

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500
2100 CLARENDON BOULEVARD
ARLINGTON, VIRGINIA 22201

NOTICE OF AWARD OF CONTRACT

Midwestern Software Solutions, LLC
3815 Plaza Dr.
Anna Arbor, MI 48108-1655

DATE ISSUED:

November 2, 2015

CURRENT
REFERENCE NO:

791-15

CONTRACT TITLE:

Crash Reporting & Traffic Data
Software

**THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE
VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective **November 2, 2015** and expires on **August 7, 2018**, with two (2) 12 month renewal options.

ATTACHMENTS:

AGREEMENT NO. 791-15

CONTRACT PRICING:

REFER TO ATTACHED AGREEMENT

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

CONTACT: Ben Chen

TELEPHONE NO.: 734-995-0200


CONTACT EMAIL: bc@ms2soft.com

COUNTY CONTACT: Prasad Pulaguntla

TELEPHONE NO.: 703-228-3780

CONTACT EMAIL: ppulaguntla@arlingtonva.us

CONTRACT AUTHORIZATION


Joshua A. Makely
Buyer

11/2/15
DATE

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201

AGREEMENT NO. 791-15

THIS RIDER AGREEMENT (hereinafter "Agreement") is made, on the date of its execution by the County, between Midwestern Software Solutions, LLC ("Contractor"), a Michigan LLC authorized to transact business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration and quantity(ies) specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement and Attachment A (City of Charlotte, NC, Contract 1400047), Attachment B Pricing Worksheet, and Attachment C Project Schedule, Attachment D Scope of Maintenance Services and Attachment E License (collectively, "Contract Documents" or "Contract").

This Agreement rides a competitive procurement process conducted by the City of Charlotte, North Carolina. The Contractor desires to extend to the County the same pricing as the Contractor's agreement with the City of Charlotte.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents.

2. CONTRACT TERM

The Contractor's provision of goods for the County ("Work") shall commence on the date of execution of this Agreement by the County and shall be completed no later than August 7, 2018 ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents.

Upon satisfactory performance by the Contractor, and with the concurrence of the Contractor, if the City of Charlotte renews their agreement identified in Attachment A, the County may elect to renew this Agreement for two (2) years under the same contract unit prices for not more than two (2) additional twelve (12) month periods from August 8, 2018 to August 7, 2020 ("Subsequent Contract Term"). However, if the City of Charlotte does NOT renew their agreement identified in Attachment A, this Agreement shall automatically expire on the date of the City of Charlotte's contract expiration.

3. CONTRACT PRICING

The County will pay the Contractor in accordance with the terms of the Payment paragraph below, at the unit prices set forth in Attachment B for Work provided by the Contractor, as described and required in the Contract Documents, and accepted by the County. The total cost of services shall be \$286,620.00 in the first year of the agreement plus data migration services

costs as needed as outlined in Attachment B. Subsequent contract term pricing shall include recurring maintenance and support costs as outlined in Attachment B.

4. SCOPE OF WORK

The primary purpose of the Work is to provide all hardware, software, labor, equipment, and materials required in order for the Crash Reporting and Traffic Data Software System to perform in accordance with the Specifications and Requirements of the City of Charlotte Contract 1400047.

The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

5. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer"), who shall be appointed by the Director of the Arlington County department or agency requesting the work under the Contract Documents. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

6. PAYMENT TERMS

Payment terms will be recorded by the County as Net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing completed work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the work which meets the Contract requirements, whichever is later. Payments will be made by the County for goods or services furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of shipment or delivery of service, subject to applicable payment terms. The number of the County Purchase Order pursuant to which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire order by the County.

7. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless

otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. NON-APPROPRIATION

All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County's written notice.

9. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and sole expense.

10. DELIVERY

All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

11. WARRANTY

All goods and materials provided to the County shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to Arlington County. The Contractor shall provide evidence of all manufacturers' warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing. Additional warranty provisions are included in Attachment A.

12. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS

Inspection and acceptance of goods or materials by the County will be at the delivery location in Arlington County, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

13. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.
- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

14. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

15. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

16. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the County determines that all the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages,

delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

17. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The performance of Work under this Contract may be terminated by the County Purchasing Agent, in whole or in part, whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

18. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

19. CONFIDENTIAL INFORMATION

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

20. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

21. COUNTY EMPLOYEES

No employee of the County shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

22. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

23. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the County.

24. RELATION TO THE COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

25. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods purchased or acquired by the County under this Contract.

26. AUDIT

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term and any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

27. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

28. AMENDMENTS

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

29. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

30. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from

the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

31. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

32. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

33. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

34. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

35. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

36. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

37. SURVIVAL OF TERMS

In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; AUDIT; WARRANTY; AND CONFIDENTIAL INFORMATION.

38. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

39. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

40. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:
Mr. Ben Chen, PE, PTOE
MS2
3815 Plaza Drive
Ann Arbor, MI 48108
bc@ms2soft.com

TO THE COUNTY:
Mr. Prasad Pulaguntla
Arlington County
Department of Environmental Services
2100 Clarendon Blvd, Suite 900
Arlington, VA 22201

AND

Mr. Michael E. Bevis, JD, CPPO, CPSM, PMP
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

41. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

42. INSURANCE REQUIREMENTS

The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

- c. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- h. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and

indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self insurance resolution to determine the adequacy of the insurance funding.

WITNESS these signatures:

THE COUNTY BOARD OF
ARLINGTON COUNTY, VIRGINIA

MIDWESTERN SOFTWARE SOLUTIONS, LLC

SIGNED
BY:
for



SIGNED
BY:



PRINT NAME
AND TITLE:

MICHAEL E. BEVIS
PURCHASING AGENT

PRINT NAME
AND TITLE:

BEN CHEN
PRINCIPAL

DATE:

11 / 2 / 2015

DATE:

10 / 27 / 2015

**RIDER AGREEMENT 791-15
ATTACHMENT B**

PRICING WORKSHEET

This Pricing Worksheet is an Exhibit to and is incorporated into the Contract between the County Board of Arlington (the "County") and MS2 (the "Contractor"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract.

1. Module Pricing

The County will pay the Contractor for the following modules based upon successful completion of the tasks in Attachment C:

Project Phase	TCLS (Traffic Crash) Enterprise License*	TCDS (Traffic Count) Enterprise License*	Econolite Traffic Data Integration	TMC (Turning Movement Count) Enterprise License*	TTDS (Travel Time) Enterprise License*	Total Cost
Implementation	\$8,580	\$4,290		\$4,290	\$8,580	\$25,740
Training	\$2,860	\$1,430		\$1,430	\$2,860	\$8,580
Software Delivery	\$50,000	\$50,000	\$12,000	\$25,000	\$50,000	\$187,000
NAVTEQ	-	-	-	-	-	-
Total Cost						\$221,320

* Denotes an unlimited number of users and data storage.

2. Recurring Maintenance Support Pricing

The County will pay the Contractor for the following recurring maintenance fees on an annual basis.

Module	Year 1	Year 2	Year 3	Optional Year 4	Optional Year 5
TCLS (Traffic Crash)	\$10,000	\$10,400	\$10,800	\$11,200	\$11,600
TCDS (Traffic Count)	\$10,000	\$10,400	\$10,800	\$11,200	\$11,600
TMC (Turning Movement Count)	\$5,000	\$5,200	\$5,400	\$5,600	\$5,800
TTDS (Travel Time)	\$10,000	\$10,400	\$10,800	\$11,200	\$11,600
HERE (NAVTEQ) Traffic Speed Data	\$30,300	\$15,150	\$15,150	\$15,150	\$15,150
TOTAL	\$65,300	\$51,550	\$52,950	\$54,350	\$55,750

3. Data Migration Services Pricing

The County will pay the Contractor for the following data migration activities based on successful completion of the tasks in Attachment C:

DATA MIGRATION SERVICE	QUANTITY	UNIT PRICE	AMOUNT
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TCLS (Traffic Crash) Data Migration and System Customizations (as needed only)	80 hours	\$143 / Hour	\$11,440
TCDS (Traffic Count) Data Migration and System Customization (as needed only)	40 hours	\$143 / Hour	\$5,720
TMC (Turning Movement Count) Data Migration and System Customization (as needed only)	40 hours	\$143 / Hour	\$5,720
TTDS (Travel Time) Data Migration and System Customizations (as needed only)	80 hours	\$143 / Hour	\$11,440

ATTACHMENT C

PROJECT SCHEDULE

This tentative Project Schedule is an Exhibit to and is incorporated into the Contract between the County Board of Arlington County, Virginia (the "County") and MS2 (the "Contractor"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

The Company shall deliver all Products and perform all Services in accordance with the below Project Schedule. The following dates indicate the plan for Implementation of the Crash Reporting and Traffic Data Software. The County Project Officer and the Company Project Manager shall reassess the Project Schedule within the final Project Plan following commencement of this Contract. Based on this reassessment the County may make changes to the schedule dates outlined below, such changes will be recorded as a written amendment to the contract for incorporation into this Agreement.

Project Phase	Responsible Party	TCLS	TCDS	TMC	TTDS
Implementation	Contractor	11/16/2015	11/16/2015	11/16/2015	11/16/2015
County Data Delivery Date	County	11/6/2015	11/6/2015	11/6/2015	11/6/2015
Training	Contractor	12/9/2015	12/9/2015	12/9/2015	12/9/2015
HERE (NAVTEQ)	Contractor				11/6/2015
Acceptance Date	Contractor	1/15/2016	1/15/2016	1/15/2016	1/15/2016

ATTACHMENT D

SCOPE OF MAINTENANCE SERVICES

This Scope of Maintenance Services is an Exhibit to and is incorporated into the Contract between the City of Charlotte and MS2 (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

1. **GENERAL DESCRIPTION OF COMPANY RESPONSIBILITIES.**

Beginning on the date of System Acceptance and continuing throughout the term of this Contract (and any renewal period thereof), the Company shall provide to the City the services specified in the following provisions of this Contract (all of which are collectively referred to in this Contract as the "Maintenance Services").

2. **PREVENTION AND CORRECTION OF DEFECTS.**

2.1. **SYSTEM.** The Company shall respond to and correct all Defects in the System within the time frames set forth in Section 2.15 of this Exhibit. The Company shall further take all actions necessary to prevent Defects, and to cause the System to reliably and consistently operate in conformance with the Specifications and Requirements.

2.2. **SOFTWARE.** Without limiting any of its other obligations under this Contract, the Company shall correct Defects in the Software within the time frames set forth in Section 2.15 of this Contract, and take such actions as are necessary to ensure that the Software fully conforms to the Specifications and Requirements. The Company's obligations hereunder extend to Third Party Software and Customizations, as well as other Software (including Upgrades and New Versions to Third Party Software and Customizations).

2.3. **HARDWARE.** Without limiting any of its other obligations under this Contract, the Company will correct Defects in the Hardware within the time frames set forth in Section 2.15 of this Contract, and maintain all Hardware in a manner so that: (i) the manufacturer warranty shall remain in full force and effect; (ii) such Hardware shall be qualified for coverage under the manufacturer's maintenance program, if available; and (iii) so as to ensure that the Hardware operates in conformity with the Specifications and Requirements. During the term of this Contract, the Company shall be responsible for correcting all Defects in the Hardware (whether covered by manufacturer warranty or not). The Company shall supply all parts and labor required to perform its obligations under this Subsection at no charge beyond the Maintenance Fee.

2.4. **HIGHEST INDUSTRY STANDARDS.** All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards for professional quality and workmanship, and shall be performed by qualified staff using quality products and materials.

2.5. **SOFTWARE NEW RELEASES AND NEW VERSIONS.** The Company shall provide to the City all New Releases and all New Versions to all Software (including Third Party Software) as soon as reasonably possible following their commercial release at no charge beyond the Maintenance Fee. The New Versions and New Releases provided by the Company to the City will incorporate Customizations at no charge beyond the Maintenance Fee. If requested by the City, the Company shall install New Releases and New Versions at no charge beyond the Maintenance Fee. All New Releases and New Versions provided to the City under this Contract will become part of the Software, and will be maintained by the Company under the terms of this Contract.

The Company will test and certify all New Releases and New Versions before providing them to the City.

Throughout the duration of the Maintenance Services, the Company will provide compatibility in new versions of the Company's Software with the Products that comprise the City's System.

2.6. **HARDWARE NEW RELEASES AND NEW VERSIONS.** The Company will provide and install at no charge beyond the Maintenance Fee all New Releases and New Versions to Hardware (including engineering changes) which are: (a) necessary to correct Defects or enable the

System or any component to function at an optimum level; or (b) required by the manufacturer. This includes mandatory engineering change orders (ECOs).

- 2.7. **COMPLIANCE WITH LAWS.** The Company will promptly develop and provide at no charge beyond the Maintenance Fee all changes and additions to the Software and the Hardware that are required to achieve compliance with local, state or federal laws, regulations, codes and guidelines (including all changes to such laws, regulations, codes and guidelines). The Company will develop New Releases as necessary to improve ease of use and correct
- 2.8. **TRAINING AND DOCUMENTATION FOR UPDATES AND ENHANCEMENTS.** The Company will provide at no charge beyond the Maintenance Fee all training and Documentation that is necessary for the City to fully utilize all New Releases and New Versions.
- 2.9. **REPORTING OF DEFECTS.** The Company shall serve as a single source to address all Defects in the System. Notwithstanding the notice provisions contained in this Contract, the City shall be entitled to report Defects to the Company by telephone, E-mail, or other means, provided that all Defects which require immediate attention shall first be reported by telephone. Notice of Defects need not be in writing, and shall be deemed effective when first received by the Company. The City shall not be required to follow up in-person, telephone, E-mail or telefax notices of Defects with a hard copy by mail or other means.
- 2.10. **TELEPHONE SUPPORT.** The Company shall provide "single point of call" telephone support to the City with respect to the use of the Products and the correction of Defects. Such support will be available from Monday through Friday 7:00 a.m. until 6:00 p.m. Eastern Time ("Regular Business Hours"). During Regular Business Hours, the Company will provide sufficient, qualified help desk personnel to ensure that City problems are addressed immediately. At all other times, a recording will advise the City representative the appropriate pager number to utilize. The Company will respond to each page within one hour.
- 2.11. **REMOTE SUPPORT.** The Company shall provide remote diagnostic and repair service to the City with respect to the use of the Products and the correction of Defects, ("Remote Services"). The Company will make Remote Services available to the City both during Regular business through the help desk, and at other times through the Company staff who respond to pages. The Company shall comply with the security measures set forth on in this Exhibit regarding remote access, and any other security measures provided by the City in writing from time to time regarding access to the System.

The Remote Services to be provided by the Company include but are not limited to the following:
 - Software diagnostics;
 - Database diagnostics;
 - CPU monitoring and diagnostics;
 - Memory usage and performance monitoring;
 - Operating system parameters analysis and diagnostics;
 - Remote downloading of software (fixes and features releases); and
 - Immediate response to calls.
- 2.12. **ON-SITE SERVICES.** Company shall provide on-site maintenance and support to the extent necessary to correct any Defect in the Products, or the System, or to carry out any of the Company's other obligations under this Contract. There shall be no charge for such on-site services, other than the Maintenance Fees provided in this Contract.
- 2.13. **CHANGE CONTROL PROCEDURES.** In performing remote support and other Maintenance Services, the Company will comply with the change control procedures established by the City from time to time, provided that the City shall give the Company notice of such procedures.
- 2.14. **ACCESS TO FACILITIES AND PERSONNEL.** In the event Company provides on-site support, the City shall provide the Company with reasonable access, without charge, to the City's facilities, appropriate personnel, and any other information reasonably requested by Company so as to enable Company to provide Services, provided that the City can do so at no significant cost to the City.

2.15. **SEVERITY LEVELS, RESPONSE TIMES AND RESOLUTION TIMES.** The Company will comply with the response times, resolution time and resolution procedures set forth in this Section for each of the priority levels of problems described herein. The City shall assign an initial priority level for each problem reported, either verbally or in writing, based on the conditions described below. The Company will work with the City to upgrade or reduce the level of a particular problem to a different priority level, if after examining the problem there is reason to do so. Notwithstanding the foregoing, the Company shall not upgrade or reduce the level of priority of a particular error to a different priority without the City's consent, which consent may not be unreasonably withheld.

Priority One Critical	Priority One applies if the problem could: Prevent the accomplishment of an operational or mission essential function, OR Causes loss of data or data corruption, OR Jeopardize safety or security
Response Time	Immediately, if the problem is reported during Regular Business Hours Within one (1) hour of notification if the problem is reported after Regular Business Hours.
Resolution Time	Within 24 hours after the problem is first reported by the City.
Liquidated Damages	Ten percent (10%) of the annual Maintenance Fees paid by the City for each instance where the Company fails to resolve a Priority One problem within the resolution time specified above. For each 24 hours that a Priority One problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to ten percent (10%) of the annual Maintenance Fees paid or payable by the City. The liquidated damage is capped at the annual Maintenance Fees paid for the current year.
Termination Trigger	The City may exercise the right to terminate this Contract immediately for default upon written notice to the Company in the event that a Priority One problem continues in duration for more than 48 hours after it is first reported by the City.
Priority Two	Priority Two applies if the problem could: Adversely affect (but not prevent) the accomplishment of an operational or mission essential function, and no Workaround is available, OR Adversely affect technical or cost risks to the life cycle support of the System, and no Workaround is available. Priority Two problems include aborts, but not loss of data or data corruption.
Response Time	Immediately, if the problem is reported during Regular Business Hours Within three (3) hours of notification if the problem is reported after Regular Business Hours.
Resolution Time	Within 48 hours after the problem is first reported to the City
Liquidated Damages	Ten percent (10%) of the annual Maintenance Fees paid or payable by the City for each instance where the Company fails to resolve a Priority Two problem within the resolution time specified above. For each forty-eight hours that a Priority Two problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to ten percent (10%) of the annual Maintenance Fees paid by the City. The liquidated damage is capped at the annual Maintenance Fees paid for the current year.
Termination Trigger	The City may exercise the right to terminate this Contract immediately for default in the event that a Priority Two problem continues in duration for more than 48 hours after it is first reported by the City.

Priority Three	<p>Priority Three applies if the problem could:</p> <p>Adversely affect (but not prevent) the accomplishment of an operational or mission essential function, but a Workaround is available, OR</p> <p>Adversely affect technical or cost risks to the life cycle support of the System, but a Workaround is available.</p> <p>Priority Three problems do not include aborts or loss of data.</p>
Response Time	<p>Immediately, if the problem is reported during Regular Business Hours.</p> <p>Within eight hours of notification if the problem is reported after normal working hours.</p>
Resolution Time	Resolution within sixty (60) days.
Liquidated Damages	<p>Five percent (5%) of the annual Maintenance Fees paid by the City for each instance where the Company fails to resolve a Priority Three problem within the resolution time specified above. For each twenty days that a Priority Three problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to five percent (5%) of the annual maintenance fees paid by the City. The liquidated damage is capped at the annual Maintenance Fees paid for the current year.</p>
Termination Trigger	<p>The City may exercise the right to terminate this Contract in the event that a Priority Three problem continues in duration for sixty (60) or more calendar days after the resolution time specified above.</p>
Priority Four Minor	Any problem related to the System which does not fall within Priority One, Two or Three
Response Time	<p>Immediately, if the problem is reported during Regular Business Hours</p> <p>Within two days of notification if the problem is reported after Regular Business Hours.</p>
Resolution Time	Resolution within sixty (60) days.
Liquidated Damages	<p>Five percent (5%) of the annual Maintenance Fees paid by the City for each instance where the Company fails to resolve a Priority Four problem within the resolution time specified above. For each thirty days that a Priority Four problem continues after the resolution time specified above, the Company shall pay additional liquidated damages equal to five percent (5%) of the annual maintenance fees paid by the City. The liquidated damage is capped at the annual Maintenance Fees paid for the current year.</p>

- 2.16. **DISASTER RECOVERY.** In the event of a disaster, the Services shall be provided to the City and/or a disaster recovery services vendor at the location of the disaster recovery efforts. Upon the occurrence of a disaster, the Company shall assist the City in performing disaster recovery activities to restore the System to operational service.
- 2.17. **PHONE LOGS.** Company will keep detailed records of telephone calls, Remote Services, on-site visits and other information necessary to readily identify the date a problem is reported, a summary of procedures followed by the Company to correct the problem and any follow up calls relating to such problem.
- 2.18. **TECHNICAL RECORDS.** The Company shall produce and maintain during the term of the MASI and for a period of five (5) years thereafter detailed technical records with respect to all Maintenance Services performed under the MASI, including but not limited to engineering notebooks, development commentary, flow charts, logic diagrams and other materials related to the System (the "Technical Records"). The Company shall provide the City with copies of the Technical Records as requested in writing by the City.

2.19. **PREVENTIVE MAINTENANCE.** The Company shall take all reasonable actions necessary to prevent Defects, and to cause the System to reliably and consistently operate in conformance with the Specifications and Requirements.

3. **CITY'S RIGHT TO RANDOM AND PERIODIC VALIDATION.**

Throughout the life of the System, the City shall have the right to, on its own or through any auditor or agent, randomly and periodically perform such tests, verifications or technical validations which the City deems necessary to determine whether the System or the Products are in conformance with the Specifications and Requirements, or to verify the results of any test(s) performed by the Company or its agents.

4. **ASSURANCE OF CONTINUED MAINTENANCE AND SUPPORT.**

Without limiting any of the Company's other obligations under this Contract, the Company shall support the immediately preceding version of a Current Release of the Software for at least twenty four (24) months following issuance of such Current Release of the Software. When a Current Release requires the City to incur significant integration costs or significant costs in replacing hardware or software (including operating system software), then the Company shall support the immediately preceding version for at least forty-eight (48) months following issuance of the Current Release.

5. **SECURITY MEASURES FOR REMOTE ACCESS.**

The Company will not allow any person or entity to have remote access to the System other than those individuals whom the City has consented in writing to allow access to ("Authorized Personnel"). The Company shall take appropriate steps to insure that all Authorized Personnel who have access to the System shall use such access only for the purpose of correcting Defects in the System or providing New Releases or New Versions to the System. The Company shall take appropriate steps to ensure that all Authorized Personnel comply with this restriction, including but not limited to having such persons execute a written agreement to that effect.

The Company will take such steps as are necessary to ensure that only Authorized Personnel have access to the System.

The Company builds and maintains such "firewalls" as are reasonably necessary to insure that access to the System is restricted in accordance with this Contract, and that Company's access will not create an opportunity for sabotage or improper use of the System.

ATTACHMENT E

LICENSE

This License is an Exhibit to and is incorporated into the Contract between the City of Charlotte and MS2 (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

For purposes of this Exhibit only, the term "Software" shall not be deemed to include Customizations, given that the Customizations are owned by the City and require no license.

1. GRANT OF LICENSE

1.1. *GRANT OF LICENSE.* Subject to the restrictions set forth in Section 1.2 below, the Company grants to City and the Affiliates a perpetual, nonexclusive, irrevocable, nontransferable, royalty-free license to:

- (a) Use the Software and the Documentation for all purposes set forth or referenced in this Contract, including but not limited to: (a) the operation and use of the System, (b) internal training and testing, (c) development, (d) disaster recovery, backup, archive and restore testing and implementation purposes and (e) any other purpose related to the above; and
- (b) Allow direct and remote access to the Software and Documentation by an unlimited number of users and departments of: (a) the City; (b) any Affiliate, (c) any other entity to which the City provides services through use of the System; and (d) any other person or entity to which the City needs to allow access in order to provide services to any of the above through the System;
- (c) Modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation on its own or through a third party; and
- (d) Make as many copies of the Software and Documentation as it desires in support of its authorized use of the Software, provided that said copies shall include the Company's or the third party owner's copyright and other proprietary notices (as the case may be).

1.2. *RESTRICTIONS ON USE.* The City shall not use, copy, disclose or distribute the Software except as permitted by this License.

1.3. *THIRD PARTY ACCESS.* The City may: (a) allow access to the Software and Documentation by third party contractors to modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation, and (b) make and provide a copy of the Software and Documentation to third parties to whom the City has outsourced disaster recovery functions, operations of human resources, or year 2000 testing; provided that such third parties execute an agreement containing provisions substantially similar to those set forth in the Confidentiality Agreement.

2. DELIVERY, TESTING AND ACCEPTANCE.

2.1. *DELIVERY.* The Company shall cause the Software to be delivered, configured and integrated at the times set forth in Exhibit A, the Project Schedule and the Project Plan. Any breach by the Company under the MCSI shall constitute a breach of this License.

2.2. *ACCEPTANCE.* The Software shall not be deemed to have been accepted by the City until System Acceptance has occurred

2.3. *ENHANCEMENTS AND UPDATES.* Company shall provide Enhancements and Updates to the City for so long as the Maintenance Services are in effect. Upon delivery to the City, such Enhancements and Updates of the Company Software and Third Party Software shall be deemed Incorporated into and made part of the Company Software or the Third Party Software (as the case may be).