



CITY OF FARMINGTON
800 MUNICIPAL DRIVE
FARMINGTON, NEW MEXICO 87401

**Report Management Software (RMS)
RFP #19-128917**

PROPOSAL DUE DATE
October 30, 2018
2:00 PM

DEADLINE FOR QUESTIONS
October 12, 2018
2:00 PM

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Report Management Software (RMS)
RFP #19-128917
October 30, 2018
2:00 P.M.

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of the Report Management Software (RMS) distribution packet #19-128917, the undersigned agrees that he/she has received a complete copy, beginning with the title page and ending with Exhibit D, Draft Agreement, for a total of 64 pages.

In order to receive copies of all future communications, relating to, and including amendments to this distribution packet #19-128917, return this acknowledgement form no later than October 12, 2018. Returning this form is not mandatory to submit a bid.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE: _____

EMAIL: _____ FAX: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to document #19-128917.

Firm **does / does not (circle one)** intend to respond to Report Management Software (RMS), #19-128917.

If firm **does not** intend to reply, please give a brief reason for not responding: _____

Return to:

Christina Tyler, Buyer I
City of Farmington
Central Purchasing
800 Municipal Drive
Farmington, NM 87401
Phone: (505) 599-1371
Fax: (505) 599-1377
Email: ctyler@fmtn.org

Faxed Copies of this form will be accepted.
Faxed RFP responses **will not be accepted.**

REQUEST FOR PROPOSALS

RFP TITLE: Report Management Software (RMS)

RFP #: 19-128917

PROPOSALS SHALL BE DELIVERED TO:
 CITY OF FARMINGTON
 CENTRAL PURCHASING DEPARTMENT
 800 MUNICIPAL DRIVE (Mailing Address) **OR**
 805 MUNICIPAL DRIVE (Physical Location)
 FARMINGTON, NM 87401

Approved as to form:

 Kristi Benson, CPPO, CPPB
 Chief Procurement Officer

If you have any questions regarding this Request for Proposal, please contact:

 Christina Tyler, Buyer I

DEADLINE FOR QUESTIONS
October 12, 2018 @ 2:00 PM

PROPOSAL DUE DATE:
October 30, 2018 @ 2:00 P.M.

IMPORTANT – PROPOSALS MUST BE SUBMITTED IN A SEALED ENVELOPE OR BOX WITH THE RFP NUMBER AND OPENING DATE CLEARLY INDICATED ON THE FRONT OF THE ENVELOPE OR BOX.

EMAILED OR FAXED PROPOSALS WILL NOT BE ACCEPTED.

Sealed proposals will be received until the above specified date and local time, and then opened at the City of Farmington Central Purchasing Department. The opening of proposals shall be conducted in private in order to maintain the confidentiality of the contents of all proposals during the negotiation process.

The undersigned declares that the amount and nature of the service to be furnished is understood and that the nature of this proposal is in strict accordance with the conditions set forth and is part of this Request for Proposal (“RFP”), and that the undersigned Offeror has read and understands the scope and conditions of the RFP.

The undersigned, in submitting this proposal, represents that Offeror is an equal opportunity employer, and will not discriminate with regard to race, age, religion, color, national origin, ancestry, sex, or physical or mental handicap as specified in Sec. 28-1-7 NMSA 1978 in the performance of this contract between Offeror and the City of Farmington (“CITY”).

The undersigned hereby proposes to perform necessary professional services for the amount and upon the conditions stated in this proposal after notice of award of the contract.

This RFP is subject to the Purchase Order “Terms and Conditions,” Proposal Requirements, Scope of Work and any subsequent contract or agreement.

OFFEROR MUST COMPLETE THE FOLLOWING

 COMPANY NAME / MAILING ADDRESS / CITY / STATE / ZIP CODE (please print)

 CONTACT PERSON (please print)

 EMAIL ADDRESS

 TELEPHONE NUMBER

*****To be a valid proposal, Offeror must sign on the above line*****

 TITLE

In-State/Resident Veterans Preference will be applied only to those Offerors who have been issued a certification number from the State of New Mexico Taxation and Revenue Department and **return a copy of their certificate with their proposal.** In-State/Resident Veterans Preference certification approval is required at the time of the proposal opening to be eligible.
Please ck here if you qualify for either preference and have included a certificate with your response.

Offeror must check the appropriate box below:

If applicable, OFFEROR ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENT(S):

Addendum No. _____ Dated _____
 Addendum No. _____ Dated _____

Addendum No. _____ Dated _____
 Addendum No. _____ Dated _____

CITY OF FARMINGTON, NEW MEXICO
NOTICE TO OFFERORS
Report Management Software (RMS), RFP # 19-128917
October 30, 2018 @ 2:00 P.M.

Request for Proposal (RFP) documents may be retrieved by accessing the Purchasing page of the City of Farmington website, www.fmtn.org, by calling (505) 599-1373 or visiting the Central Purchasing Office at 805 Municipal Drive, Farmington, New Mexico. Questions and/or clarifications regarding this RFP will be received until October 12, 2018 @ 2:00 PM.

The above document has been issued by the City of Farmington for a competitive solicitation. Interested parties may obtain documents as described above.

Publication Date: October 3, 2018

GENERAL CONDITIONS

As required by 13-1-111 NMSA 1978 the City of Farmington (City) is requesting proposals (RFPs) for Report Management Software (RMS) 19-128917.

Proposals must include, but are not limited to, the requirements set forth in the RFP. Proposals deposited with the City may be withdrawn or modified prior to the time set for opening of proposals by delivering written notice on company letterhead.

The opening of sealed proposals shall be conducted in private in order to maintain the confidentiality of the information/data provided. Proposals will remain confidential during the negotiation process.

Pursuant to 13-1-115 NMSA 1978, Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible Offerors who submit proposals found to be reasonably likely to be selected for award.

The City will open all proposals, assign an evaluation committee and evaluate all proposals; determine the need for, and conduct any negotiation; and make a final recommendation to the City Council for award of the agreement or contract.

The agreement or contract award shall be made to the responsible Offeror or Offerors whose proposal is most advantageous to the City, taking into consideration the evaluation factors set forth in the RFP.

The Proposal total shall exclude all applicable taxes including applicable New Mexico Gross Receipts Tax or applicable local option tax. The City will pay the successful Offeror for any taxes due on the agreement or contract and will pay any increase in applicable taxes which become effective after the date the agreement or contract is entered into in addition to the Proposal total amount. Taxes shall be shown as a separate line item and separate amount on the invoice.

The Offeror shall complete the "Offeror's Estimate of Taxes" and shall identify by name each tax Offeror believes to be applicable to the agreement or contract and shall estimate the amount of each tax which will be billed to the City.

The City reserves the right to reject any or all proposals, cancel the RFP in its entirety or to waive irregularities at its option when it is in the best interest of the City of Farmington.

Award of the contract is contingent upon the budgeting and appropriation of funds for continuation of the professional services contemplated by this RFP.

Request for Proposals
Report Management Software (RMS)
RFP 19-128917

I. Background Information

1. General Information

- a. The City of Farmington (City) is requesting proposals (RFP's) for Report Management Software (RMS) for the Farmington Fire Department (FFD). The City is seeking a qualified firm (Offeror) for the project described below.
- b. The FFD has a need to update the RMS to be compliant with the newest standards required by the State of New Mexico and all applicable Federal agencies.
- c. The proposed RMS will replace the current software, Firehouse Software. FFD is also seeking additional capabilities that will support the requirements now and into the future. Implementation of current data will be required, see below.
- d. The FFD averages 13,000 to 15,000 calls per year.

2. Scope of Services

- a. The City is requesting proposals from firms to provide a proven RMS that is capable of accommodating 80 -100 users with one (1) administrator.
- b. General requirements for RMS functionality are:
 - The software must be compliant with the National Fire Incident Reporting System (NFIRS), latest edition and National Emergency Medical Services Information System (NEMESIS), latest edition, and be able to automatically report to the State of New Mexico without intervention or manual uploads;
 - Fully customizable reporting structure with the ability to move fields, change label names, enter new user fields, hide fields, auto-fill fields, etc;
 - Update fields based on the information entered in another field and ability to update multiple fields at the same time in a one to many relationship;
 - Streamline the report when certain conditions are met. i.e. no patient assessment, hide or auto-fill fields for faster report writing;
 - Create custom fields that are trackable, reportable and searchable in a query;
 - Medication tracking and the ability to use medications in a report, have it update the status or use of the medicine in the inventory portion;
 - Fully functional EMS module that encompasses all items of patient data tracking, i.e. all vitals, injuries, scene conditions, past history, events related to the scene, medications, any current procedures, transport data, and any user defined data that needs tracked. EMS module needs to be efficient and easy to use so that it does not increase current reporting times;

- Auto-generate narratives based on data previously entered into fields thereby stopping data entry duplication;
- NEMSIS ruleset that is already build for New Mexico with all codes and descriptions preloaded or loadable. The user should be able to choose the state and load the codes, no manual code entry should be necessary to prevent errors in data entry;
- User friendly Quality Assurance (QA) system in place for reviewing reports by supervisors;
- NEMSIS “plus one” codes to modify the code set that users can choose and is also reportable, trackable and can be used in queries.
- Hide codes not used from either NFIRS or NEMSIS code sets including, but not limited to medication lists;
- Validated, easy to use reporting system with customizable fields, queries, and exportable to standard formats like Excel, Word, PDF, etc.
- Build reports that the users can change query data at runtime. Customizable Reports
- Track repeat patient data and have the ability to possibly map the GPS locational data of the runs.
- Import existing records, items, inventory, occupancies, inspections, etc. from Firehouse.
- Run analytics on the data, 1710 reports, National Fire Protection Agency (NFPA) yearly standards reports, etc.
- Modify personnel on the units each day.
- Fully functional, secure form set for fire investigations, building inspections, and preplans all from a mobile device. Needs to be able to export this data to First-Due Sizeup (for pre-plan data);
- Staff tracking; certifications, gear, training, etc.
- Fully functioning training module with reports being able to be run for staff hours, training categories, programs, etc.
- Inventory module for tracking gear, hoses, vehicles, equipment, medications, devices, etc. and be able to modify the required fields for each type of inventory item.
- Track hydrants, locations, flow tests, and any needed hydrant data.
- Document storage capability or picture storage for uploading attached documents and pictures to reports.
- Web or cloud based so that it's accessible from ANY device, tablet, smart phone, etc.
- Interface with New World Systems for CAD data and report creation.
- Interface with Telestaff for daily personnel changes.
- Have Fire and EMS data combined and shareable to avoid replicating data like units, times, addresses.
- Cloud based management solution
- 2D driver's license and barcode scanning for data entry, and inventory tracking.
- Ability to take pictures with a device and attach them to the incident without saving the pictures to the device itself for security;

- EMS mobile application that can be done while in the field and off-line. Reports can be written and synced once there is signal. Data needs to have an auto-backup feature to a server to help protect against data loss in the event of the mobile device being lost/stolen/damaged.

3. Qualifications of Offerors

- a. The City is seeking a qualified firm with experience, expertise and qualifications to provide a proven RMS system for the FFD. Qualifications and experience should be demonstrated with similar fire departments within the last three (3) years.

4. Information Provided by the City

- a. Offerors are solely responsible for conducting their own independent research, due diligence or other work necessary for the preparation of proposals, negotiation of agreements, and the subsequent delivery of services pursuant to any agreement. In no event may Offerors rely on any oral statement.
- b. Should an Offeror find discrepancies in, or omissions from, this RFP and related documents, or should Offeror be in doubt as to meaning, Offeror shall immediately notify the City's designated representative and, if necessary, a written addenda will be emailed to each Offeror who has returned the "Acknowledgement of Receipt" form, included in this document as Page 3. Each Offeror requesting an interpretation will be responsible for the delivery of such requests to the City's designated representative in writing as outlined in this RFP. The City will not be bound by, nor responsible for, any explanation or interpretation of the proposed documents other than those given in writing.

5. Intent

- a. It is the intent of the City to award the contract to the most qualified, responsible Offeror(s) as detailed in the Scope of Work, and with consideration of the potential costs for services. The City will negotiate with the Offeror(s) deemed most qualified by the City to address the specific services to be provided, the time and order of services, staffing, areas of responsibility and proposed fee structure, including the amount and method of payment.

II. Proposal Process

1. Introduction
 - a. Until the final award by the Farmington City Council, the City reserves the right to reject any and/or all submittals, to waive technicalities, to re-advertise, or to otherwise proceed when the best interest of the City will be realized. This procurement is governed by the New Mexico State Statutes 1978, Chapter 13, Public Purchases and Property.

2. Schedule

- a. It is the City's intent to adhere to the following schedule. However, the City reserves the right to modify this schedule.

Preliminary Schedule

Activity	Date
Issue RFP	October 3, 2018
Deadline for Questions	October 12, 2018 @ 2:00 PM
Proposal Due Date	October 30, 2018 at 2:00 PM
Recommendation to City Council for Award	November 13, 2018

3. Due Date

- a. Proposals shall be due **no later than 2:00 p.m. on October 30, 2018**. The Submittal Form (see page 4); the cost proposal form; and the Campaign Contribution Disclosure Form must be completed, signed, and incorporated into the proposal. Envelopes or boxes should be clearly marked "Proposal to Report Management Software (RMS), RFP 19-128917."
 - b. Offerors are fully responsible for timely delivery of proposals. Any proposal received after the stated closing time will be returned unopened. If proposals are sent by mail to the Central Purchasing Office, the Offeror shall be responsible for actual delivery of the proposal to the Central Purchasing Office before the advertised date and hour for the opening. Proposals which are delayed will not be considered and will be returned unopened.

4. Number of Copies

- a. The Offeror shall submit one (1) original, and one (1) electronic version **formatted as a single PDF document** provided on a CD or flash drive. The electronic version shall be an exact copy of the original proposal. The proposal shall contain any information or supplements which will assist the City in selecting an Offeror. All expenses associated with this submittal will be borne solely by the Offeror.

5. Inquiries

- a. Questions and/or clarifications concerning this RFP will be accepted in writing through **October 12, 2018 at 2:00 PM**. Requests may be transmitted via facsimile or email. Written responses to all written inquiries will be provided and distributed to all recipients of this RFP. Responses and addenda to this RFP, if necessary, are scheduled to be issued by **October 17, 2018**. No Offeror may rely upon oral responses made by any City employee or any representative of the City. Questions and/or clarifications concerning this RFP shall be directed to:

Christina Tyler
Buyer I
Phone: (505) 599-1371
Fax: (505) 599-1377
Email: ctyler@fmtn.org

- b. The only approved contact shall be with the above referenced purchasing staff. Offerors making contact with any other City official, evaluation committee member, or City employee regarding this RFP may be disqualified.
- c. Offerors shall have no claim against the City for failure to obtain information made available by the City which the Offeror could have remedied through the exercise of due diligence.

6. Signing of Proposals and Authorization to Negotiate

- a. The original proposal shall be executed by a duly authorized officer of the Offeror. The Offeror must also identify those persons authorized to negotiate on its behalf with the City in connection with this RFP (see Section III Item 3.c.).

7. Period of Acceptance

- a. All proposals must remain valid for a minimum period of ninety (90) days after the Proposal Due Date. No proposal may be modified or withdrawn by the Offeror during this period of time unless prior written permission is granted by the City.
- b. The City reserves the right to request additional information from the Offeror at any time during the selection process. The City also reserves the right to extend by thirty (30) days the proposal of any Offeror, at no additional cost to the City, to allow for the completion of the final contract documents. If the notification of selection of an Offeror or request for time extension has not been made by the City after ninety (90) days, Offerors may, at their discretion, withdraw their proposals or provide the City with written extensions of time.

8. Binding Offers

- a. All proposals submitted by Offeror are required to be binding offers, enabling acceptance by the City to form a binding contract. Proposals are to remain as binding offers for the full period of time of the initial 90-day Period of Acceptance and as such

time period may be extended by the City. The City reserves the right to request revisions to proposals, prior to award, for the purpose of obtaining best and final offers.

9. Subcontracts and Other Contractual Arrangements

- a. The use of subcontracts or other contractual arrangements to provide the requested services is permitted. The City, however, is looking for a contracting entity that provides for a single, technically and financially capable party to be fully responsible to the City for all contractual obligations.
- b. All existing or anticipated subcontracting and other arrangements relating to the entity that will contract with the City and to the services to be provided by such entity must be fully and clearly disclosed in proposals and are subject to further clarification by the Offeror, and the review and approval by the City.

10. Independence of the Offeror

- a. The employees, officers and agents of the Offeror are not, nor shall they be deemed for any purpose, employees or agents of the City, nor shall they be entitled to any rights, benefits, or privileges of City employees. It is understood that the relationship of the Offeror to City, if a contract is successfully negotiated, will be that of independent contractor.

11. Laws and Regulations

- a. This procurement shall be governed by, construed, and enforced in accordance with the laws of the State of New Mexico, and the laws, ordinances, rules and regulations of the City of Farmington. The City also requires that all responses to this RFP, and any contracts that may arise as a result of this procurement, be in accordance with laws, ordinances, and regulations of the State of New Mexico and the City of Farmington, New Mexico.

12. Confidentiality

- a. It is understood by the Seller or Offeror and the City that the City is a New Mexico municipal corporation and, as such, is subject to the provisions of the New Mexico Inspection of Public Records, Section 14-2-1 through 14-2-12 NMSA 1978 and the New Mexico Public Records Act, Chapter 14, Article 3 NMSA 1978. In the event Seller or Offeror has responded to a City Request For Bid (RFB) or a City Request For Proposal (RFP) and marked all or any part of the information submitted as "CONFIDENTIAL INFORMATION" or as "PROPRIETARY INFORMATION," City agrees to notify Seller of any third party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, Agreement, or Contract. To the extent Seller or Offeror provides City with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, Seller or Offeror agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. Seller or Offeror, being aware of said facts, agrees to provide legal counsel on behalf of the City in any such litigation and shall bear the complete cost of litigation, including attorney fees and court costs. If Seller or Offeror fails or refuses to provide legal counsel at

its expense within ten (10) calendar days after written notification, as aforesaid, such failure may result in the City agreeing to release the Purchase Order, Agreement, or Contract or any portion thereof which is relevant to the denied request.

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

13. Prohibited Contacts

- a. The Offeror, including any person affiliated with or in any way related to the Offeror, is strictly prohibited from any contact with members of the City Council, City staff or the City consultants on any matter having to do in any respect with this RFP other than as outlined herein. Failure by any Offeror to adhere to this prohibition may, at the sole discretion of the City, result in disqualification and rejection of any proposal.

14. Bribery and Kickbacks

- a. By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerors of the following: (1) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978); (2) it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978); (3) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); (4) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

15. Protest Deadline

- a. Any protest by an Offeror must be timely and in conformance with Section 13-1-172, NMSA, 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the City's written notification to all responding Offerors. Protests must be written and must include the name and address of the protestor and the number assigned to this RFP by the City. It also must contain a statement of grounds for protest including appropriate supporting exhibits. The timely protest must be delivered to:

Ms. Kristi Benson, CPPO, CPPB
Chief Procurement Officer
Central Purchasing Division
City of Farmington
800 Municipal Drive (Mailing Address) OR
805 Municipal Drive (Physical Location)
Farmington, NM 87401-2663

16. Agreement

- a. A draft agreement is attached as Exhibit D. A written contract will be entered into between the City and the successful Offeror.

17. Contract Length

- a. The contract completion date shall be 120 calendar days following contract start-up date, except for causes beyond the control of the awarded Offeror. Any alterations in the completion date shall be agreed to in writing by the City and the awarded Offeror.

18. References

- a. The Offeror shall provide a list of five (5) references of clients whom are being provided the same or similar type service. The reference list shall include current clients which services have been provided within the past three (3) years and shall provide a business name, contact person, telephone number and email address. The City reserves the right to contact clients for reference checks.

19. Conflict of Interest

- a. Offeror warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract.
- b. Offeror must notify the City's Chief Procurement Officer if any employee(s) of the requesting department or the Central Purchasing Division have a financial interest in the Offeror. If yes, the Offeror must specify the employee(s) name in their proposal.

20. Debarment, Suspension, and Ineligibility

- a. By submitting a response to this solicitation RFP the business (Bidder/Offeror/Contractor) represents and warrants that it is not debarred, suspended, or placed in ineligibility status under the provisions of Federal Executive Order 12549.

III. Proposal Format Requirements

1. General Format for Proposals
 - a. To facilitate comparison and evaluation, Offerors must follow the format outlined in this section. Failure of an Offeror to follow the required format, may, at the sole discretion of the City, result in the rejection of the submittal. Proposals shall contain concise written material and illustrations that enable a clear understanding and evaluation of the capabilities of the Offeror. Legibility, clarity, and completeness are essential. The City, at its sole discretion, may reject any proposal which is unclear in any way.
2. Organization of Materials
 - a. Proposals must be organized in the following manner:
 - (1) Submittal Form, page 4; Cost Proposal, Exhibit A; Campaign Contribution Disclosure Form, Exhibit C.
 - (2) Cover Letter
 - (3) Table of Contents
 - (4) Qualifications and Experience with governmental entities
 1. Professional Resumes
 2. Experience and Background
 - (5) Minimum requirements listed in the Scope of Services, pages 7-9 of this RFP
 - (6) References
 - (7) Contractual Considerations of Draft Agreement
3. Contents of Proposal
 - a. The Offeror must provide the required information both as to itself and any other person, including without limitation, any corporation, partnership, contractor, joint venture, consortium, or individual which the Offeror intends to assign to a key management role in the proposed agreement with the City or to which the Offeror intends to assign material responsibilities under any such agreement.
 - b. Submittal Form and Form of Proposal
 - (1) The submittal form is included as Page 4, the cost proposal is included as Exhibit A, and the Campaign Contribution Disclosure Form is included as Exhibit C. They must be completed, signed and incorporated into the submitted proposal. Failure to do so may result in disqualification.
 - c. Cover Letter
 - (1) The cover letter shall constitute a firm offer to the City and be utilized to introduce the Offeror. Cover letters should contain the following information:

1. Designation of the business entity that will contract with the City;
2. Identification of the principal contact person for the Offeror and an alternate contact person together with addresses, telephone and facsimile numbers, and e-mail address;
3. A clear statement indicating that the attached proposal constitutes a firm and binding offer by the Offeror to the City; and
4. A clear statement indicating that all information in support of the proposal is accurate, truthful, and factual.

d. Table of Contents

- (1) Proposals should contain a detailed table of contents listing major sections and subsections which correspond to the requirements of the RFP. The table of contents should also list all tables, exhibits, figures, etc. contained in the proposal.

e. Qualifications and Experience

- (1) Professional Resumes of each key staff member, organized as follows:
 1. Professional background
 2. Current and past relevant experience
 3. Education
 4. Certifications
 5. A listing of directly relevant projects of similar nature which includes the project name, project description, and role of staff member in project.

f. Offeror to submit any requested changes/additions to the Draft Agreement.

4. Maximum Page Limitation: 20 single sided=10 double sided

If supplied, the following pages will be excluded from being counted as part of the maximum page limitation:

- a. Front and back cover and binding pages;
- b. Submittal Page, Page 4 of RFP, Cost Proposal, Campaign Contribution Disclosure Form;
- c. Letter of Introduction;
- d. Title Page;
- e. Table of Contents;
- f. Resumes of Key Staff Members;
- g. Dividers between proposal information categories;
- h. Contractual considerations, Agreement, Certificate of Insurance, and other certifications.

Double sided printed pages shall be numbered as two pages. Any 11" x 17" page shall be numbered as two pages. Drawings on 24" x 36" sheets shall be numbered as four pages. Offeror's proposal should be as clear and concise as it can be while still

providing the Evaluation Committee with information addressing the requirements in each of the categories stipulated in the RFP.

At the City's discretion, proposals exceeding the maximum page limitation may be rejected and not evaluated.

1. Criteria for Award

- a. The City will receive proposals from firms having specific experience, resources and qualifications in the proposed scope of work.

Proposals for consideration for this project must contain evidence of the firm's experience and abilities in the specified area and other disciplines directly related to the proposed services. Other information required by the City to be submitted in response to this RFP is included elsewhere in this solicitation.

A selection committee will review and evaluate all replies and detailed proposals, may conduct oral presentations or a combination of both, unless otherwise indicated in this solicitation. The selection committee will have only the response to this solicitation to review for selection of finalists and, therefore, it is important that Offerors emphasize specific information considered pertinent to the services to be provided. Evaluation of the responses will be based on the following criteria:

35 Points

System meets the functional requirements. Functional requirements will be evaluated based on how the proposal meets the requirements listed in the scope of services.

25 Points

Experience of Offeror to perform tasks described in this RFP. Provide company background information outlining years in business and relevant experience in projects of similar nature and utilized with fire departments in the last three (3) years.

15 points

Offeror's personnel. Adequacy of proposed project management team and resources to be utilized by the Offer and any other relevant information outlining Offeror's team qualifications.

5 points In-state Preference

Or

10 points Veterans Preference

25 points

Cost

The Offeror with the lowest cost will receive a total of 25 points. Each succeeding offer will receive a quota of points computed as follows:

$$\frac{\text{Lowest Offer (\$)}}{\text{Higher Offer (\$)}} \times 25 = \frac{\text{Points}}{\text{Price Evaluation}}$$

110 Points Proposals will be evaluated based on the above evaluation criteria for final negotiations with the top rated firm.

b. Application of Preferences

Offeror shall include in-state preference certificates for themselves and for any subcontractors listed in the proposal.

(1) Pursuant to Section 13-1-21(E), NMSA 1978, When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award additional points equivalent to:

1. Five percent of the total possible points to a resident business; or
2. Ten percent of the total possible points to a resident veterans business that has annual gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year.

(2) Pursuant to Section 13-1-21(F), NMSA 1978, When a joint bid or joint proposal is submitted by a combination of resident veteran, resident and nonresident businesses, the preference provided pursuant to Subsection B, C, D or E of the statute shall be calculated in proportion to the percentage of the contract, based on the dollar amount of s or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal.

1. Offeror will complete the following table if submitting a joint proposal:

Firm Name, Location Of Resident Businesses	Work to be Performed	% of Work Performed Compared to Contract Cost
Firm Name, Location Of Non-Resident Businesses		

Points shall be distributed by the percent of work identified above calculated as follows:

Example: 35% of work will be performed by the certified resident business:

35% of 5 points = 1.75 points

3. In accordance with Sections 13-1-21 and 13-1-22 NMSA 1978 and effective July 1, 2012, a resident and resident veteran's business preference has been implemented. The Taxation and Revenue Department (TRD) will be issuing a three (3) year certificate to each qualified business. Businesses are required to reapply to TRD every three (3) years with the proper documentation to renew their certificate.

4. In accordance with Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate, valid resident veteran business certificate, valid resident contractor certificate or valid resident veteran contractor certificate issued by the taxation and revenue department.
2. Presentation/Demonstration Agenda – if required
 - a. Offerors should be prepared to speak on the following issues during the course of their presentation.
 - Grasp of Project Requirements - Discussion of firm's analysis and understanding of the project.
 - Project Approach/Methodology - Discussion of the methodology the firm proposes to use in providing the required services.
 - Key Personnel and Roles - Discussion of personal qualifications and professional skills of key individuals.
 - Pertinent Experience of the Firm - Discussion of related projects presented as previous work of the firm.
 3. Presentation/Demonstration Schedule – if required
 - a. A Presentation Schedule of the top evaluated firms that will be continuing in the evaluation process will be issued. Offeror's proposal will be utilized by the evaluation committee and any additional presentation material shall be distributed at the time of Offeror's presentation. City personnel will be available during the Offeror's set-up period, and during the presentation to offer assistance.
 - b. A one (1) hour maximum time allotment will be available for each firm. A fifteen (15) minute question and answer period shall be incorporated within the presentation period.
 - c. The City requests that Offerors address all concerns outlined in the RFP during their scheduled presentation. The RFP outlines the City's project summary and it is our intent to refine in detail the scope of services, additional requirements and agreement format during negotiations with the top evaluated firm.

EXHIBIT A

PRICING TABLE NO. 1

The pricing for this table shall cover all procurement, installation, and warranty services to configure, document, install, and test a Complete System.

ITEM	DESCRIPTION	QTY	UNIT PRICE	EXTENDED DETAIL PRICE	TOTAL PRICE
1	SOFTWARE PACKAGE	1 LS			\$
1a	DETAIL LIST - Must total the above lump sum (LS) total price:			\$ \$ \$ \$ \$ \$ \$ \$	
2	HARDWARE (IF APPLICABLE)	1 LS			\$
2a	DETAIL LIST – Must total the above lump sum (LS) total price:			\$ \$ \$ \$ \$ \$ \$ \$	
Subtotal – Price Table No. 1:					\$

**PRICING TABLE NO. 2
Installation and Integration**

The pricing for this table shall cover all project management and engineering services to configure, install, and test a Complete System.

ITEM	DESCRIPTION	QTY	UNIT PRICE	TOTAL PRICE
1	Installation			\$
2	Configuration/Integration			\$
3	Acceptance Testing			\$
Subtotal – Price Table No. 2:				\$

PRICING TABLE NO. 3

Training

The pricing for this table shall cover all training required for the software provided.

ITEM	DESCRIPTION	# of Days Training or Travel	UNIT PRICE per day	TOTAL PRICE
1	Software On-site Training			\$
1a	Travel			\$
2	Other Recommended On-site Courses (list Training & Travel as detailed above)			
2a				\$
2b				\$
Subtotal – Price Table No. 3				\$

PRICING TABLE NO. 4

MAINTENANCE AND SUPPORT AFTER WARRANTY PERIOD

The pricing for this table shall cover all software maintenance, technical support and upgrades required for the Complete System.

ITEM	DESCRIPTION	TERM	UNIT PRICE PER YEAR	TOTAL PRICE FOR FIVE (5) YEARS
1	Software Maintenance and Technical Support & Upgrades	Year 1		\$
		Year 2		\$
		Year 3		\$
		Year 4		\$
		Year 5		\$
Subtotal – Price Table No. 4				\$

TOTAL COSTS

DESCRIPTION	TOTAL PRICE
Pricing Table No. 1: Software and Hardware	\$
Pricing Table No. 2: Installation and Configuration/Integration	\$
Pricing Table No. 3: Training	\$
Pricing Table No. 4: Maintenance & Support after Warranty Period	\$
GRAND TOTAL OF PROPOSAL:	\$

**EXHIBIT B
OFFEROR'S ESTIMATE OF TAXES**

The City of Farmington issues **Type 9 Non-Taxable Transaction Certificates** (NTTC's) and is tax exempt for purchases of TANGIBLE PERSONAL PROPERTY ONLY. These certificates may not be used to purchase construction materials to be used in construction projects. To receive an NTTC please contact Accounts Payable at 505-599-1213. Determinations for applicable tax classification should be made by the Taxation and Revenue Department or your tax consultant. Please call 505-325-5049 for the Farmington branch or 505-827-0700 for the State office.

I, the official signature on the Cost of Proposal, hereby swear that I am duly authorized to legally bind the prospective contractor to this estimate of taxes certification. Hereby as Offeror, I certify that Offeror has made a diligent effort to ascertain and identify all taxes which will be charged to the City against this Proposal and that, in Offeror's opinion, the taxes identified below and the amount shown for all of the taxes which will be charged in addition to the total costs shown on the Cost of Proposal. I affirm Offeror will submit payment on the State of New Mexico periodic CRS-1 report for actual taxes due, as estimated below, to the State of New Mexico Taxation and Revenue Department, accurately identifying the appropriate governmental entity to receive credit for taxes paid.

I am fully aware that this certification is made under penalty of perjury under the laws of the State of New Mexico.

New Mexico Gross Receipts Tax	_____ %	\$ _____	Offeror's Initial Here to Certify Compliance
Compensating Tax	_____ %	\$ _____	
Other	_____ %	\$ _____	

Offeror's New Mexico CRS Identification Number _____

EXHIBIT C CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS MADE TO: Mayor Nate Duckett, Councilor Linda G. Rodgers, Councilor Janis Jakino, Councilor Jeanine Bingham-Kelly and Councilor Sean E. Sharer:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

EXHIBIT D
REPORT MANAGEMENT SOFTWARE (RMS)
RFP NO. 19-128917

DRAFT
Software License, Support Services, and Maintenance Agreement

THIS SOFTWARE LICENSE, SUPPORT SERVICES, and MAINTENANCE AGREEMENT (hereafter “Agreement”) is made and entered into this ____ day of (month and year) (“Effective Date”) by and between **COMPANY NAME, a (State) corporation** (hereinafter referred to as “LICENSOR”), and the CITY OF FARMINGTON, a New Mexico municipal corporation (hereinafter referred to as “CITY”). This Agreement, No. **XX-XXXXX**, establishes the terms and conditions for the provision of an [title of RFP] including software, maintenance and support services (hereafter “Services”). LICENSOR and CITY are at times referred to individually as Party or collectively as Parties.

1. Interpretation - Definitions

- 1.1 Agreement, this Agreement, "herein", "hereof", "hereunder", and similar expressions refer to this Agreement and the SCHEDULES attached hereto and including those referred to within.
 - 1.1.2 Acceptance means the CITY accepts the Licensed Software in accordance with Schedule F – Acceptance Test.
 - 1.1.3 Associated Documentation means all standard materials, including manuals, CD ROM documentation, programming aids, software related training materials and other relevant materials and documentation provided by LICENSOR and/or its subcontractor or supplier and thereby made available to the CITY as Licensed Software.
 - 1.1.4 Contract Documents means the documents referred to in sub-article 3.1 below.
 - 1.1.5 Delivery means the deposit by LICENSOR or its shippers of the Licensed Software and LICENSOR provided Hardware (if any) at the Site.
 - 1.1.6 Designated Equipment means the CITY’s operating environment including all related computer hardware, networking equipment and communication lines and computer equipment at the other end of such lines; and the usual and necessary operating system software provided with the equipment by its manufacturer or purchased by the CITY (**if applicable**).

- 1.1.7 Installation Date means the date on which the initial system as defined in sub-article 1.1.14 below is fully installed (except for items that are not provided by LICENSOR or not available on the Installation Date as discussed by the Parties during the development of Schedule D - Installation Timetable, Site and Manner of Installation at the Site and the initial on-site training is complete.
- 1.1.8 _____ (company name) means the software developer, contracted through LICENSOR to the CITY for the use of the Licensed Software.
- 1.1.9 License means the License set forth in Article 8, License, granted by LICENSOR to the CITY for the use of the Licensed Software.
- 1.1.10 License Fee means the fee payable by the CITY to LICENSOR as specified in SCHEDULE C Payment Schedule & Summary of Costs for use of the Licensed Software.
- 1.1.11 Licensed Software or Software means any software, provided by LICENSOR under the terms of this Agreement consisting of a set of instructions or statements in machine readable medium, including software related training materials, Associated Documentation and any addition, supplement, enhancement, modification or new release.
- 1.1.12 Nonconformities and/or Error means any function that is performed incorrectly or inconsistently by the Licensed Software which is not performing in substantial accordance with the specifications in the Contract Documents and which results in incorrect data or failure of the System to provide the correct response.
- 1.1.13 Professional Services means the services as may be specified in SCHEDULE B, Professional Services and Travel and performed by LICENSOR personnel to provide the CITY with training and project management services during implementation.
- 1.1.14 System means the Licensed Software provided under the terms and conditions of this Agreement which operates on the CITY's server and hardware as an integrated group.
- 1.1.15 Site means the location designated in SCHEDULE D - Installation Timetable, Site and Manner of Installation for Delivery of the System.
- 1.2 Words importing a gender include any other gender.
- 1.3 A reference to a Schedule is a reference to a Schedule in this Agreement. A reference to an Article is a reference to an Article in this Agreement.

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

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

2. Scope of Agreement

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

3. Contract Documents

3.1 The Contract Documents are:

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

3.1.2 LICENSOR proposal (the Proposal) in response to the RFP (including LICENSOR's response to the Requirements for the "[TYPE TITLE OF RFP]"; and all items in LICENSOR's detail response to CITY's RFP will be provided to CITY through currently existing SCHEDULE A - LICENSED SOFTWARE (including its Associated Documentation) capabilities and/or future enhancements to SCHEDULE A - LICENSED SOFTWARE (including its Associated Documentation) provided under a Software License, Support Services, and Maintenance Agreement in effect.

3.1.3 This Agreement including the attached SCHEDULES and EXHIBITS.

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

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

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

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

3.3. There shall be no binding oral commitments.

4. Term of Agreement

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

5. Designated Equipment (if applicable)

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

6. Documentation

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

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

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

7. License Fee, Taxes and Other Payments

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

7.2 LICENSOR shall provide an invoice which provides detailed billing for the Software and Professional Services and Travel in accordance with the milestones in SCHEDULE C - Payment Schedule & Summary of Costs. Such invoice shall be submitted no later than ninety (90) calendar days after the

date services have been rendered unless, in accordance with the milestones, it is to be invoiced after the ninety (90) calendar days period or is mutually agreed by the Parties in the establishment of the SCHEDULE D - Installation Timetable, Site and Manner of Installation that the delivery and invoice will be outside of the milestones. Invoices received twelve (12) months after this time has elapsed may be considered null and void. The invoice shall reference the purchase order number assigned to this Agreement.

7.2.1 The invoice shall be addressed as follows:

City of Farmington
Attention: Accounts Payable
800 Municipal Drive
Farmington, New Mexico 87401
accountspayable@fmtn.org

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

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

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

7.3.3 Invoices received by the CITY are undisputed.

8. License

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

Documentation. Ownership, title and all proprietary rights shall at all times remain with LICENSOR or its relevant third party provider.

- 8.2 This License shall remain in force until the CITY ceases use of the Software and returns to or destroys all copies (including Software related Associated Documentation) of Software or until the CITY's rights are otherwise terminated for cause as provided in Article 17 Termination for Cause, of this Agreement.
- 8.3 Terms in any third-party LICENSOR-provided software licenses or support services contracts for Software shall be consistent with the requirements of this Agreement. In the event of a conflict between the terms of any such licenses and support services contracts, and this Agreement, this Agreement shall take precedence and supersede such license and support services contract terms.
- 8.4 The CITY may use the Licensed Software and related materials on the CITY's Designated Equipment for which licenses has been purchased and only to process the CITY's own work.
- 8.5 In no circumstance shall the CITY make available simultaneously, more than one instance of the application server Software, or more than the licensed number of concurrent users of the client Software to its staff or to the public, for production use.
- 8.6 The CITY shall not reverse assemble, reverse compile, or modify the Software without the express written consent of LICENSOR.
- 8.7 The CITY may make copies of the Software for the System, for back-up and archival purposes only. All such copies are subject to these licensing terms. No other copies of all or any part of the Software may be made without prior written consent.
- 8.8 The Licensed Software may be used on equipment other than the CITY's Designated Equipment if the Designated Equipment is temporarily inoperable. The Licensed Software shall not be run on more than one hardware platform at a time.
- 8.9 The CITY may use the Licensed Software on equipment which replaces or upgrades the Designated Equipment if the Software can be operated without modification.
- 8.10 The CITY shall not transfer, sub-license or assign, in whole or in part, the Software or any rights therein granted under the terms of this License, except as provided in Article 24 Assignment of this Agreement.

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

9. Delivery

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

10. Installation

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

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

11. Acceptance Test

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

12. Training

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

13. Indemnification and Insurance

13.1 Indemnification; Minimum Liability Insurance Requirements - LICENSOR agrees to protect, defend, indemnify, and hold harmless, CITY and its officials, agents and employees from and against any and all liability, damages, claims,

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

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

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

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

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

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

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

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

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

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

13.2.4 CITY Named as Additional Insured, Cross Liability Provisions, and Waiver of Subrogation - The CITY shall be named as an additional insured on all policies except Workers' Compensation. Workers'

Compensation, Commercial General Liability, and Automobile Liability Insurance coverage shall include a waiver of subrogation in favor of the CITY. The Certificate(s) of Insurance shall be explicit with regard to these requirements.

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

14. Confidentiality

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

14.2 It is understood by the LICENSOR and the CITY that the CITY is a New Mexico municipal corporation and, as such, is subject to the provisions of the New Mexico Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978. In the event LICENSOR has responded to a CITY Request For Bid (RFB) or a CITY Request For Proposal (RFP) and marked all or any part of the information submitted as "CONFIDENTIAL INFORMATION" or as "PROPRIETARY INFORMATION," CITY agrees to notify LICENSOR of any third party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, Agreement, or Contract. To the extent LICENSOR provides CITY with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, LICENSOR agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. LICENSOR, being aware of said facts, agrees to provide legal counsel on behalf of the CITY in any such litigation and shall bear the complete cost of litigation, including attorney fees and court costs. If LICENSOR fails or refuses to provide legal counsel at its expense within ten (10) calendar days after written notification, as aforesaid, such failure may result in the CITY agreeing to release the Purchase Order, Agreement, or Contract or any portion thereof which is relevant to the denied request.

15. Intellectual Property Rights

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

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

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

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

15.3.2 provides all reasonable assistance to defend against the claim;

15.3.3 has not breached any provision of this Agreement;

15.3.4 has not modified the Software.

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

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

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

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

16. Warranties

16.1 Software Performance Warranty

16.1.1 LICENSOR warrants that the Software shall perform in accordance with the Contract Documents. LICENSOR will provide to the CITY any

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

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

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

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

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

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

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

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

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

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

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

16.3.3.6 Clarify Documentation.

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

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

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

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

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

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

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

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

17. Termination for Cause

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

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

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

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

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

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

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

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

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

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

18. Exclusive Remedies and Limitations of Liability

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

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

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

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

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

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

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

19. Arbitration

- 19.1 Except for matters in which the dispute relates to unpaid license or service fees, or a breach of the provisions set forth in Article 8 (License) or Article 14 (Confidentiality), any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled in arbitration in accordance with the Uniform Arbitration Act (Section 44-7-1 et. Seq. NMSA 1978). Judgment upon any award rendered by the arbitrator(s) may be entered in any New Mexico court having jurisdiction thereof.
- 19.2 Before a demand for arbitration may be filed by either Party, the management of both Parties shall have met in face-to-face meetings in an effort to resolve any dispute or controversy through normal business management practices. Unless otherwise agreed to in writing, meeting(s) shall take place at the location where the software is being utilized.
- 19.3 In the event of arbitration, each Party shall appoint one arbitrator and the two (2) appointed arbitrators so chosen shall appoint a third (3rd) arbitrator. No arbitration, arising out of, or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement, except by written consent containing specific reference to this Agreement and signed by LICENSOR, CITY, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the Parties to this Agreement shall be specifically enforceable as provided in the Uniform Arbitration Act.
- 19.4 Notice to the demand for arbitration shall be filed in writing with the other Party to this Agreement. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- 19.5 The arbitrators shall have no power or authority to add to or detract from this Agreement of the Parties. The arbitrators shall have no authority to award damages over and above those provided for in this Agreement.
- 19.6 Neither Party nor the arbitrators may disclose the existence or results of any arbitration hereunder, except if the arbitration results in a Court imposed judgment, the non-disclosure restriction shall not be effective to the extent the matter becomes a public record.
- 19.7 Each Party shall bear its own costs in preparing for and conducting arbitration, except that the joint costs, if any, of the actual arbitration proceeding shall be shared equally by the Parties.

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

20. Maintenance

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

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

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

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

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

21. No Waiver

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

22. Force Majeure

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

such Party. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

23. Independent Contractor

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

24. Assignment

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

25. Publicity

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

26. Severability

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

27. Governing Law

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

28. Unlawful Discriminatory Practice

28.1 In performing the required Services, LICENSOR represents that it will not practice unlawful discrimination per Section 28-1-7 NMSA 1978 and Title VI of the Civil Rights Act of 1964 - 49 CFR part 21, with regard to, but not limited to, the following: race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap, age or serious medical condition..

29. Agreement Extension and Modification Article

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

30. Drug and Alcohol Policy

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

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

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

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

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

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

31. Notice

31.1 Except as expressly provided otherwise herein, any formal notice, demand, or request provided for in this Agreement shall be in writing and shall be deemed properly made if personally delivered, delivered by courier, or sent by first-class mail, postage prepaid, or by electronic transmission to the person specified below and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U.S. mail, and if sent by electronic transmission, upon transmission as evidenced by an email read receipt.

To LICENSOR:	Address:	[FILL IN "Address"]
		[FILL IN "Address"]
	Attention:	[FILL IN "Name or Department"]
Phone:		[FILL IN "Phone #"]
Fax:		[FILL IN "Fax #"]
Email:		[FILL IN "Email"]

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

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

in the ordinary course of performing their respective obligations under this Agreement.

32. Conflict of Interest

- 32.1 LICENSOR shall exercise reasonable care and diligence to prevent any actions or conditions which would result in a conflict with CITY's interest. LICENSOR shall immediately notify the person specified in Article 31, Notices of this Agreement in the event a conflict with the CITY's interest is recognized.
- 32.2 LICENSOR warrants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of an services or maintenance under this Agreement.
- 32.3 LICENSOR shall notify CITY's Purchasing Officer if any employee(s) of the requesting department or the Purchasing Division have a financial interest in the LICENSOR's business operations.

33. Bribes and Gratuities

- 33.1 By law (Section 13-1-191, NMSA, 1978) the CITY is required to inform Offerors/Bidders/Contractors/Consultants/Sellers/Suppliers/Licensors of the following:
- (a) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978);
 - (b) it is a third-degree felony to commit the offense of demanding or receiving a bribe buy a public officer or public employee (Section 30-24-2, NMSA, 1978);
 - (c) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); and
 - (d) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

34. Audit

- 34.1 LICENSOR shall maintain complete and accurate records concerning this Agreement (including any Attachments and Exhibits) and all related transactions for at least three (3) years from the date of final payment for the License(s), Support Services, and Maintenance. At any time but not later than three (3) years after final payment under this Agreement, CITY may make such audit of the invoices and substantiating material (including time and/or travel records) as deemed necessary by CITY. Each payment made shall be subject to reduction and refund to CITY, or offset on future payments due LICENSOR, to the extent of

amounts which are found by CITY not to have been properly payable or to have been overpaid, and shall also be subject to increase and payment to LICENSOR for underpayments to the extent of any amounts which are found by CITY to have been underpaid. Upon request by CITY, LICENSOR shall insert a clause containing all the provisions of this Article 34 in all subcontracts to permit CITY to make identical audits and inspections of the records of all subcontractors involved in performance of this Agreement (including Attachments and Exhibits).

35. Taxes

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

36. Designated Representative and Project Manager.

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

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

The Designated Representative's authority shall encompass but not be limited to (1) issuance of instructions, (2) interpretation of plans, (3) review and inspection of LICENSOR's services, (4) rejection of nonconforming work or services, (5)

determination of when services are/is complete, (6) approval of progress payments and final payment, and (7) first point of contact for certain Change Orders as set forth in Article 29, Agreement Extension and Modification.

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

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

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

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

37. Non-Disclosure

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

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

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

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

37.2 Such prohibition on disclosure shall not apply to:

a. disclosures by either party to their employees; or

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

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

38. Security/Access

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

39. Laws, Ordinances and Permits

39.1 The LICENSOR shall comply with all applicable laws, rules, regulations, and ordinances of the United States and the state, county, and municipality, including state and federal occupational, safety, environmental and health laws and regulations, and also including the procurement of all necessary permits and licenses. The Contractor shall indemnify and safe the CITY harmless from and against any claims, damage, and expense (including reasonable attorney fees) arising from the violation by the LICENSOR of any such law, rule, regulation, or ordinance.

40. Extent of Agreement

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

IN WITNESS WHEREOF, said Parties hereto have hereunto set their hands and seals

CITY OF FARMINGTON
A New Mexico Municipal Corporation

(LICENSOR)

By: _____
Title: Mayor

By: _____
Duly Authorized Signature

Date: _____

By: _____
(Printed Name)

(SEAL)

Title: _____

ATTEST:

Date: _____

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

City Clerk

NOTARY PUBLIC SIGNATURE
(REQUIRED)

Date: _____

State of New Mexico
County of San Juan

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

Kristi Benson, CPPO, CPPB
Chief Procurement Officer
Date: _____

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

Department Head Approval

New Mexico State Taxation and
Revenue Department Taxpayer
Identification Number

Date: _____

Legal Department Approved to Form

Federal Taxpayer Identification or
Social Security Number

Date: _____

at Farmington, New Mexico effective the day and year first above written.

SCHEDULE A
LICENSED SOFTWARE

<u>DESCRIPTION</u>	<u>License Fee</u>	<u>Annual Maintenance & <u>Support Fee</u></u>
Package includes:		
"[TO BE COMPLETED UPON FINAL NEGOTIATIONS]"		

SCHEDULE B – Professional Services and Travel

"[TO BE COMPLETED UPON FINAL NEGOTIATIONS]"

SCHEDULE C - Payment Schedule & Summary of Costs

The Payment Schedule is as follows:

"[TO BE COMPLETED UPON FINAL NEGOTIATIONS]"

SCHEDULE D - Installation Timetable, Site and Manner of Installation

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

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

SCHEDULE E - Training

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

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

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

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

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

SCHEDULE F - Acceptance Testing

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

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

SCHEDULE G -Software Support and Maintenance Agreement

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

Section 1. Definitions

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

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

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

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

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

Section 2. Term.

The term of this Maintenance Agreement shall commence on the Effective Date and shall continue thereafter for one (1) year from the expiration of the warranty expiration date and shall be automatically renewed for successive one (1) year periods unless

notice of non-renewal is received by either Party from the other, not less than thirty (30) calendar days prior to the end of the then current one (1) year period. Renewal of the Maintenance Agreement is subject to the appropriation of funds by the City of Farmington City Council, from year to year.

Section 3. Service Fees.

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

Section 4. Payments

The invoice shall be addressed as follows:

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

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

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

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

Section 5. Coverage.

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

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

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

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

- 5.2.1 Subsequent Software Upgrades cannot be installed until the bypassed Upgrade has been installed, and
 - 5.2.2 LICENSOR has no obligation to correct errors, malfunctions or defects in the Software for which corrections or remedies were included in a Software Update or Upgrade which has been rejected or delayed by CITY, and
 - 5.2.3 LICENSOR has no obligation to continue services under this Maintenance Agreement or renewal of this Maintenance Agreement, when two (2) consecutive Software Upgrades have been bypassed.
- 5.3 LICENSOR will reasonably determine the priority level of an error, using the following protocols:
- 5.3.1 Down System Errors: LICENSOR shall acknowledge Down System calls within one (1) Service Hour from the time that the call was placed during Service Hours. In addition, shall promptly initiate the following procedure:
 - 5.3.1.1 assign LICENSOR specialists to correct the error,
 - 5.3.1.2 provide ongoing communication on the status of the corrections; and,
 - 5.3.1.3 commence to develop a work-around or a fix and provide such work-around or fix as soon as it is available.
 - 5.3.2 Other Support Call Errors: LICENSOR shall acknowledge other Support Calls within one (1) business day from the time the call was placed. LICENSOR shall provide a fix or work-around as soon as practical, but not later than the next Software Upgrade.

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

Section 6. Hours.

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

Section 7. Limitation of Liability.

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

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

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

Section 8. Travel Expenses.

LICENSOR shall provide the support services herein via as detailed in "[REVIEW & UPDATE]" Section 8. If the CITY requests and LICENSOR agrees, that LICENSOR provide services on-site under this Maintenance Agreement, the CITY will

reimburse LICENSOR for any travel or travel related expenses. (e.g., coach airfare to and from the CITY's site, local transportation, lodging, and meals). Travel and per diem or subsistence costs, if any, supported by a breakdown including destination, duration and purpose. Reimbursement shall be limited to those that are allowable under Federal cost principles contained in 48 CFR, Chapter 1, Part 31, Federal Acquisition Regulation (FAR 31). Automobile mileage and per diem shall not exceed the amounts authorized by the New Mexico Per Diem and Mileage Act.

Section 9. Proprietary Rights.

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

Section 10. Termination.

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

10.1 Termination for Cause

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

10.2 Termination for Convenience of CITY

The CITY may terminate this Maintenance Agreement at any time by giving at least "[REVIEW & UPDATE]" thirty (30) calendar days notice in writing to LICENSOR. If this Maintenance Agreement is terminated due to the fault of, the above paragraph,

Termination for Cause, shall apply and no compensation or reimbursement to LICENSOR shall be due. If terminated for any other reason, CITY will reimburse for all reasonable documented out-of-pocket expenses incurred in connection with this Maintenance Agreement. LICENSOR will refund (or CITY may offset) from the date of termination the prorated portion of any paid Service Fees for the remaining unused term of the Software License, Support Services, and Maintenance Agreement.

Section 11. General .

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

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

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

EXHIBIT A

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

Maintenance Period: Indefinite, until terminated

DESCRIPTION

PACKAGE INCLUDES:

ANNUAL MAINENENCE and
SUPPORT FEE

"[TO BE COMPLETED UPON FINAL NEGOTIATIONS]"