ensure that all of Contractor's subcontractors adhere to the terms and conditions of this Agreement.

Contractor agrees and understands that this Agreement shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services from another vendor at the City's sole option.

The City may require additional items or services of a similar nature, but not specifically listed in this Agreement. The Contractor agrees to provide such items or services, and City shall compensate Contractor for such additional services using the out of scope hourly rates as provided by the Contractor in Exhibit B hereto (subject to adjustment as set out in Section XXII below. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items or services from other vendors, or to cancel this Agreement upon giving the Contractor thirty (30) days' written notice.

In the event Services are scheduled to end because of the expiration of this Agreement, the Contractor shall continue the Services upon the request of the City as authorized by the awarding authority under the then-current terms of this Agreement. The extension period shall not extend for more than ninety (90) days beyond the expiration date of this Agreement. The Contractor shall be compensated for any Services then being provided at the rate in effect when this extension clause is invoked by the City.

IV. CONTRACTOR SUPPORT DURING AND POST IMPLEMENTATION

- A. During implementation the Contractor will act as the prime contractor and overall project manager and the main contact for the implementation and support coordinator of the System, including but not limited to reporting issues regarding integrations and configurations, until complete Final System Acceptance has occurred.

The Contractor or its subcontractors will not access any Licensed Program(s) remotely without prior authorization from the City, with such authorization to include access time/date and duration. The City will not unreasonably withhold any such authorization so as to prevent Contractor, or any of Contractor's subcontractors, from being able to perform the Services.

Contractor shall maintain staff or have access to staff that is appropriately trained to be familiar with the Licensed Program(s) Contractor is implementing as a part of this project in order to render assistance, should it be required.

B. POST GO-LIVE AND POST IMPLEMENTATION PERIOD SUPPORT

Contractor will provide functional application and environment support for a period of three (3) months beyond the Go-Live Date as follows: month end, quarter end and fiscal year end for financials (GL and A/P) and quarter end and fiscal year end for payroll

processing. Contractor has included in the Fixed Cost costs for an eight hundred (800) hour allotment to achieve this functional application and environment support. Should such support not require all of this eight hundred (800)-hour allotment, the City shall be allowed to utilize any unused hours for other services as requested by the City. Should additional hours be required to achieve such support, such additional hours shall be provided at the hourly rates set out in the BAFO for out-of-scope services, such rates being subject to adjustment as set out in Section XXII. below.

C. REMOTE ACCESS

Contractor will provide functional application and environment support for a period of three (3) months beyond the Go-Live Date as follows: month end, quarter end and fiscal year end for financials (GL and A/P) and quarter end and fiscal year end for payroll processing. Contractor has included in the Fixed Cost costs for an eight hundred (800) hour allotment to achieve this functional application and environment support. Should such support not require all of this eight hundred (800)-hour allotment, the City shall be allowed to utilize any unused hours for other services as requested by the City. Should additional hours be required to achieve such support, such additional hours shall be provided at the hourly rates set out in the BAFO for out-of-scope services, such rates being subject to adjustment as set out in Section XXII. below. The parties envision that Services regarding City's production, development and/or test environments may be provided by remote electronic means (remote access). The manner, including any security restrictions, method, equipment, software and other considerations for remote access shall be provided on a request by request basis subject to City's internal security requirements. City, at its own expense, shall provide the equipment and software at its location to permit remote access by Contractor. Contractor, at its own expense, shall provide any equipment and software at its location required to permit remote access by Contractor to City. Physical access for Contractor personnel to the System as necessary to allow Contractor to perform Services shall be provided by City.

In addition, City shall provide, within City's premises, adequate space for Services to be performed on-site. Contractor will assume its respective telephone access costs incurred to perform Services on the System by remote access. Contractor represents and warrants that while performing Services by remote access it will use all reasonably commercially available methods not to transmit any type of undocumented software routines or other elements which are designed to, or capable of, permitting, allowing, or causing: (a) unauthorized access to or intrusion upon; (b) disabling of; (c) erasure of; or (d) interference with any hardware, software, data or peripheral equipment whether directly or by transference. In the event of a breach of this representation and warranty, Contractor, to the extent caused by Contractor, shall be responsible for, and pay City for, any and all actual harm, injury, damages, costs and expenses incurred by City by reason of the breach within thirty (30) calendar days after Contract Coordinator's written demand for same. City will be responsible for creating a secure platform for remote access. At a minimum this will consist of: (i) the maximum allowed encryption supported by both City and Contractor for a VPN tunnel; and (ii) a terminal services environment secured and controlled by City with remote access granted to Contractor. At no time will City grant unencrypted remote access to Contractor. Contractor will follow City's documented access control procedures to gain access to City's Facilities. City is responsible for developing and implementing all City's Security Procedures. As part of City's Security Procedures, City will provide VPN and terminal services tools, and the

necessary network and environment logins to ensure that Contractor will never have access to any information in City's Facilities except through those tools and logins. Contractor Associate will use those tools and logins for remote access.

V. DELETION OR MODIFICATION OF SERVICES

The City reserves the right to change the scope of Services or modify any portion of thereof upon no less than a thirty (30)-calendar day written notice, without cause, and if such right is exercised by the City, the Fixed Cost shall be reduced by the costs included in the Fixed Cost for such terminated Services. If Services have already been accomplished on the portion of the Agreement to be deleted, the Contractor shall be paid for the deleted portion on the basis of the percentage of completion of such portion. If the Contractor and the City agree on modifications or revisions to the Deliverables after the City has approved Services to begin on a particular Deliverable, and a budget has been established for that task or project, the Contractor will submit a revised budget or written Change Order, whichever is applicable, to the City for approval prior to proceeding with the modified/revised Services.

VI. PROJECT PLANNING AND MANAGEMENT

Contractor's Project Manager, in collaboration with the City's Project Manager will conduct Project Planning activities to develop detailed Task Orders and Project Plans guided by Contractor's IMPACT methodology as described in the applicable Task Order, for each Roll-Out as agreed to by the City, that details at a minimum, both Contractor and City's responsibilities, timeline for project activities, phases, Milestones, Deliverables, associated costs and other details as required, in connection with Contractor's performance of the Services. The Task Order must be in sufficient detail to specify the planning timelines and tasks, such as all required Deliverables, conversion, training, Acceptance Testing, Acceptance Criteria, configuration, modification, integration, and Go-Live operational activities and costs for each. Both Contractor and City agree that a mutually agreeable initial Task Order and Project Plan will be submitted by Contractor and approved by City within ninety (90) Business Days of the Effective Date.

VII. TESTING AND ACCEPTANCE

A. Verification/Validation System Acceptance Testing

The City and Contractor will jointly develop Task Orders that include Acceptance Testing of each Deliverable contained in that Task Order, as proposed in Contractor's Response. The Task Order will also include Acceptance Criteria, as mutually agreed by the parties, for the Deliverables included in such Task Order. In addition, the City and Contractor shall schedule verification acceptance testing of the Licensed Program(s) on a module-by-module basis. Verification acceptance testing shall be the process whereby the City verifies that all modules of each Licensed Program have been delivered. Should City require assistance in verification acceptance testing, such assistance will be provided as part of the testing support activities. Each Deliverable which comprises software shall undergo Acceptance Testing and such Deliverable shall be deemed as formally verified and accepted when used in a future production environment for forty-five (45) consecutive calendar days with no Priority 1 or Priority 2 Events occurring, such to be achieved no later than two hundred seventy (270) days following delivery of the Deliverable, at which point the City will either confirm in writing that it has accepted the Deliverable, or the parties will enter in the dispute resolution process set out in

Section XVI. below to resolve any issues. Acceptance Testing will be based on mutually agreed Acceptance Criteria or other conditions mutually agreed to by both parties. Should the Deliverable fail Acceptance Testing, City shall give Contractor notice of such failure describing in reasonable detail the material failure. Contractor shall be granted thirty (30) calendar days to cure such failed condition(s) and, if the failure involved a Priority 1 Event, the forty-five (45)-calendar day Acceptance Testing shall then be re-scheduled. Should the failure have involved a Priority 2 Event, the re-testing shall only be subject to a further thirty (30)-calendar day Acceptance Testing period. All such re-testing shall only include the portion of the Deliverable which involved the respective Priority 1 or 2 Event. Notwithstanding the foregoing, the Project Coordinator and Contractor's Project Manager shall be allowed to override the cure period and decide to either restart the Acceptance Testing periods once the issue is resolved, or, at their mutual agreement, extend the original Acceptance Testing period by a mutually agreeable additional number of days, if needed. This procedure may be repeated should City decide to do so. Note that all modifications, interfaces, report writer files, etc., programmed by Contractor are subject to individual Acceptance Testing as documented in the Project Plan. Should a given module fail two (2) tests, City reserves the right to schedule additional tests. Acceptance or failure of Acceptance Testing will be determined jointly by City's officially designated Project Manager and the Contractor's Project Manager. Should any Priority 3 or 4 Event occur during Acceptance Testing, and such Priority 3 or 4 Event cannot be remedied during the forty-five (45)-day period Acceptance Testing Period, any such Event shall not cause the Acceptance Testing period to be re-started, but the Project Coordinator shall have the option to extend the forty-five (45)-day Acceptance Testing period for ten (10) calendar days for a Priority 3 Event and five (5) calendar days for a Priority 4 Event to ensure any such Priority 3 or 4 Event, only, does not reoccur. If there is a reoccurrence of the same Priority 3 or 4 Event, the ten (10) and (5) calendar periods shall continue until such periods run without any such Priority 3 or 4 Event.

B. Final System Acceptance.

Final System Acceptance will be achieved when the System has been operated in Go-Live mode for a period of sixty (60) Business Days, including use of the Deliverables, Roll-Outs and/or the System as previously accepted or having achieved Conditional Acceptance in writing by City. If after sixty (60) Business Days the System performs without any Priority 1 or 2 Event which is solely caused by Contractor, or any of Contractor's subcontractors, and meets all applicable Acceptance Criteria, the Project Coordinator and the Contractor's Project Manager will both issue and execute a written Final System Acceptance of the System. The sixty (60)-Business Day time frame for Final System Acceptance will stop if any Priority 1 or 2 Event which is solely caused by Contractor, or any of Contractor's subcontractors, are found during Go-Live use. The Final System Acceptance process will restart on the date any Priority 1 or 2 Event which is solely caused by Contractor, or any of Contractor's subcontractors, is confirmed in writing by Contractor and will continue for another full sixty (60)-Business Day time frame if the issue constitutes a Priority 1 Event, and forty-five (45) Business Days if the issue constitutes a Priority 2 Event. Notwithstanding the foregoing, the Project Coordinator and Contractor's Project Manager shall be allowed to override the cure period and decide to either restart the sixty (60)/forty-five (45)-Business Day period once the issue is resolved, or, at the mutual agreement of the Project Coordinator and Contractor's Project Manager, extend the original sixty (60)/forty-five (45)-Business Day

period by adding a mutually agreed additional number of days, if needed. In no case whatsoever will Final System Acceptance testing exceed two hundred seventy (270) calendar days of the City's running the System in a live environment at which point the City will either confirm in writing that it has accepted the System, or the parties will enter in the dispute resolution process set out in Section XVI. below to resolve any issues.

VIII. TASK ORDERS

The Task Orders, which will set out the specific Services to be performed and Deliverables to be delivered hereunder, derived from the services and products listed in Contractor's Response and the BAFO (Exhibits C and B hereto), will be per a phased implementation approach, including both Contractor and City roles and responsibilities. All Task Orders will be collaboratively developed and agreed upon between the City and Contractor for implementation of successive project phases as approved by the City, and will be attached and incorporated into this Agreement as Exhibits D (Exhibit "D1", "D2", "D3", etc.) as such Task Order are compiled and agreed. Any Task Orders executed between the parties beyond the initial Task Order referred to in Section VI. above which include total fees payable by the City of less than Twenty-Five Thousand Dollars (\$25,000.00), and, in the aggregate, One Hundred Thousand Dollars (\$100,000.00) for all such Task Orders, shall take precedence over all Contract Documents in the case there should be any conflict between the terms of any such Task Orders and any of the Contract Documents.

IX. CONTROL OF SUB-CONTRACTOR, PROJECT TEAM AND PROJECTMANAGER DESIGNATION

The Contractor understands that the successful installation, testing, and operation of the Solution shall be accomplished by a cooperative effort. To most effectively manage this process, the Contractor shall designate a single representative to act as Contractor's Project Manager who shall also act as an ex-officio member of the City's project management team and who shall have the authority to act on behalf of the Contractor on all matters pertaining to this Agreement.

City shall have the right to approve all Designated Staff. In the event that one or more Designated Staff is, in the opinion of the City, uncooperative, inept, incompetent, or otherwise unacceptable, the Contractor agrees to remove such person or subcontractor from the project. In the event of such a removal, the Contractor shall, within ten (10) Business Days, fill this representative vacancy as described above. Regardless of whom the Contractor has designated to fill this representative vacancy, the Contractor organization remains the ultimate responsible party for performing the tasks and responsibilities presented in this Agreement.

Contractor shall be responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval or disapproval, such approval not to be unreasonably withheld or delayed, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

X. SUBSTITUTION OF PERSONNEL

It is the intention of the City that the Contractor's personnel proposed for this Agreement will be available for the Services proposed. In the event the Contractor wishes to substitute trained and qualified personnel for those previously agreed by the City, the Contractor shall provide the City prior notification at least fifteen (15) Business Days in advance, and the City shall have the right to review, test and approve such substitutions. The Contractor shall propose personnel of equal or higher qualifications and all replacement personnel are subject to City's approval. In the event substitute personnel are not satisfactory to the City and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to terminate this Agreement for cause.

XI. CHANGE ORDERS OR OUT OF SCOPE SERVICES

The City's Project Manager and Contractor's Project Manager appointed pursuant to this Agreement will meet periodically to review the Project Plan and status for each implementation phase. Any material changes to scope or any changes that would increase the total compensation due to the Contractor must be made in accordance with the provision of the Change Order process in this Section. Changes to the Project Plan including those involving a change in scope of the project such as those involving additional software and services may be proposed by either party, and if accepted by the parties, the proposed changes shall be reduced to a Change Order, inclusive of any applicable pricing changes. Each Change Order shall be reviewed and be subject to approval by City pursuant to Code of Ordinance section 2-127.

Notwithstanding the foregoing, any pricing changes will be established using Contractor's hourly rate as specified in Exhibit B for the term of this Agreement. Such hourly rates are subject to adjustment as set out in Section XXII. below. Written approval signed by a duly authorized representative of each of the parties of such Change Order must be obtained prior to the provision of any products or services related to such Change Order.

XII. CUSTOMIZATION SERVICES

City may during the implementation period or thereafter require Customizations from Contractor. Contractor agrees to provide a written Change Order describing the work to be performed to provide such Customizations and providing the estimated costs using the out of scope hourly rates as provided by the Contractor in the (BAFO for City approval before any work is initiated by Contractor. Such hourly rates are subject to adjustment pursuant to Section XXII. below. Contractor will not exceed the costs set forth in the mutually agreed to Change Orders absent a duly approved and executed amended Change Order. No costs in excess of the estimates will be paid by City unless approved in writing in advance of fee incurrence. All Customizations shall be subject to Acceptance Testing before payment is released by the City.

XIII. TRAINING DOCUMENTATION AND MANUALS

Contractor shall provide to the City as Deliverables under the applicable Task Order, end-user training courseware development templates, application design documents, business process step-by-steps through CRP scripts and Core Project Team training materials from the Licensed Programs vendors (as such are provided by such Licensed Programs vendors, generally, to their customers). The City will use these Deliverables to create end-user courseware that describe in detail the operation of the Solution, during, and upon Final System Acceptance. Contractor shall

ensure that documentation generally provided by the vendors of the Licensed Programs will be provided to the City upon installation of the respective Licensed Program(s). Contractor agrees City may make such additional copies of such training manuals documentation as first described above in this Section XIII. as needed for use by City employees.

XIV. INEFFECTIVE TRAINING

Contractor will submit to City a written training plan and agenda (a written Deliverable) in advance of any training sessions to be covered with the key materials to be provided during the course of the training. Further, Contractor will provide to City detailed client computer requirements as well as all associated media necessary to deliver the course. City will conduct a rating of the course after its completion and communicate the results of this rating to Contractor for future class improvements. In the event that City asserts in good faith that any Contractor training consultant lacks the skill or capacity to adequately train City's staff or that the Solution is not properly configured for such training, Contractor shall replace such training consultant as soon as reasonably possible. If City notifies Contractor within ten (10) Business Days of the completion of said training, that in City's reasonable judgment the training sessions provided by such training consultant were inadequate or ineffective, then Contractor shall provide remedial training sessions to City for all such training sessions.

XV. THIS SECTION INTENTIONALLY NOT USED

XVI. DISPUTE RESOLUTION

The City and Contractor agree to use their best reasonable efforts to resolve promptly any functional, technical, and any other issue that may arise during the course of the project. However, each party acknowledges that certain issues, by their nature, may require more time to resolve and in these situations, each party agrees to use its good faith and best reasonable efforts to expedite the resolution as soon as practicable and without delay.

City shall have the right to approve or accept part of any Deliverable, in accordance with the Task Order. Any such approval shall be regarded as partial and conditional upon City's approval or acceptance of all aspects of the Deliverable. Contractor must correct any deficiencies of any Deliverable within the time the parties determine is required for such correction in City's notice concerning a partial approval (including approvals subject to correction of minor deficiencies) or, if no time has been determined, promptly. If City does not subsequently approve or accept all aspects of the Deliverable, the earlier conditional acceptance or approval may, in accordance with the requirements of the Task Order(s) and Acceptance Criteria, be regarded as void and of no effect by City, and which shall be accepted by Contractor.

The parties agree to first try to resolve any dispute informally with the help of a mutually agreed upon mediator. If it proves impossible to arrive at a mutually agreed upon solution through mediation, the parties agree to submit their dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All arbitration hearings shall be held in Broward County, Florida. Each party shall pay its own costs and expenses, including attorney's fees. Findings of facts and a statement of reasons for the decisions shall accompany the award of the arbitrator.

All parties agree to be bound by the results of this arbitration judgment upon the award and such award as so rendered may be entered and enforced in the State of Florida.

XVII. WARRANTY

The Contractor warrants that it will perform all Services in a professional and workmanlike manner and provide Deliverables that conform in all material respects to the specifications set forth in the Task Orders. To receive warranty remedies, the City must report any deficiencies to the Contractor in writing within ninety (90) Business Days from the date of the City's acceptance of the Services or Deliverable. The City's exclusive remedy and the Contractor's entire liability are to provide services to correct the deficiencies. If the Contractor is unable to correct the deficiencies, the Contractor shall refund forthwith to the City the fees paid to the Contractor for the deficient portion of the Services or Deliverables. **THE CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.**

XVIII. WARRANTY AS TO SPECIFICATIONS AND FUNCTIONALITY

Contractor warrants that each Roll-Out (upon each respective Go-Live) and the entire Solution/System (upon Final System Acceptance) shall conform to and function in accordance with the Task Orders and shall meet or exceed the functionality and interoperability requirements as defined in the Specifications. In addition, Contractor warrants that its performance of the Task Order shall be in accordance with the general methodology proposed by Contractor in the Contractor's Response, unless otherwise stated in the Task Orders.

XIX. COMPENSATION

Contractor and its subcontractors, as outlined in the RFP (Exhibit A hereto) and the Contractor's Response (Exhibit C hereto), as further clarified in the BAFO (Exhibit B hereto), will provide Services as described in this Agreement and in Task Orders to deliver an Enterprise Resource Planning System Solution comprising of third party software products for the City in multiple phases as described in this Agreement and Exhibits attached hereto and Task Orders at the Fixed Cost for those items in scope.

The total Fixed Cost compensation to Contractor for Services is \$2,762,820.00.

The Services as proposed is detailed as follows:

Contractor Infor Implementation Services	\$999,880.00
Other Services	1,011,650.00
Contractor SymPro Services	9,600.00
Interface Development	247,240.00
Train-the-Trainer Training	72,670.00
Data Conversion	59,280.00*
Travel and Lodging Budget	<u>362,500.00</u>
	<u>\$2,762,820.00</u>

*Includes \$10,000 SymPro of Debt Conversion Cost by Contractor

Payment shall be made only for Services actually provided in accordance with the terms of this Agreement and Task Orders and shall be made in accordance with the applicable payment schedule which is set out in the Task Order, which payment shall be accepted by Contractor as full compensation for all Services. Contractor acknowledges that the amounts set forth herein are the maximum amounts payable for the respective terms and constitute a limitation upon City's obligation to compensate Contractor for its Services under this Agreement.

Payment shall be made for certain Deliverables preliminarily accepted in connection with the Services as described in the respective Task Order.

The Fixed Cost amount, however, do not constitute a limitation of any sort upon Contractor's obligation to perform its Services under this Agreement. An estimate of all travel and living expense costs are included in the Fixed Cost as provided under Travel & Lodging of the BAFO (Exhibit B). Contractor shall be reimbursed for all travel and living expenses it incurs under this Agreement with the prior approval of the City. Per Force Majeure, City shall not be liable for additional travel costs incurred due to any Force Majeure situation.

Contractor acknowledges and agrees that the Debt Management Conversion Services (\$10,000) is included as part of the project Deliverables and shall have no effect on the BAFO pricing (Exhibit B hereto).

Contractor will be responsible for identifying all required software required for each Roll-Out of the Services during the implementation period. The City will accept and make payment for the services and software licenses and support to the appropriate contractors as provided in each respective third-party vendor agreement.

XX. METHOD OF BILLING AND PAYMENT

Invoices. Contractor may submit invoices only in accordance with the payment schedules in the Task Orders and as follows:

Unless otherwise stated, an electronic invoice must be submitted within fifteen (15) days after the end of the month for which Services were rendered, except the final invoice must be submitted no later than sixty (60) days after all applicable Services are completed.

A payment schedule shall be developed and included in each phased Task Order based upon an agreed schedule of Services, Deliverables, and Milestones for each Roll-Out of the project and such payment schedule shall be as set forth therein in accordance with this Agreement.

For Services, Contractor shall not submit any invoice for payment until City has agreed to preliminary acceptance of the particular Deliverable(s).

The invoice will fully detail the related costs and shall specify the status of the particular task or project as of the date of the invoice as regards the accepted schedule for that task or project. Payment will be made within forty-five (45) days after receipt of an invoice acceptable to the City, in accordance with the Florida Local Government Prompt Payment Act. If, at any time during the term of this Agreement, the City shall not approve or accept the Contractor's work product, the parties shall undertake the dispute resolution process set forth in Section XVI above.

Invoices and backup materials may be emailed to Acctspayable@fortlauderdale.gov with a copy of such to the City's Project Coordinator/Project Manager.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted pursuant to instructions prescribed by the Project Coordinator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may dispute in good faith, any amount on any invoice and the parties will attempt to resolve any such disputed amounts in good faith. City's dispute of any amounts will not delay its payment of undisputed charges.

City has thirty (30) calendar days after receipt of an invoice to provide written notice of a dispute of that invoice to the Contractor's Chief Financial Officer at the address listed on the cover of this Agreement. Contractor will provide a written response to City that either provides a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by Contractor and City to resolve any remaining issues in the City's dispute. City may withhold payment of the amount in actual dispute until Contractor provides the required written response and has completed all material steps in the action plan to be taken by Contractor. Invoices disputed as provided herein will not be assessed interest or late fees. If Contractor is unable to complete all material steps in the action plan because City has not completed its part of the action plan, City will remit the full payment of the invoice.

Any invoice not disputed as described above shall be deemed accepted by the City. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, Contractor reserves the right to suspend performance of all Services required under this Agreement.

XXI. ADDITIONAL PAYMENT TERMS -

- A. Upon preliminary acceptance of a Deliverable under a Task Order for which payment is indicated in the payment schedule per the applicable Task Order, City shall pay Contractor ninety-five percent (95%) of the total shown to be due on the invoice for the applicable Deliverable in the Task Order and payment schedule. Such five percent (5%) holdback shall constitute "5% Retainage". Upon Contractor's having delivered fifty percent (50%) of all Deliverables required under the respective Task Order, and the City's acceptance, or Conditional Acceptance, of all such Deliverables,, Contractor may invoice the City for all of the 5% Retainage held for that Task Order which the City shall pay in accordance with Section XX above, and the City shall then begin paying Contractor ninety-seven and 1/2 percent (97.5%) of the total shown to be due on the invoice for the then-remaining Deliverables in the applicable Task Order and payment schedule. The remaining two and 1/2 percent (2.5%) due for the respective Deliverables, shall constitute 2 1/2% Retainage"). Upon the City's acceptance, or Conditional Acceptance, of the respective Task Order, Contractor may invoice City for all of the 2 1/2 % Retainage held for that Task Order, which City shall pay to Contractor in accordance with Section XX. above

- (1) Training fees will be invoiced as incurred. Contractor will only invoice City for the actual number of training days received.

- (2) In the event a Go-Live Date (as such Go-Live Date is agreed in the Task Orders) is postponed due to the sole action or inaction of the Contractor or its subcontractors, the associated payment will be postponed the corresponding number of days. Otherwise, the associated payment will be due on the date(s) indicated in the applicable Task Order.
- (3) Travel and Lodging – Any travel out of the tri-county (Dade, Broward and Palm Beach Counties) area shall be in accordance with the City's Travel Allowance and Subsistence Policy. The current policy may be viewed at the City website. No costs for travel, meals, or accommodations shall be charged to the City for travel within the tri county area unless the Contractor's office assigned to the project is located outside this area.

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

- B. Service Credits – Commencing at the Go Live Date, if an Event occurs which constitutes a Priority 1, and such Priority 1 is the result of Contractor's, or its subcontractors', sole fault or sole inaction, then for each twenty-four (24) consecutive hours that the Priority 1 continues as the result of Contractor's, or its subcontractors' sole fault or sole inaction, Contractor shall issue a credit against any fees then payable by City under this Agreement equal to Three Hundred Dollars (\$300.00), with such aggregate credits under this Agreement not to exceed One Hundred Twenty Thousand Dollars (\$120,000.00). Such credits shall be calculated and agreed no later than the end of the first month after the subject calendar quarter, during the term of this Agreement, and shall be credited against fees then payable by the City. Should the credits exceed fees payable at that time, Contractor shall issue payment for any such excess credits no later than sixty (60) days after the end of the subject calendar quarter.

XXII. COST ADJUSTMENTS

The fees charged by Contractor for additional services under Sections III. and XI. above, and for Customizations, under Section XII. above, and for all other services provided by Contractor which are outside the scope of the Fixed Cost shall be charged at the hourly rates set out in the BAFO, and, after the third (3rd) year of the Initial Agreement Term shall be subject to the following:

Costs for any increase or extension terms shall be subject to an adjustment equal to two percent (2%) per year

Any requested adjustment shall be fully documented and submitted to the City at least ninety (90) days prior to the Agreement anniversary date. Any cost adjustments shall become effective on the beginning date of the approved Agreement extension.

XXIII. GENERAL CONDITIONS

A. Indemnification

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

B. Intellectual Property

Contractor shall defend, and pay any damages and costs awarded in final judgment or made in settlement of, any claim or suit against City by a third party alleging that a Service or Deliverable provided by Contractor, when used in conformity with Contractor's instructions and documentation, infringes a U.S. patent, copyright or trade secret. If any Service or Deliverable is determined by a court of competent jurisdiction to be infringing, or in Contractor's opinion is likely to become the subject of a claim of infringement or violation, Contractor may, at its option, procure for City the right to continue using the Service or Deliverable, or replace or modify the Service or Deliverable so it is not infringing. If Contractor cannot secure these remedies on a reasonable basis and if City must discontinue use of any Service or Deliverable, Contractor will refund the unamortized portion of the fees paid for the infringing Service or Deliverable based on an expected life of five (5) years of the Service or Deliverable.

The foregoing indemnity shall not apply to any infringement claim arising from: (i) a Service or Deliverable that has been modified by any party other than Contractor; (ii) City's use of a Service or Deliverable in conjunction with the products or services of parties other than Contractor where such use gives rise to the infringement claim; (iii) City's use of a Service or Deliverable after written notice to City to cease such use; (iv) a Service or Deliverable not used in accordance with Contractor's instructions and specifications; (v) City's use of other than the current release of a Service or Deliverable if such claim would have been avoided by the use of the current release provided by Contractor; or (vi) Contractor's compliance with any design, specification or instruction of City.

This Section sets forth City's sole and exclusive remedies for infringement or misappropriation of third party rights. Services and Deliverable do not include any third party services, products or materials, whether or not supplied by Contractor.

C. Termination

1) Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Services to the City's satisfaction; or failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

2. Termination for Convenience

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

3. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

D. Insurance

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

The City shall be given notice thirty (30) days prior to cancellation or modification of any required insurance. It shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and

addressed to the City's Procurement Services Division.

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

Workers' Compensation and Employers' Liability Insurance

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

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

Commercial General Liability Insurance

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

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

This coverage must include, but not limited to:

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

Automobile Liability Insurance

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

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

Professional Liability (Errors & Omissions)

Consultants/Contractors

Limits: \$2,000,000 per occurrence

Certificate holder should be addressed as follows:

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

E. Environmental, Health and Safety

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Services. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Services. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Services.

F. Standard of Care

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

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

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

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

Contractor shall perform the services contemplated in the Agreement without interfering in any way with the activities of the City's staff or visitors.

Contractor and its employees or agents shall have the right to use only those facilities of the City that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the City. The City shall also extend parking privileges to properly identified members of Contractor's full-time staff on the same basis as they are extended to the City's staff.

The City shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Contractor or its employees or subcontractors.

G. Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor in connection with this Agreement, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the Project Coordinator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until Contractor delivers all documents to the City as provided herein. City acknowledges that Contractor is in the business of providing information technology consulting and implementation services and has accumulated expertise in this field and agrees that Contractor will retain all right, title, and interest in and to all Contractor Materials. "Contractor Materials" means all inventions, discoveries, concepts, and ideas, including, without limitation, patents, copyrights, trademarks, trade secrets, processes, methods, formulae, techniques, tools, solutions, programs, data, and documentation, and related modifications, improvements, and know how, that Contractor, alone, or jointly with others, its agents or employees, conceives, makes, develops, acquires, or obtains knowledge of at any time before, after, or during the term of this Agreement without breach of Contractor's duty of confidentiality to City. To the extent Contractor Materials are included in any Deliverable, Contractor will grant City a personal, perpetual, irrevocable, nonexclusive, worldwide, royalty free license to use, execute, reproduce, and modify such Contractor Materials, but only for Customer's internal use in conjunction with the Deliverable or as otherwise provided by Florida law. Contractor's grant to City of any interest in the Services and Deliverables is effective only upon City's payment of all fees and charges invoiced by Contractor.

H. Audit Right and Retention of Records

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

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents

pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

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

I. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

J. Independent Contractor

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever. It is expressly agreed that the Contractor is an independent contractor and not an agent of City. The Contractor shall not pledge or attempt to pledge the credit of City or in any other way attempt to bind the City.

K. Inspection and Non-Waiver

Contractor shall permit the representatives of City to inspect and observe the Services at all times. The City shall not undertake any/all such inspections and observations in a way so as to unduly disrupt the Contractor's operations to all extent possible.

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

L. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered by either party without the written consent of the other party. In addition, Contractor shall not subcontract any portion of the Services required by this Agreement, except as provided in the Contractor's response to the RFP (Exhibit C hereto) and Task Orders. The parties may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, which is not allowed by this Agreement, without the non-assigning party's prior written consent.

M. Conflicts

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to Contractor's performance under this Agreement.

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

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

N. Schedule and Delays

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the Project Plan Deliverables to be reasonable; provided, the City meets its obligations in a timely manner, as such obligations are set out in all Task Orders; however, the parties acknowledge that the Project Plan(s) which are to be included in each Task Order might be modified as the parties may mutually agree.

O. Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

P. Compliance With Laws

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

Q. Severance

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

R. Limitation of Liability

NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOST DATA, LOST PROFITS, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR OTHER INDIRECT DAMAGES OF ANY KIND FOR ANY REASON WHATSOEVER INCLUDING, BUT NOT LIMITED TO, DAMAGES BASED UPON, CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each party agrees that the other party's liability hereunder for damages, regardless of the form of action, will not exceed the total amount actually paid for Services and Deliverables under the Task Order giving rise to the damages. Notwithstanding the above, the liability of both parties may be increased to include the prevailing party's costs in litigation regarding collection of Services fees, including without limitation, reasonable attorneys' fees and court costs, following any and all appeals. The parties agree that amounts stated herein are fair under the circumstances and that the charges reflect this limitation of liability.

S. Jurisdiction, Venue, Waiver, Waiver of Jury Trial

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

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

T. Amendments

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

U. Prior Agreements

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

V. Payable Interest

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

W. Representation of Authority

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

X. Uncontrollable Circumstances ("Force Majeure")

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

1. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
2. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
3. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

4. The non-performing party uses its commercially reasonable efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, (in the event that any parts of the Solution are hosted off premise, performance shall not be excused under this Section for a period in excess of eight (8) hours) provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of this Agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

Y. Scrutinized Companies

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2016), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2016), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2016), as may be amended or revised.

Z. Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address, and mailing address).

100 N. Andrews Ave., Fort Lauderdale, FL 33301

(954) 828-5006, jmodarelli@fortlauderdale.gov,

Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this Agreement if the Contractor does not transfer the records to the City.

4. Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

AA. Agreement Extension

If Contractor anticipates missing a Milestone date identified in the Task Order and its Project Plan, then Contractor must notify City immediately so that a mutually acceptable revised Milestone date can be agreed to.

BB. Contractor Merger or Acquisition

In the event that the Contractor is merged or acquired, Ciber will use all commercially reasonable efforts to ensure that the acquiring entity shall honor all of the terms of the existing Agreement for the then-remaining term of the Agreement as set out in Section III. above.

CC. Video and Audio Recording

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

DD. Performance Bond

The Contractor shall within fifteen (15) business days after notification of award, furnish to the City a Payment and Performance Bond, in the amount of five percent (5%) of the proposed price for the initial and subsequent phased Task Orders as agreed upon, as surety for faithful performance under the terms and conditions of this Agreement. If the bond is on an annual coverage basis, renewal for each succeeding year or Task Order shall be submitted to the City thirty (30) days prior to the termination date of the existing Payment and Performance Bond. The Performance Bond must be executed by a surety company of recognized standing to do business in the State of Florida and having a resident agent. The surety must have a Financial Size Categories (FSC) rating of no less than "A-" by the latest edition of Best's Key Rating Guide, or acceptance of insurance company that holds a valid Florida Certificate of Authority issued by the State of Florida, Department of Insurance, and are members of the Florida Guarantee Fund.

Acknowledgement and agreement is given by both parties that the amount herein set for the Payment and Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

EE. Data and Privacy

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

2. Privacy Laws

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

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

3. Handling of Protected Data after Termination

Upon termination of this Agreement or at the City's request, the Contractor shall return or destroy protected information in accordance with Subsection XXIII.Z and in accordance with Florida law.

FF. National Conference

Contractor will provide four (4) annual no cost passes for admission to any national conference hosted by Contractor or Infor Public Sector, Inc. for the first three (3) years following the Effective Date.

By executing this Agreement, the Contractor represents that it thoroughly reviewed the Contract Documents incorporated into this Agreement by reference and that it accepts the description of the work and the conditions under which the Services are to be performed.

[Remainder of Page Left Blank]

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

ATTEST:




Jeffrey A. Modarelli, City Clerk

CITY OF FORT LAUDERDALE

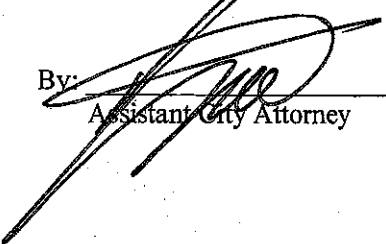
By: 

John P. "Jack" Seiler, Mayor

By: 

Lee R. Feldman, City Manager

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

By: 
Assistant City Attorney

ATTEST:

CIBER, INC.

Michael Sean Radcliffe
Secretary

By: _____
Michael Boustridge, President

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Michael Boustridge as President for Ciber, Inc.

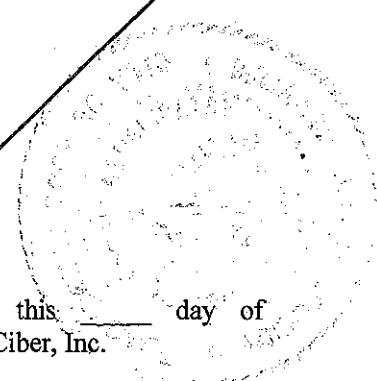
(SEAL)

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

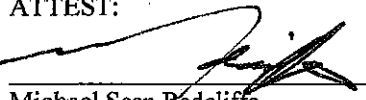
(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

See following page

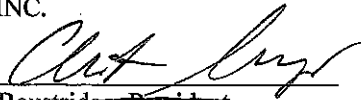


ATTEST:


Michael Sean Radcliffe
Secretary

CIBER, INC.

By:

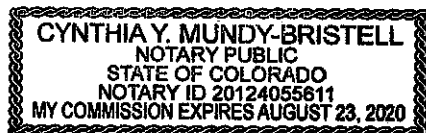

Michael Boustridge, President
Christian Mezger, Chief Financial Officer


(CORPORATE SEAL)

STATE OF COLORADO :
COUNTY OF ARAPAHOE :

The foregoing instrument was acknowledged before me this 27th day of
OCTOBER, 2016, by ~~Michael Boustridge as President~~ for Ciber, Inc.
Christian Mezger, Chief Financial Officer

(SEAL)




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

CYNTHIA Y. MUNDY-BRISTELL
(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known ☒ OR Produced Identification _____
Type of Identification Produced _____

EXHIBIT A
RFP TO BE INCORPORATED

EXHIBIT B

BAFO TO BE INCORPORATED

EXHIBIT C

CONTRACTOR'S RESPONSE TO BE INCORPORATED

EXHIBIT D1, D2, etc.

TASK ORDERS